

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

TOWN OF HOPEDALE,

Plaintiff,

v.

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

Defendants.

No. 2022-J-0146
Lower Ct. No. 20MISC000467

**TOWN OF HOPEDALE’S MOTION FOR INJUNCTION PENDING
APPEAL**

Pursuant to Mass. R. App. P. 6(a)(1), plaintiff Town of Hopedale (the “Town”) moves for an order granting an injunction during the pendency of its appeal of the Land Court’s Decision on Plaintiff’s Motion to Vacate entered on January 28, 2022 (the “Land Court Decision”). Although the Town seeks the same relief (an injunction pending appeal) as the Hopedale Citizens have requested in their Emergency Motion to Preserve the Status Quo and Protect the Forestland Pending Land Court Appeal, filed in this Court on March 28, 2022, the Town does so on different grounds and in support of its own appeal.¹

¹ The Town takes no position on the Hopedale Citizens’ Emergency Motion to Preserve the Status Quo.

FACTUAL AND PROCEDURAL BACKGROUND

1. On June 27, 2020, the One Hundred Forty Realty Trust (the “Trust”), while under the control of a prior trustee and prior owner of the beneficial interest, both of whom were unaffiliated with the Grafton & Upton Railroad Company (the “Railroad”) at the time, entered into a purchase and sale agreement with Jon Mark Delli Priscoli, as Trustee of the New Hopping Brook Realty Trust, for two parcels of land located in Hopedale, known as 363 West Street and 364 West Street, for a purchase price of \$1,175,000.00 (the “P&S Agreement”). See **Exhibit 1**, Amended Verified Complaint (“Complaint”), at ¶ 5.

2. At the time of execution of the P&S Agreement, the Trust owned both parcels. The parcel located at 364 West Street consisted of 155.24 total acres of generally undeveloped land, of which 130.18 acres was classified as forest land under G.L. c. 61 (the “Chapter 61 Land” or the “Forestland”). The remaining 25.06 acres of land at 364 West Street was unclassified wetlands adjacent to the Forestland (the “Wetlands”). Complaint, at ¶¶ 6 & 7.

3. The Forestland portion of 364 West Street had been under Chapter 61 classification since 1992. The Hopedale Board of Assessors approved the most recent re-certification of the Chapter 61 classification on September 3, 2014. The most recent Chapter 61 tax lien is recorded in the Worcester South Registry of Deeds (the “Registry”) in Book 52875, Page 355. The 364 West Street parcel is

generally undeveloped except for a single railroad track and a gas pipeline easement that run through the managed Forestland. There are no buildings or other structures located on the parcel. Complaint, at ¶¶ 8-10.

4. The Railroad owns and operates the railroad track that runs through the 364 West Street parcel. The Railroad is a short line railroad that runs for 16.5 miles from Grafton to Milford. The Railroad is owned by Mr. Delli Priscoli. Complaint, at ¶ 14.

5. On July 9, 2020, the prior trustee of the Trust served a Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien on the Hopedale Board of Selectmen and other parties as required pursuant to G.L. c. 61, § 8 (the “Notice of Intent”). Complaint, at ¶ 15.

6. G.L. c. 61, § 8, grants the municipality in which classified forest land is located a first refusal option to meet a bona fide offer to purchase the land for a period of 120 days (the “Chapter 61 Option”). Complaint, at ¶ 19.

7. On October 12, 2020, the Trust and the Railroad entered into a series of transactions relating to the parcels that were the subject of the P&S Agreement. First, the Trust conveyed the 363 West Street parcel and the Wetlands portion of 364 West Street to the Railroad by quitclaim deed for \$1.00. Second, the owner of 100% of the beneficial interest of the Trust assigned the beneficial interest to the Railroad for \$1,175,000.00. Third, the prior trustees of the Trust resigned as

trustees. These transactions were recorded simultaneously in the Registry. Fourth, the Trust appointed successor trustees affiliated with the Railroad: Mr. Delli Priscoli (CEO) and Mr. Milanoski (President). As a result of these transactions, the Railroad came to own the controlling beneficial interest in the Trust, which continued to hold the record title to the Chapter 61 Land. Complaint, at ¶¶ 26-31.

8. On October 24, 2020, at a Special Town Meeting attended by over 400 residents, the Town adopted warrant articles by unanimous consent to appropriate money for the acquisition of the Chapter 61 Land for \$1,175,000 and to maintain and preserve the Chapter 61 Land “and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission.” Complaint, at ¶ 32.

9. On or around October 27, 2020, agents and/or representatives of the Trust and/or the Railroad began to undertake site work activities on the Chapter 61 Land, including but not limited to flagging for wetlands delineation and tree cutting. Complaint, at ¶ 33.

10. On October 28, 2020, the Town commenced an action in the Land Court for injunctive relief to prevent the Trust and the Railroad from clearing trees on the Chapter 61 Land and for declaratory relief relating to the validity of the Town’s Chapter 61 Option. RA/417 (Docket Report).

11. On October 30, 2020, the Hopedale Board of Selectmen (the “Board”) voted at a duly noticed public hearing to exercise the Chapter 61 Option.

Complaint, at ¶ 34.

12. On November 2, 2020, Hopedale recorded a Notice of Exercise of First Refusal Option Pursuant to M.G.L. c. 61, § 8 (the “Notice of Exercise”) in the Registry at Book 63651, Page 272. Complaint, at ¶ 35 & Ex. E; RA/020 (Notice of Exercise).

13. Also on November 2, 2020, Hopedale sent written notice to the current and former trustees of the Trust that the Board voted to exercise the Chapter 61 Option. The Board included a copy of the Notice of Exercise and a proposed purchase and sale agreement as required by G.L. c. 61, § 8. Complaint, at ¶ 36; RA/019 & RA/046 (Written Notices).

14. Also on November 2, 2020, Hopedale filed an Amended Verified Complaint in the Land Court action to incorporate the Board’s vote to exercise the Chapter 61 Option and the recording of the Notice of Exercise. Complaint, at p. 14.

15. On November 22, 2020, the Railroad filed a petition with the Surface Transportation Board (“STB”) seeking a declaratory order that federal law preempted the application of G.L. c. 61, § 8. RA/418 (Docket Report).

16. On November 23, 2020, the Land Court (Rubin, J.) held a Hearing on Hopedale’s request for a preliminary injunction and an Initial Case Management

Conference for the Land Court action. The Land Court did not enter a preliminary injunction. RA/419 (Docket Report).

17. On November 24, 2020, the Land Court (Rubin, J.) issued an Order Referring Case to Dispute Resolution Screening Session. RA/420 (Docket Report).

18. On January 8 and 21, 2021, the Town, the Trust, and the Railroad participated in mediation sessions with the Hon. Leon J. Lombardi (ret.). RA/420 (Docket Report).

19. On February 8, 2021, the Town, the Trust, and the Railroad entered into a Settlement Agreement and Mutual Release after mediation (the “Settlement Agreement.”). During the mediation, one of the central issues was how to divide ownership of the Chapter 61 Land in a manner that would preserve and protect the interests of the negotiating parties. RA/007, at ¶ 19; RA/420 (Docket Report).

20. Pursuant to the Settlement Agreement, the Town agreed to purchase a 64-acre parcel comprised of the Chapter 61 Land and the Wetlands from the Trust for \$587,500 (“Parcel A”). The parties agreed that the Trust would retain ownership to the rest of the Chapter 61 Land; that this land would no longer be classified under Chapter 61; and that the Town would waive its Chapter 61 Option. The parties also agreed to file a stipulation of dismissal with prejudice in the Land Court action. RA/007, at ¶ 20; **Exhibit 2**, Settlement Agreement.

21. On February 10, 2021, pursuant to the Settlement Agreement, the Town, the Trust, and the Railroad filed a Stipulation of Dismissal with Prejudice in the Land Court action. RA/008, at ¶ 21.

22. On March 3, 2021, the Hopedale Citizens filed an action in Worcester Superior Court seeking to enjoin the Hopedale Board of Selectmen and the Railroad from completing the acquisition of Parcel A contemplated in the Settlement Agreement; to enforce the Town's right to exercise the Chapter 61 Option; and to protect the Chapter 61 Land under Article 97 of the Amendments to the Massachusetts Constitution (the "Citizen Suit"). RA/008, at ¶ 22; RA/073 (Citizen Suit Verified Complaint).

23. On September 24, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum and Order on Motion for Preliminary Injunction in the Citizen Suit (the "Sept. 24 Superior Court Decision"). Addressing the plaintiffs' allegations (supported by affidavits) that the Railroad had resumed cutting trees on the Forestland, the Superior Court enjoined the Railroad and the Trust "from any further alteration or destruction of the 130.18 acres of Forestland that is the subject of this lawsuit pending further order of the court." RA/008, at ¶ 23; RA/099 (Sept. 24 Superior Court Decision).

24. On November 4, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum of Decision on Cross-Motions for Judgment on the

Pleadings in the Citizen Suit (the “Nov. 4 Superior Court Decision”), which included an order prohibiting the Railroad from clearing trees or performing any other site work for a period of 60 days. RA/008, at ¶ 24; RA/105 (Nov. 4 Superior Court Decision).

25. Prior to a public hearing on December 13, 2021, the Board received a petition signed by hundreds of residents of the Town requesting that the Board continue to move forward to exercise the Chapter 61 Option and acquire the Forestland and the Wetlands pursuant to the October 2020 Town Meeting vote. RA/008, at ¶ 25; RA/119 (Petition).

26. On December 14, 2021, the Worcester Superior Court (Goodwin, J.) issued a Memorandum of Decision on Hopedale’s Motion for Clarification in the Citizens Suit (the “Dec. 14 Superior Court Decision”) holding in part that “[u]ntil the reduced acquisition is approved by Town Meeting, the agreement is not effective, and the Town may (but is not required) attempt to enforce the Option.” RA/008-09, at ¶ 26; RA/131 (Dec. 14 Superior Court Decision).

27. On December 30, 2021, the Town filed a Motion to Vacate Stipulation of Dismissal (the “Motion to Vacate”) seeking to vacate the Stipulation of Dismissal with Prejudice entered in the Land Court pursuant to Mass. R. Civ. P. 60(b)(6) based on the Superior Court decisions enjoining the Town from completing the Parcel A acquisition under the Settlement Agreement. The

Defendants opposed the Motion to Vacate. The Hopedale Citizens moved to intervene in the Land Court action. RA/003 (Motion to Vacate); RA/421 (Docket Report).

28. On January 28, 2022, the Land Court (Rubin, J.) issued the Land Court Decision denying the Town's Motion to Vacate. RA/390 (Decision); RA/422 (Docket Report).

29. On February 15, 2022, the Town filed notice of its intent to take an appeal from the Land Court Decision. RA/423 (Docket Report).

30. Also on February 15, 2022, the Town filed an Application for Injunction Pending Appeal pursuant to Mass. R. Civ. P. 62(c) in the Land Court action. The Defendants opposed the application. The Hopedale Citizens filed their own application for an injunction pending appeal. RA/423 (Docket Report); RA/427 (Application for Injunction Pending Appeal).

31. On March 22, 2022, the Land Court (Rubin, J.) denied the Town's Application for Injunction Pending Appeal. RA/425 (Docket Report); RA/463 (Hearing Transcript).

32. On March 26, 2022, the Town held a Special Town Meeting vote on warrant articles authorizing the Parcel A acquisition under the Settlement Agreement and the appropriation of funds for the acquisition. The Town Meeting

voted down the warrant articles and they did not pass. See Exhibit 3, Affidavit of Diana Schindler (“Schindler Aff.”), at ¶ 6.

33. On March 28, 2022, the Hopedale Citizens filed their Emergency Motion to Preserve the Status Quo. Appeals Court Docket.

34. Also on March 28, 2022, a single justice of this Court (Desmond, J.) entered an order enjoining the Railroad “from further altering or destroying the forestland that was the subject of the underlying Land Court case pending further order of this court or a single justice thereof,” and ordered the Town and the Defendants to respond to the Hopedale Citizens’ motion by April 7, 2022. Appeals Court Docket.

ARGUMENT

I. Legal Standard.

A single justice of the Appeals Court has the authority to “grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo.” Mass. R. Civ. P. 62(e).

In civil cases, an application for a stay of the judgment or order of a lower court pending appeal, ... or for an order ... granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the lower court. A motion for such relief may be made to the appellate court or to a single justice, but the motion shall show ... that the lower court has denied an application, ... with the reasons given by the lower court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon....

Mass. R. App. P. 6(a)(1). See also Oakville Dev. Corp. v. Commonwealth Mortg. Co., 32 Mass. App. Ct. 445, 449 n.5 (1992) (“Under ... Mass.R.A.P. 6(a) ..., a party may request from the single justice, and he may grant, an order granting an injunction during the pendency of the party’s appeal.”).

An appellant seeking a stay pending appeal must ordinarily meet four tests: (1) the likelihood of appellant’s success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting the stay.

C.E. v. J.E., 472 Mass. 1016, 1017 (2015), quoting J.W. Smith & H.B. Zobel, RULES PRACTICE § 62.3, at 409 (2d ed. 2007).

II. Hopedale is Entitled to An Injunction Pending Appeal Preventing the Defendants from Further Altering or Destroying the Forestland.

A. Hopedale Has a Meritorious Claim on Appeal.

The Town must show that it has asserted a meritorious claim on appeal in order to meet the likelihood of success on the merits prong of the injunction inquiry. “It has been customary ... on the civil side of the court to employ the words ‘meritorious issue’ or ‘meritorious claim’ in analogous situations” of a stay of execution pending appeal. Commonwealth v. Levin, 7 Mass. App. Ct. 501, 503–04 (1979).

A “meritorious claim,” or “meritorious appeal,” has been held to mean “one which is worthy of judicial inquiry because raising a question of law deserving some investigation and discussion . . .”, ... “. . . one that is worthy of presentation to a court, not one which is sure of success[.]” ... [T]he civil concept of “meritorious appeal” ... [is] an appeal which presents an issue which is worthy of presentation to an appellate court,

one which offers some reasonable possibility of a successful decision in the appeal.

Id. at 504 (internal citations omitted).

The Town's appeal of the Land Court Decision presents an issue which is worthy of presentation to an appellate court. The various decisions of the Superior Court (Goodwin, J.) raised serious issues about the Settlement Agreement which remain unresolved. The Town entered into the Settlement Agreement based on the understanding that it (acting through the Board of Selectmen) had the full authority to acquire Parcel A and that by doing so it would have partially achieved the objective of the Land Court action by acquiring some portion of the Forestland. That was part of the bargain it struck with the Defendants in the Settlement Agreement and motivated its agreement to file the Stipulation of Dismissal; the Board believed it had achieved a fair and just resolution of the litigation. After the Citizens Suit and the various decisions of the Superior Court, however, the Board rightfully questioned whether the Town actually received the benefit of the bargain it made with the Defendants.

By enjoining the Town from completing the acquisition of Parcel A without Town Meeting authorization, the Superior Court introduced the issue that the Town may not have received the fundamental and essential consideration of the Settlement Agreement, and therefore the agreement may have failed due to lack of consideration, rendering it ineffective and subject to rescission. See RA/132

(Dec. 14 Superior Court Decision, at 2 & n.3). Though Judge Goodwin speculated about the implications of the Town not receiving Parcel A, both the Superior Court and the Land Court subsequently acknowledged that this idea was likely dicta and never formally adjudicated, and therefore remained unresolved. RA/491 (Land Court Hearing Transcript); **Exhibit 4**, Superior Court Hearing Transcript, at I-3. Ultimately, the Town Meeting voted against the Parcel A acquisition, thus prolonging the uncertainty around the Settlement Agreement.

While the Settlement Agreement issue is interesting in its own right, this appeal is more specifically focused on restoring the Town's ability to prosecute the Land Court action. The purpose of the Motion to Vacate was to lift the Stipulation of Dismissal and re-open the Land Court action so the Town could continue with the adjudication of its claim that it validly exercised the Chapter 61 Option in light of the altered bargain brought about by the Superior Court's decisions. By ruling that the Town must present the Parcel A acquisition to a Town Meeting vote, the Superior Court altered the Town's bargaining power post hoc. The ensuing Town Meeting vote has made clear that the Town will not get the benefit of its closely-negotiated bargain with the Railroad. While the Railroad may argue that there is other consideration supporting the Settlement Agreement, the Superior Court's decision inexorably altered the Town's position under the Settlement Agreement and precipitated the events which led to the Town's failing to receive the portion of

the Forestland for which it negotiated. The stark reality is that the Town has ended up with none of the Forestland after agreeing to dismiss valid claims to all of it—an outcome the Superior Court (Goodwin, J.) called “unjust, to say the least.” RA/132. Where the purpose of Rule 60(b)(6) relief is “to accomplish substantial justice,” Rezendes v. Rezendes, 46 Mass. App. Ct. 438, 440-41 (1991), the Town sought to reverse the unjust result that befell the Town as a result of the Superior Court’s decision and the ensuing Town Meeting vote.

The Town presented this issue to the Land Court in its Motion to Vacate, arguing that “extraordinary circumstances warrant[ed] relief” from the Stipulation of Dismissal. Owens v. Mukendi, 448 Mass. 66, 72 (2006). The extraordinary circumstances presented in the Motion to Vacate (i.e., the Board of Selectmen exceeding their authority in agreeing to the Parcel A acquisition without a Town Meeting vote) were virtually identical to the circumstances which justified vacating part of an agreement for judgment in Bowers v. Bd. of Appeals of Marshfield, 16 Mass. App. Ct. 29, 33-35 (1983) (selectmen exceeded their authority in agreeing to impose perpetual encumbrance upon six lots to cease use as a public parking in exchange for property owner’s abandonment of challenge to site plan approval for sewage pumping station). In both cases, the select board of a town agreed to some action for which it was later determined they did not have the authority to agree to. See id. at 33 (“What makes the instant case exceptional is that

a public authority, the selectmen, offered as their part of an agreement for judgment a restriction that they lacked the power to impose.”). In both cases, the select board moved to vacate the judgment and the lower court denied the motions. In Bowers, this Court reversed the lower court and vacated the part of the judgment relating to the exceedance of the select board’s authority. Whether the Court should rule similarly on the Town’s appeal and reverse the Land Court Decision is “an issue which is worthy of presentation to an appellate court” and therefore presents a meritorious claim on appeal. Levin, supra.

This is an issue “which offers some reasonable possibility of a successful decision in the appeal.” Id. The Land Court Decision attached far too much significance to the nature of the termination of the action by a stipulation of dismissal with prejudice as opposed to an agreement for judgment, which was the case in Bowers. See RA/398 (Land Court Decision) (“The decision to file a stipulation of dismissal with prejudice instead of an agreement for judgment changes the balance of the equities and the effect on the parties’ deal.”); RA/469 (Hearing Transcript) (“I guess for the sake of clarity and my thinking in the decision rested -- almost entirely began and ended ... with the finality and ... the import ... of the stipulation of dismissal with prejudice.”).

The Land Court’s unwarranted elevation of the procedural significance of a stipulation of dismissal is inequitable to the Town and neglectful of Rule

60(b)(6)'s purpose of accomplishing justice. It focused on the means the parties took to enter judgment and not on the character of the circumstances which called into question whether the judgment was fair and just. The Land Court Decision ignored "the function of rule 60(b)(6) 'to preserve the delicate balance between the sanctity of final judgments ... and the incessant command of the court's conscience that justice be done in light of *all* the facts.'" Rezendes, 46 Mass. App. Ct. at 441, quoting Freitas v. Freitas, 26 Mass. App. Ct. 196, 198 (1988) (emphasis in original). Although a lower court judge has broad discretion in considering a Rule 60(b)(6) motion, the failure to include any consideration of justice in ruling on such a motion is a clear error of law. The Land Court committed such an error here.

The Town initially sought relief in the Land Court to vindicate its rights under G.L. c. 61, § 8. Despite a clear record that the assignment of the beneficial interest of the Trust to the Railroad triggered the Chapter 61 Option, the Land Court expressed skepticism of the Town's likelihood of success on the merits in the Town's initial request for a preliminary injunction and strongly encouraged the parties to resolve the case through mediation. The Town followed the Land Court's directive and mediated in good faith. However, after being denied the core bargain of its mediated resolution, the Town asked to return to the Land Court to vindicate its Chapter 61 Option. The Land Court kept the doors shut because the mediation

resulted in the filing of the Stipulation of Dismissal, even though such a stipulation of dismissal is a customary result in private party mediation and a foreseeable outcome from the path Judge Rubin laid out for the Town. It is inequitable that Judge Rubin rested her decision solely on the nature of this particular form of dispute resolution, and did not consider the unjust result suffered by the Town.

Judge Rubin's limited reading of the holding in Bowers is ripe for review by the Appeals Court and in this context, the Town has a meritorious claim on appeal.

B. Hopedale Will Suffer Irreparable Harm if the Court Does Not Enter an Injunction Pending Appeal.

The Town will suffer irreparable harm to its drinking water supply resources if the Court does not enter an injunction preventing the Defendants from further altering or destroying the Forestland pending its appeal.

“Irreparable harm is that harm that cannot be adequately addressed by money damages.” Ramsten v. Alfieri, 83 Mass. App. Ct. 1132 (Table), No. 12-P-983, 2013 WL 2111668, at *2 (May 17, 2013). “It is well-settled law in this Commonwealth that real property is unique and that money damages will often be inadequate to redress a deprivation of an interest in land.” Greenfield Country Estates Tenants Ass’n., Inc. v. Deep, 423 Mass. 81, 88 (1996).

It is undisputed that the Defendants are intent on developing the Forestland for the purposes of expanding their railroad operations. The Defendants have already on several occasions begun to clear areas of the Forestland and cut trees for

water supply exploration and construction of an access road and stormwater management system. They will continue to alter the site and destroy the Forestland for the construction of new tracks, warehouses, and other structures. The clearcutting of the Forestland for industrial development will undoubtedly cause irreparable harm to the Town, where the Forestland is located upstream of the Town's existing and potential drinking water supply resources.

The link between protected forest land, conservation, and water supply protection is well established. "General Laws c. 61 is part of a broader statutory scheme animated by conservationist values that expressly creates a program of incentives to encourage conservation by private landowners." New England Forestry Found., Inc. v. Bd. of Assessors of Hawley, 468 Mass. 138, 144 (2014).

[A]s the science of conservation has advanced, it has become more apparent that properly preserved and managed conservation land can provide a tangible benefit to a community even if few people enter the land. For example ... forest land helps to clean the air by filtering particulates naturally, and it regulates and purifies the fresh water supply by stabilizing soils that store water over time and filter contaminants.

Id. at 150-51. The Forestland is crucial to the protection of Hopedale's current and future public water supply. Environmental Partners Group, Inc. ("EPG"), the Town's engineering consultant, determined that the 364 West Street parcel and the adjacent open space of the Hopedale Parklands "are both located hydraulically upgradient of all of the Town's public water supply sources and these parcels

provide an important buffer for protection of the Town’s public water supply wells.” Ex. 1, Complaint, at ¶ 11 & Ex. B, at 3. Further, EPG reported that “the [Town’s] current water supply sources are pumping at full capacity and the Town is limited on any future development without a new or expanded water supply source. ... A new water supply source would provide the Town with the additional capacity and add redundancy and resilience to the water system.” Id. at ¶ 12 & Ex. B, at 4.

The 364 West Street parcel (which includes the Chapter 61 Land) is a key parcel in the Town’s search for a new water supply source and for the protection of its existing water supply. EPG concluded that “should someone else acquire the Chapter 61 Parcel and the property[’s] developed use is not consistent with public water supply protection or Zone II land uses, then portions of the [Hopedale Parklands] may no longer be suitable for public water supply development.” Id. at Ex. B, at 4. EPG also concluded that the 364 West Street parcel “significantly increases the potential area for public water supply exploration” and “provides additional protection for the Town’s existing public water supply sources.” Id. at Ex. B, at 11-12. Should the Town prevail in this appeal and this Court order the Stipulation of Dismissal vacated, the Town will proceed to adjudicate its claim that it validly exercised the Chapter 61 Option. Any harm to the Forestland will

jeopardize the land which the Town would be entitled to purchase under the Chapter 61 Option.

The harm caused by clearing of trees on the Chapter 61 Land for development would not be adequately addressed by money damages. Thus, the Defendants' development of the Forestland would cause irreparable harm to Hopedale's current and future drinking water supply resources.

C. The Risk of Irreparable Harm to Hopedale Outweighs Any Potential Harm to the Defendants.

After first "evaluat[ing] in combination the moving party's claim of injury and chance of success on the merits," the Court "must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party." Packaging Indus. Grp., Inc. v. Cheney, 380 Mass. 609, 617 (1980). Here, the risk of irreparable harm to the Town by the clearcutting of the Forestland far outweighs any potential harm to the Defendants.

The Defendants claim they will suffer irreparable harm from an injunction pending appeal because they will incur daily carrying costs relating to equipment rental that cannot be used for site clearing activities.² However, if the Court were

² If the Court enters an injunction pending appeal, the Railroad is obligated to mitigate any potential damages, including by removing from the site any construction equipment subject to daily rental charges for the months-long duration of the appeal. The Court should discount or disregard any alleged damages based on costs and fees that the Railroad could easily mitigate.

to enter an injunction pending appeal, the Defendants would have no reason to continue renting equipment for site work activities they would be enjoined from performing. Moreover, the Defendants have not identified any basis for recovering the damages they allege they would suffer if an injunction were to enter. While the Defendants' costs could be addressed by money damages and therefore would not ordinarily be considered irreparable, see Ramsten, supra, the Defendants assert that the Town is in a dire financial situation such that it cannot afford to cover these costs, and therefore the inability to recover damages makes the harm irreparable. That assertion is based on the Defendant's inflated estimate of their daily costs. The Town would have the financial capacity to cover any realistic estimate of the potential damages to the Defendants, if any, of an injunction pending appeal. See Ex. 4, Schindler Aff., at ¶¶ 9-12.

Accordingly, the balance of harms weighs in favor of issuing an injunction pending the Town's appeal of the Land Court Decision. Without the injunction, the Forestland that the Town is trying to protect and preserve in the status quo may be cleared and denuded. The substantial public interest in preserving this Forestland which may have a deleterious impact on the Town current and future public drinking water resources far outweighs the Railroad's attenuated claim that it will be damaged by an injunction.

D. The Public Interest is Benefitted By an Injunction Pending Appeal.

As noted above in Section II.B, the Forestland has significant benefits for the current and potential future drinking water supply in the Town. Protection of the municipal drinking water supply is undoubtedly an important public interest. See New England Forestry Found., 468 Mass. at 150-51; Goddard v. Bd. of Appeals of Concord, 13 Mass. App. Ct. 1001, 1002 (1982) (“The protection of ground water is a valid public interest.”). If the Town were to prevail on its appeal and this Court were to vacate the Land Court Decision, thus reinstating the Land Court action, the Town would proceed to enforce the Chapter 61 Option and seek to acquire all of the Forestland in order to conserve it for the protection of the Town’s drinking water supply. Accordingly, there is a significant public interest in the entry of an injunction pending appeal.

CONCLUSION

The Town has asserted a meritorious claim worthy of presentation to this Court, and the irreparable harm that would occur from the alteration or destruction of the Forestland without an injunction pending the Town’s appeal would vastly outweigh any harm the Defendants might suffer. An injunction would also be in the public interest as the Forestland provides important benefits to the Town’s current and future public drinking water supply.

WHEREFORE, based on the foregoing, the Town of Hopedale respectfully requests that this Honorable Court grant this motion and enter the following relief:

1. Enter an order prohibiting the Defendants further altering or destroying the Forestland that was the subject of the underlying Land Court case pending further order of this Court after the Town's appeal of the Land Court Decision, notice of which was filed on February 15, 2022, has been heard and decided; and
2. Enter such other relief as the Court deems just and proper.

Respectfully submitted,

TOWN OF HOPEDALE

By its attorneys,



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Dated: April 7, 2022

CERTIFICATE OF SERVICE

I certify that on April 7, 2022, I served this Motion for Injunction Pending Appeal on the above-captioned Defendants and the Hopedale Citizens by emailing a copy thereof to their attorneys, Donald C. Keavany, Jr., Esq., of Christopher Hays, Wojcik & Mavricos, LLP, 370 Main Street, Suite 970, Worcester, Massachusetts, and David E. Lurie, Esq., of Lurie Friedman LLP, One McKinley Square, Boston, Massachusetts, respectively.



Peter F. Durning

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 20 MISC 000467

TOWN OF HOPEDALE,

Plaintiff,

v.

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

Defendants.

AMENDED VERIFIED COMPLAINT

The Town of Hopedale, by and through its Board of Selectmen, brings this civil action against the parties who now own the controlling interest to a parcel of land in Hopedale which is classified as forest land for tax purposes under Chapter 61 of the General Laws.

On July 9, 2020, the One Hundred Forty Realty Trust (the "Trust"), under control of a prior trustee, sent the Town notice of its intent to sell the Chapter 61 land with a copy of the purchase and sale agreement with a trust affiliated with the Grafton & Upton Railroad Company ("GURR"). Pursuant to M.G.L. c. 61, § 8, Hopedale has a first refusal option to meet any offer to purchase classified forest land and 120 days to exercise this option. Within this statutory time period, the prior trustee assigned 100% of the beneficial interest of the Trust to GURR, so that GURR has obtained the controlling interest in the Chapter 61 land. Even though the Trust still holds legal title to the Chapter 61 land and the Town still holds an option to purchase it, GURR has begun to convert the use of the land by clearing the forest in preparation for development.

After a duly noticed public hearing, the Hopedale Board of Selectmen voted to exercise the first refusal option on October 30, 2020.

Therefore, Hopedale now seeks equitable relief from this Court, including: (i) a declaration that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 land which would result in any alienation of it or any conversion of its current use as forest land until such time as the Town no longer holds the option to purchase; (ii) a temporary restraining order and/or a preliminary injunction preventing the Trust and/or GURR and each of their agents and representatives from alienating or converting the use of the Chapter 61 land at any time before the expiration of the statutory first refusal option period set forth in M.G.L. c. 61, § 8, and as extended by Section 9 of Chapter 53 of the Acts of 2020; (iii) entry of a memorandum *lis pendens* covering the Chapter 61 land; and (iv) entry of an order for specific performance directing the Trust to convey the Chapter 61 land to the Town.

PARTIES

1. Plaintiff Town of Hopedale (“Hopedale” or the “Town”) is a Massachusetts municipality, here acting through its duly-elected Board of Selectmen, with a principal address of 78 Hopedale Street in Hopedale, Massachusetts.

2. Defendants Jon Delli Priscoli and Michael R. Milanoski are Trustees of the One Hundred Forty Realty Trust (the “Trust”), which is a nominee trust established under a declaration of trust dated September 16, 1981, and recorded in the Worcester Registry of Deeds (the “Registry”) in Book 7322, Page 177. The trustees have a principal address of 7 Eda Avenue in Carver, Massachusetts. This action is brought against Mr. Delli Priscoli and Mr. Milanoski in their capacities as trustees only.

3. Defendant Grafton & Upton Railroad Company (“GURR”) is a Massachusetts corporation with a principal place of business at 42 Westborough Road in North Grafton, Massachusetts. GURR owns 100% of the beneficial interest of the Trust pursuant to an Assignment of Beneficial Interest dated October 12, 2020, and recorded in the Registry in Book 63493, Page 39.

JURISDICTION

4. This court has jurisdiction over the parties and this action pursuant to M.G.L. c. 184, § 1(k), because this action involves matters cognizable under the general principles of equity jurisprudence where a right, title, or interest in land is involved, including but not limited to specific performance of a land contract.

FACTUAL BACKGROUND

5. On or around June 27, 2020, the Trust (under the control of a prior trustee and prior owner of the beneficial interest, both of whom are unaffiliated with the defendants named herein) entered into a purchase and sale agreement with Jon Mark Delli Priscoli, Trustee of the New Hopping Brook Realty Trust, for two parcels of land located in Hopedale, Massachusetts, known as 363 West Street and 364 West Street for a purchase price of \$1,175,000.00 (the “P&S Agreement”). A true and accurate copy of the P&S Agreement is included in **Exhibit A** as described below.

6. At the time of execution of the P&S Agreement, the Trust owned both parcels.

7. The parcel located at 364 West Street consisted of 155.24 total acres of generally undeveloped land, 130.18 acres of which was (and continues to be) valued, assessed, and taxed as classified forest land under M.G.L. c. 61 (the “Chapter 61 Land”).

8. A portion of 364 West Street has been under Chapter 61 classification as forest land since 1992.

9. The Hopedale Board of Assessors approved the most recent re-certification of the Chapter 61 classification on or around September 3, 2014, and the current Chapter 61 tax lien is recorded in the Registry in Book 52875, Page 355.

10. The 364 West Street parcel was and is generally undeveloped except for a single railroad track and a gas pipeline easement that run through the managed forested land. There are no buildings or other structures located on the parcel.

11. According to a report prepared for the Town by Environmental Partners Group, Inc. (“EPG”), the 364 West Street parcel is located hydraulically-upgradient of all of Hopedale’s public water supply sources and provides an important buffer for protection of the Town’s public water supply wells. A copy of the EPG’s report is attached as **Exhibit B**.

12. In addition, EPG noted 364 West Street is the only optimal location for siting a new public water supply source in the Town, and ownership of the Chapter 61 Land would ensure that future land uses on the parcel are consistent with water supply protection and would not adversely impact groundwater quality.

13. The Chapter 61 Land is also located adjacent to, and contiguous with, the Hopedale Parklands, a public parkland first designated in 1899 and with trails and landscape features designed by the American landscape architect Warren H. Manning. Ownership of the Chapter 61 Land would accentuate this existing conservation land and open space and provide additional recreational opportunities for the residents of Hopedale in proximity to the Hopedale Parklands.

14. Upon information and belief, GURR owns and operates on the railroad track that runs through the 364 West Street parcel. GURR is a short line railroad that runs for 16.5 miles from Grafton to Milford. GURR is owned by Mr. Delli Priscoli and was affiliated with the buyer under the P&S Agreement.

15. On or around July 9, 2020, the prior trustee of the Trust served a Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien on the Hopedale Board of Selectmen and other parties as required pursuant to M.G.L. c. 61, § 8 (the “Notice of Intent”). A true and accurate copy of the Notice of Intent is attached as **Exhibit A**.

16. In the Notice of Intent, the Trust indicated its intent to sell both parcels of land, not just the Chapter 61 Land.

17. In the Notice of Intent, the Trust indicated that the proposed use of the Property was “to provide additional yard and track space in order to support the current and anticipated increase in rail traffic of GU[RR]’s transloading operations.”

18. Upon information and belief, GURR has no concrete or definitive plans for its future use of the parcels.

19. M.G.L. c. 61, § 8, provides, in pertinent part: “For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.”

20. Section 9 of Chapter 53 of the Acts of 2020 provides:

Notwithstanding section 8 of chapter 61 of the General Laws, section 14 of chapter 61A of the General Laws, section 9 of chapter 61B of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during and for a period of 90 days after the termination of the governor’s March 10, 2020 declaration of a state of emergency, all time periods within which

any municipality is required to act, respond, effectuate or exercise an option to purchase shall be suspended.

21. Assuming the Notice of Intent was deposited in the mail on July 9, 2020, the statutory period for Hopedale to exercise its first refusal option to purchase the Chapter 61 Land would expire on November 7, 2020, which is 120 days after July 10, the day following the date of deposit of the Notice of Intent in the mail, without including any extension pursuant to Section 9 of Chapter 53 of the Acts of 2020.

22. Upon information and belief, the P&S Agreement contained a bona fide offer to purchase the two parcels, including the Chapter 61 Land.

23. After July 9, 2020, but within the statutory option period, the Town of Hopedale made multiple statements to representatives of the Trust and of GURR that clearly and expressly indicated that the Town was considering exercising its first refusal option to purchase the Chapter 61 Land.

24. On October 7, 2020, counsel for the Trust sent a letter to Hopedale purporting to withdraw the Notice of Intent:

[T]he Notice of Intent is hereby withdrawn in its entirety by One Hundred Forty Realty Trust, the property owner and shall be deemed of no further force and effect... Any further notice to sell or convert the land will be subject to a new Notice of Intent. To the extent that the Notice of Intent constituted an offer to sell to the Town of Hopedale, said offer is withdrawn.

A true and accurate copy of the October 7, 2020, letter is attached as **Exhibit C**.

25. On October 8, 2020, counsel for the Town of Hopedale sent a letter to the Trust and GURR stating that the purported withdrawal of the Notice of Intent was not effective because, by operation of law, the “first refusal option ripened into an irrevocable option to purchase which vested when the Town received the Notice of Intent.” The letter further advised the Trust and GURR “that the Town of Hopedale will proceed to consider whether to exercise its

option to purchase the portion of the property located at 364 West Street which is classified forest land under Chapter 61 according to the terms of the offer contained in the Notice of Intent.” A true and accurate copy of the October 8, 2020, letter is attached as **Exhibit D**.

26. Despite knowing that the Town of Hopedale was actively considering exercising its first refusal option, the Trust and GURR entered into a series of transactions which accomplished an end run around the P&S Agreement.

27. First, the Trust conveyed by quitclaim deed to GURR the parcel located at 363 West Street and the non-classified portion of 364 West Street (i.e., the non-Chapter 61 Land) for consideration of \$1.00. This quitclaim deed is dated October 12, 2020, and is recorded in the Registry in Book 63493, Page 34.

28. Second, the owner of 100% of the beneficial interest of the Trust assigned the beneficial interest to GURR for consideration of \$1,175,000.00 (the same amount as the purchase price in the P&S Agreement). The Assignment of Beneficial Interest is also dated October 12, 2020, and is recorded in the Registry in Book 63493, Page 39.

29. Third, the trustees of the Trust, Charles E. Morneau and Gregg Nagel, resigned as trustees. Their resignations are also dated October 12, 2020, and are recorded in the Registry in Book 63493, Pages 43 & 45 (respectively).

30. Fourth, the Trust appointed successor trustees—the defendants named herein—who are affiliated with GURR: Mr. Delli Priscoli (CEO of GURR) and Mr. Milanoski (President of GURR). The appointment of successor trustees to the Trust is dated October 14, 2020, and is recorded in the Registry in Book 63508, Page 8. The certificate of appointment and acceptance of appointment is also dated October 14, 2020, and is recorded in the Registry in Book 63508, Page 11.

31. As a result of these transactions, GURR now owns the controlling beneficial interest in the Trust, which holds legal title to the Chapter 61 Land.

32. On October 24, 2020, at a Special Town Meeting attended by over 400 residents, the Town of Hopedale adopted warrant articles by unanimous consent to appropriate money for the acquisition of the Chapter 61 Land and to maintain and preserve the Chapter 61 Land “and the forest, water, air, and other natural resources thereon for the use of the public for conservation and recreation purposes to be managed under the control of the Hopedale Parks Commission.”

33. Upon information and belief, on or around October 27, 2020, agents and/or representatives of the Trust and/or GURR began to undertake site work activities on the Chapter 61 Land, including but not limited to flagging for wetlands delineation and tree cutting.

34. At a duly noticed public hearing held on October 30, 2020, the Hopedale Board of Selectmen voted 2-0 to exercise the first refusal option to purchase the Chapter 61 Land.

35. Hopedale recorded notice of the decision to exercise the first refusal option in the Worcester South District Registry of Deeds on November 2, 2020. A copy of the recorded Notice of Exercise is attached as **Exhibit E**.

36. On November 2, 2020, Hopedale sent the Notice of Exercise accompanied by a proposed purchase and sale agreement for the Chapter 61 Land to the Trust’s prior and current trustees by certified mail, as required by M.G.L. c. 61, § 8.

COUNT I
M.G.L. c. 231A, § 1 -- DECLARATORY JUDGMENT

37. Hopedale incorporates by reference the allegations in paragraphs 1 through 36 as if fully set forth herein.

38. An actual controversy exists between the Town of Hopedale and the Trust and GURR over the statutory first refusal option contained M.G.L. c. 61, § 8.

39. The Town of Hopedale seeks a binding declaration that the Notice of Intent complied with the provisions of M.G.L. c. 61, § 8; that the offer contained in the P&S Agreement was a bona fide offer to purchase the Chapter 61 Land; that its first refusal option vested on July 10, 2020, the day following the latest date of deposit in the United States mail of the Notice of Intent; and that, as a result, the Town of Hopedale now holds an irrevocable option to purchase the Chapter 61 Land for the statutory time period.

40. The Town of Hopedale seeks a further binding declaration that, pursuant to Section 9 of Chapter 53 of the Acts of 2020, the time period within which it is required to act to exercise its option to purchase is suspended for the duration of, and for a period of 90 days after the termination of, the governor's March 10, 2020, declaration of a state of emergency; and that the statutory 120-day time period within which the Town of Hopedale may act to exercise its option to purchase will not begin to run until that suspension is lifted.

41. The Town of Hopedale seeks a further binding declaration that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 Land which would result in any alienation of the Chapter 61 Land or any conversion of its current use as forest land until such time as the Town of Hopedale no longer holds the option to purchase.

42. The Town of Hopedale seeks a further binding declaration that it is entitled to specific performance of its first refusal option to purchase the Chapter 61 Land on the same terms and conditions that the GURR-affiliated buyer offered to the Trust in the P&S Agreement.

43. The Town of Hopedale seeks a further binding declaration that the Trust's assignment of 100% of its beneficial interest to GURR was equivalent to a transfer of title to the Chapter 61 Land and therefore constituted a sale of land taxed under Chapter 61 giving rise to a separate and independent first refusal option in the Town of Hopedale.

COUNT II
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTIVE RELIEF

44. Hopedale incorporates by reference the allegations in paragraphs 1 through 43 as if fully set forth herein.

45. M.G.L. c. 61, § 8, provides Hopedale with a first refusal option to meet any offer to purchase land protected under Chapter 61. Hopedale has a 120-day period to exercise this option, subject to any suspension of this time period pursuant to Section 9 of Chapter 53 of the Acts of 2020.

46. Hopedale is likely to prevail on the merits of its claim to have an irrevocable option to purchase the Chapter 61 Land, such that Hopedale can meet the offer contained in the P&S Agreement and purchase the Chapter 61 Land within the statutory time period.

47. If an injunction is denied and the Trust and/or GURR are able to impair the quality of the Chapter 61 Land by conducting site work, Hopedale will suffer irreparable harm by the loss of valuable land for conservation, recreational, and water supply protection purposes. Given the unique nature of land, Hopedale's harm is not likely to be remedied by money damages.

48. In light of Hopedale's likelihood of success on the merits, the risk of irreparable harm to Hopedale far outweighs any potential harm to the Trust and/or GURR if an injunction is not issued, since the defendants have already acquired controlling interests in all the land that was the subject of the P&S Agreement, and will merely have to wait to perform site activities on the

Chapter 61 Land until such time as the Town of Hopedale no longer holds the option to purchase.

**COUNT III
SPECIFIC PERFORMANCE**

49. Hopedale incorporates by reference the allegations in paragraphs 1 through 48 as if fully set forth herein.

50. Pursuant to M.G.L. c. 61, § 8, Hopedale holds a first refusal option to purchase the Chapter 61 Land.

51. The Hopedale Board of Selectmen validly exercised the first refusal option to purchase the Chapter 61 Land on behalf of the Town of Hopedale.

52. Hopedale sent the Trust, which is now controlled by GURR, a proposed purchase and sale agreement for the Chapter 61 Land which contained substantially the same terms and conditions as the original P&S Agreement that the GURR-affiliated buyer had offered the Trust for the intended sale set forth in the Notice of Intent.

53. Hopedale is ready, willing, and able to meet the original bona fide offer to purchase the Chapter 61 Land.

54. Upon information and belief, the Trust, now controlled by GURR, will not agree to sell the Chapter 61 Land to the Town despite the Town's valid exercise of the first refusal option to purchase under Chapter 61.

55. Failure by the Trust, now controlled by GURR, to sell the Chapter 61 Land to the Town will result in damage to the Town's existing and future water supply if the Town is not able to acquire and conserve the Chapter 61 Land and the Trust and GURR are able to develop the land instead.

REQUESTS FOR RELIEF

WHEREFORE, based on the foregoing, Hopedale respectfully requests that the Court enter the following relief:

1. Enter a temporary restraining order and/or a preliminary injunction preventing the Trust and/or GURR and each of their agents and representatives from alienating or converting the use of the Chapter 61 Land at any time before the expiration of the statutory first refusal option period set forth in M.G.L. c. 61, § 8, and as extended by Section 9 of Chapter 53 of the Acts of 2020;
2. Enter a judgment declaring the following:
 - a. that the Notice of Intent complied with M.G.L. c. 61, § 8;
 - b. that the offer contained in the P&S Agreement was a bona fide offer to purchase the Chapter 61 Land;
 - c. that the Town of Hopedale's first refusal option vested on July 10, 2020;
 - d. that, as a result, the Town of Hopedale now holds an irrevocable option to purchase the Chapter 61 Land for the statutory time period;
 - e. that, pursuant to Section 9 of Chapter 53 of the Acts of 2020, the time period within which it is required to act to exercise its option to purchase is suspended for the duration of, and for a period of 90 days after the termination of, the governor's March 10, 2020, declaration of a state of emergency, and that the statutory 120-day time period within which the Town of Hopedale may act to exercise its option to purchase will not begin to run until that suspension is lifted;
 - f. that the Trust and GURR are prohibited from taking any action or conducting any activities on or concerning the Chapter 61 Land which would result in any

alienation of the Chapter 61 Land or any conversion of its current use as forest land until such time as the Town of Hopedale no longer holds the option to purchase;

g. that Hopedale is entitled to specific performance and conveyance of the Chapter 61 Land; and\

h. that the Trust's assignment of 100% of its beneficial interest to GURR was equivalent to a transfer of title to the Chapter 61 Land and therefore constituted a sale of land taxed under Chapter 61 giving rise to a separate and independent first refusal option in the Town of Hopedale;

3. Approve Hopedale's memorandum of *lis pendens*;

4. Enter an order for specific performance directing the Trust to convey the Chapter 61 land to the Town;

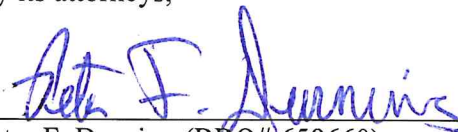
5. Enter an order permitting Hopedale and its agents or representatives to enter the Chapter 61 Land for inspection purposes at reasonable times and upon reasonable notice as permitted by M.G.L. c. 61, § 8; and

6. Enter such other relief as the Court deems just and proper.

Respectfully submitted,

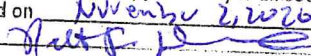
TOWN OF HOPEDALE

By its attorneys,



Peter F. Durning (BBO# 658660)
Peter M. Vetere (BBO# 681661)
MACKIE SHEA DURNING, P.C.
20 Park Plaza, Suite 1001
Boston, MA 02116
(t) (617) 266-5104
pdurning@mackieshea.com
pvetere@mackieshea.com

Dated: November 2, 2020

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above
document was served upon the attorney of record
for each other party by mail, postage prepaid,
(hand delivering a copy of same) to all counsel of
record on November 2, 2020


VERIFICATION

I, Brian Keyes, Chair of the Town of Hopedale Board of Selectmen, have read the above Verified Complaint and now state, under penalties of perjury, that the facts stated therein are true to the best of my personal knowledge and that no material facts have been omitted.



**Brian Keyes, Chair
Hopedale Board of Selectmen**

Dated:

EXHIBIT

A

Affidavit of Service
Notice of Intent to Purchase Forest Land Subject to M.G.L. c. 61
364 West Street Hopedale, MA

On this 9th day of July 2020, I, Michael R. Milanoski, on behalf of Seller, Charles Morneau, Trustee One Hundred Forty Realty Trust, served the Notice of Intent to Sell Forest Land Subject to MGL c.61 to the following as required pursuant to MGL. C. 61 s. 8:

1. Commissioner of the Department of Conservation and Recreation (certified mail)
251 Causeway Street


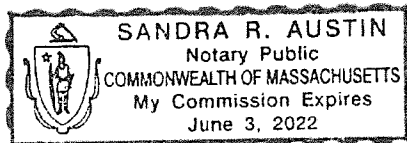


Michael R. Milanoski

Commonwealth of Massachusetts

Middlesex ss.

On this the 9th day of July 2020, before me, the undersigned Notary Public, personally appeared Michael R. Milanoski, personally known to me to be the individual who executed this Affidavit and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public: Sandra R. Austin
My Commission Expires: June 3, 2022

NOTICE OF INTENT TO SELL
FOREST LAND SUBJECT TO CHAPTER 61 TAX LIEN

PROPERTY: 364 West Street, Hopedale, MA (Assessors Map 2; Block 5, consisting of 155.24 acres; recorded in the Worcester District Registry of Deeds Book 56336 Page 136).

SELLER: Charles E. Morneau, Trustee of the One Hundred Forty Realty Trust u/d/t September 16, 1981, recorded at the Worcester District Registry of Deeds in Book 7322 Page 177, with an address of 31 Conant Road, Lincoln, MA 01773.

BUYER: Jon Mark Delli Priscoli, Trustee, New Hopping Brook Realty Trust u/d/t June 5, 2000 recorded at Middlesex South District Registry of Deeds in Book 31501 Page 89, with an address of 7 Eda Avenue, Carver, Massachusetts 02330.

C. 61 LAND: 130.18 acres of the Property identified in the Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien dated September 3, 2014 and recorded in the Worcester District Registry of Deeds in Book 52875 Page 355.

SUPPORTING DOCUMENTS ATTACHED PURSUANT TO C. 61 S. 8 REQUIREMENTS:


1. Statement from Seller of Intent to Sell
2. Proposed Use of Land
3. Property Description, Location and Acreage/Maps
4. Name and Address of Landowner
5. Purchase and Sale Agreement

Statement of Intent to Sell or Convert Land that is currently in Forest Land Subject to Chapter 61
Tax Lien

Charles E. Morneau, Trustee of the One Hundred Forty Realty Trust u/d/t September 16, 1981, recorded at the Worcester District Registry of Deeds in Book 7322 Page 177, with an address of 31 Conant Road, Lincoln, MA 01773 intends to sell to Jon Mark Delli Priscoli, Trustee of the New Hopping Brook Realty Trust u/d/t June 5, 2000 recorded at Middlesex South District Registry of Deeds in Book 31501 Page 89 with a principal address of 7 Eda Avenue, Carver, Massachusetts 02330, the property located at 364 West Street in Hopedale, MA as shown on the Hopedale Assessors Map as Map 2; Block 5: Lot 0 consisting of 155.24 acres and recorded in the Worcester District Registry of Deeds in Book 56336 Page 136. ("Property").

A 130.18 portion of the Property is currently classified as Forest Land pursuant to G.L. c. 61, as identified in the Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien dated September 3, 2014 and recorded in the Worcester District Registry of Deeds in Book 52875 Page 355, a copy of which is attached to this statement for reference.

One Hundred Forty Realty Trust by:

A handwritten signature in black ink, appearing to read "Charles E. Morneau", written over a horizontal line.

Charles Morneau, Trustee

PROPOSED USE OF LAND

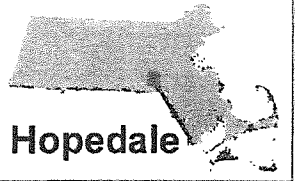
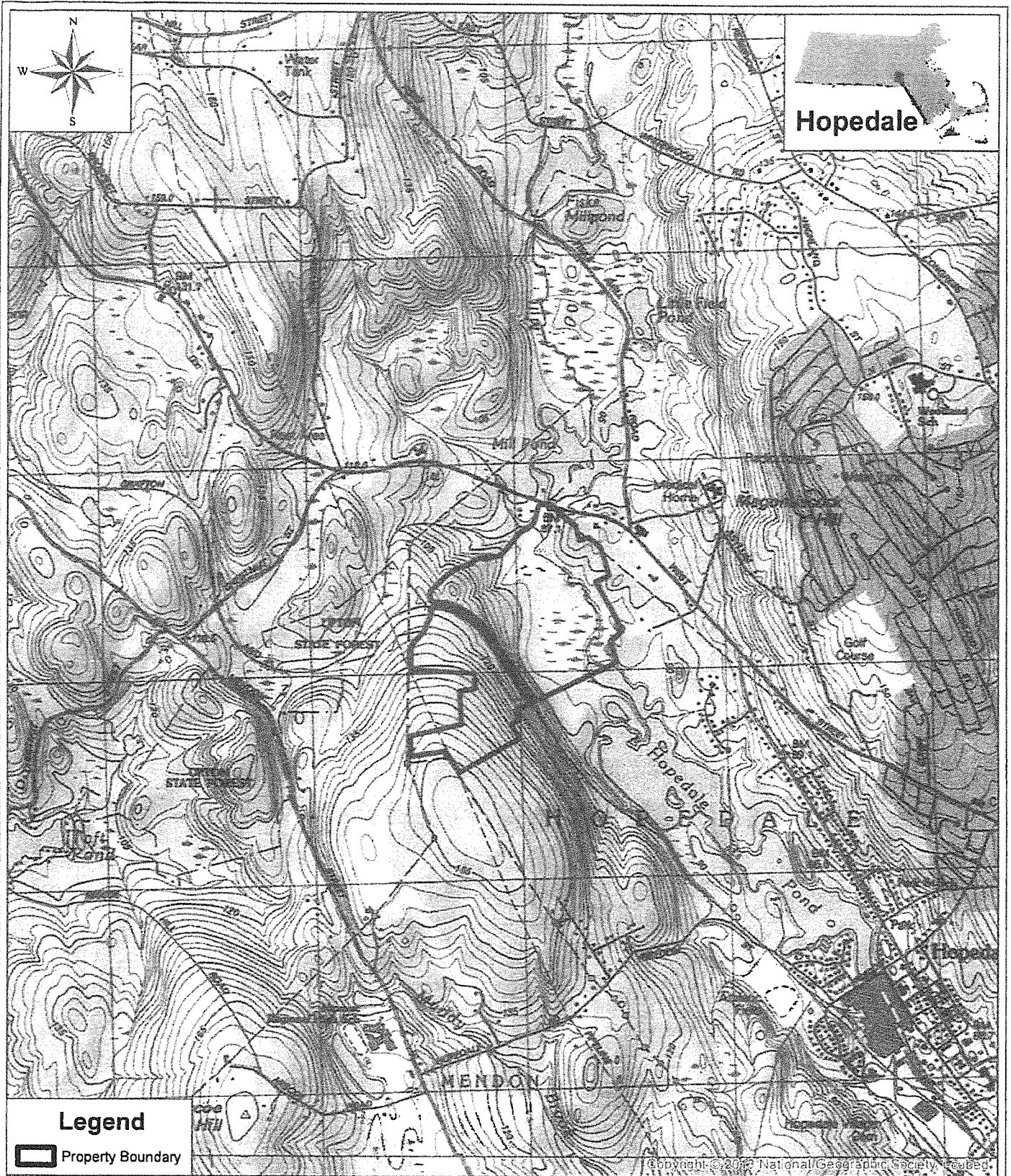
The proposed use of the Property is to provide additional yard and track space in order to support the current and anticipated increase in rail traffic of GU's transloading operations.

PROPERTY DESCRIPTION
FOREST LAND SUBJECT TO CHAPTER 61 TAX LIEN

PROPERTY: 364 West Street, Hopedale, MA; Assessors Map 2; Block 5; recorded in the Worcester District Registry of Deeds Book 56336 Page 136.

AREA: Property are is 155.24 acres of which 130.18 acres are classified as Forest Land pursuant to MGL c. 61.

DESCRIPTION: Undeveloped land located in the Industrial Zone; Railroad tracks located on Property; no buildings or other structures.



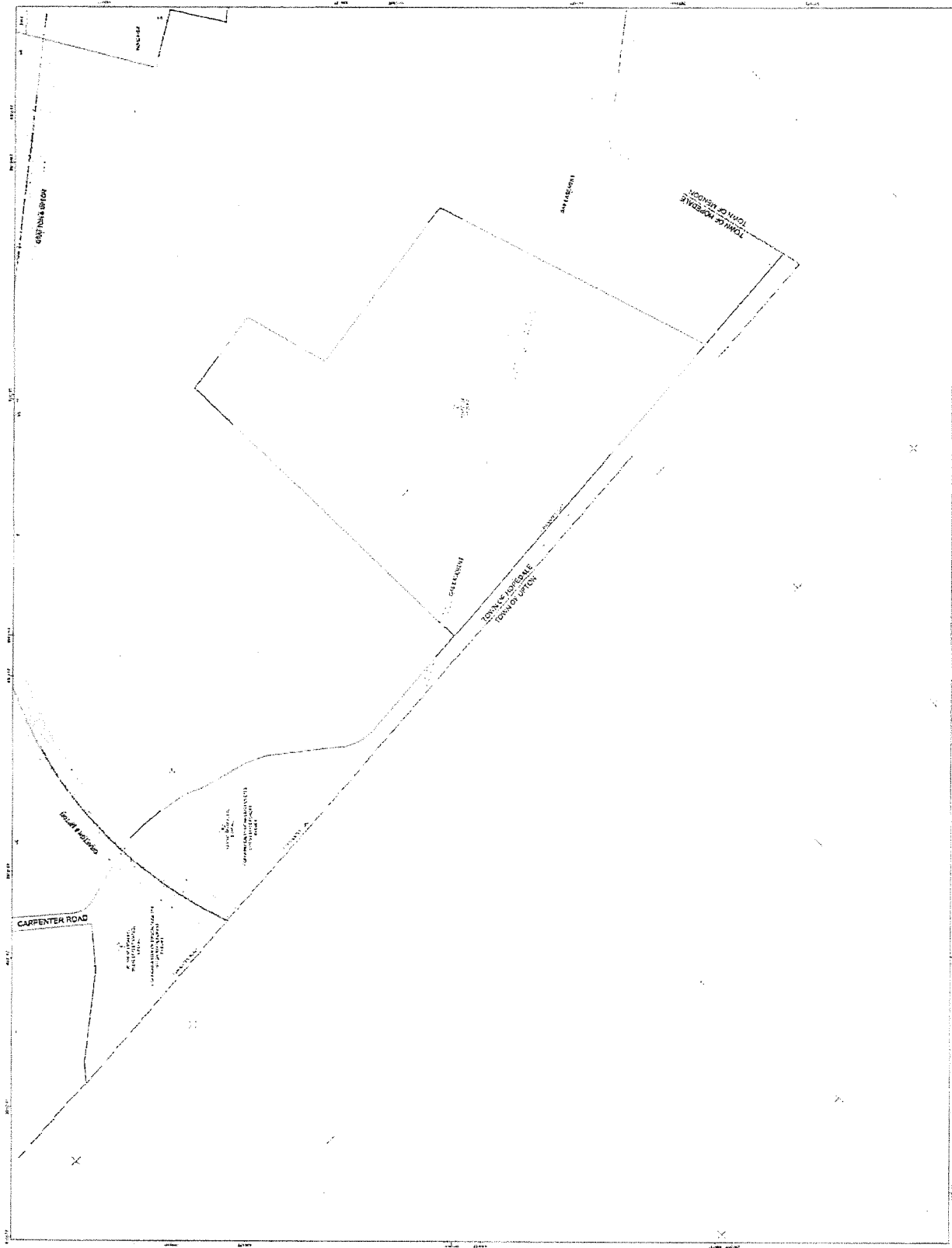
Legend
 Property Boundary

Copyright © 2013 National Geographic Society, Inc.

OXBOW
 ASSOCIATES INC.

1:24,000
 1 inch = 2,000 feet
 0 2,000 4,000
 Feet

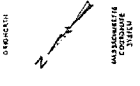
USGS Topographic Quad
Hopedale Logistics Yard
 364 West Street
 Hopedale, MA
 July 01, 2020



SHEET NO. 3

NOTICE: These maps are prepared by the Assessor's Office and are not intended to be used as a legal document. Plans shown herein are compiled from aerial photographs, deeds, and plans of record and are not to be construed as having sufficient accuracy for conveyance.

| Color | Description |
|----------|---------------------|
| [Symbol] | 100-Year Flood Area |
| [Symbol] | 500-Year Flood Area |
| [Symbol] | 100-Year Flood Area |
| [Symbol] | 500-Year Flood Area |



TOWN OF HOPEDALE
MASSACHUSETTS
ASSESSORS ATLAS
 AS OF JANUARY 1, 2014

- Legend**
- Redline
 - Road
 - Water
 - Wet Area
 - Streams
 - Buildings (MassGIS)
 - Condo
 - Adjacent Map Parcel
 - Revised
 - Red Right of Way Boundary
 - Town Boundary
 - Water
 - 100-year Flood Area
 - 500-year Flood Area



Map data courtesy of the Massachusetts Department of Transportation (MassDOT) and the Massachusetts Office of Geographic Information (MassGIS).



**TOWN OF HOPDALE
MASSACHUSETTS
ASSESSORS ATLAS
AS OF MAY 1, 2018**

Legend

| | |
|------------|----------------------------|
| Red line | Road Right of Way Boundary |
| Blue line | Water |
| Black line | Parcel Boundary |
| Black line | 100-year Flood Area |
| Black line | 500-year Flood Area |
| Black line | Town Boundary |
| Black line | Adjacent Map Parcel |
| Black line | Water |
| Black line | Stream |
| Black line | Exempts |
| Black line | Rail |
| Black line | Parcel Boundary |

CONDO NOTE: Parcels indicated as Condos do not necessarily have land area associated with the structure. The parcels associated with these Condos are shown in grey. The location of the unit and are approximated based on platimetric building footprints. Parcels shown in grey are not to be construed as having sufficient accuracy for conveyance.

| | | |
|--------|------|-------|
| Parcel | Area | Value |
| 1 | 100 | 100 |
| 2 | 200 | 200 |
| 3 | 300 | 300 |
| 4 | 400 | 400 |
| 5 | 500 | 500 |
| 6 | 600 | 600 |
| 7 | 700 | 700 |
| 8 | 800 | 800 |

CONTOUR & SPOT ELEVATIONS

CHUBB

5
SHEET NO.

CHUBB

CHUBB

CHUBB

CHUBB

CHUBB

CHUBB

CHUBB

CHUBB

CHUBB

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CONTACT INFORMATION OF LANDOWNER AND BUYER

Landowner:

One Hundred Forty Realty Trust
Charles E. Morneau, Trustee
31 Conant Road
Lincoln, MA 01773
Phone: 617-733-3790.

With a copy to:

Mark L. Donahue, Esquire
Fletcher Tilton PC
370 Main Street
Worcester, MA 01608
Email: mdonahue@fletchertilton.com
Phone : 508.459.8029

Buyer:

New Hopping Brook Realty Trust
7 Eda Ave
Carver, MA 02330
Attn: Michael Milanoski
Email: mmilanoski@graftonuptonrr.com
Phone: 508-965-3493

With a copy to:

Sandra R. Austin, Esquire
Law office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com
Phone: 508-281-2299

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made as of this ___ day of June 2020 ("**Effective Date**") by and between Charles E. Morneau and _____, Trustees of the One Hundred Forty Realty Trust u/d/t September 16, 1981, recorded at the Worcester District Registry of Deeds in Book 7322 Page 177, with an address of 31 Conant Road, Lincoln, MA 01773 ("**Seller**"), and Jon Mark Delli Priscoli, Trustee of the New Hopping Brook Realty Trust u/d/t June 5, 2000 recorded at Middlesex South District Registry of Deeds in Book 31501 Page 89 with a principal address of 7 Eda Avenue, Carver, Massachusetts 02330 ("**Buyer**").

1 *Purchase and Sale*. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, transfer and convey to Buyer, and Buyer agrees to purchase and accept from Seller, the following real (the "**Property**"):

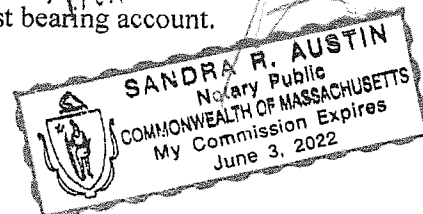
1.1 All that certain land located at 363 West Street Hopedale, Massachusetts subject to the tax taking recorded in the Worcester District Registry of Deeds ("**Registry**") in Book 56336 Page 136 ("**Tax Taking**") and 364 West Street, Hopedale, Massachusetts subject to the Forest Land Tax Lien pursuant to MGL c. 61 recorded in the Registry in Book 52875 Page 355 or similar notices (the "**Forest Lien**"), more particularly described in Exhibit A hereto, together with all privileges, rights, easements and appurtenances belonging to such land, and all right, title and interest (if any) of Seller in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such land, and all right, title and interest (if any) of Seller in all mineral and development rights appurtenant to such land;

1.2 All of Seller's right, title and interest, if any, in all intangible assets of any nature relating to the Property, including without limitation all of Seller's right, title and interest in all (i) warranties all licenses, permits, and approvals and (ii) all plans and specifications, in each case to the extent that Seller may legally transfer the same (the "**Intangible Personalty**").

2. *Purchase Price*. The purchase price for the Property (the "**Purchase Price**") shall be One Million One Hundred Seventy Five Thousand and 00/100 Dollars (\$1,175,000.00), which, subject to the terms and conditions hereinafter set forth, shall be paid to Seller by Buyer as follows:

2.1 *Deposit*. Concurrently with the execution and delivery of this Agreement by Buyer, Buyer shall deliver to the law office of Fletcher Tilton PC, 370 Main Street, Worcester, Massachusetts 01608 ("**Escrow Agent**"), in immediately available funds, to be held in escrow and delivered in accordance with this Agreement, a cash deposit in the amount of Fifty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$58,750.00) (the "**Initial Deposit**"). Within two (2) business days following the expiration of the Inspection Period as defined in Section 4.3 herein. Buyer shall deposit with Escrow Agent an additional deposit of Forty One Thousand Two Hundred Fifty and 00/100 (\$41,250.00) (the "**Additional Deposit**"). The Initial Deposit and Additional Deposit are hereinafter referred to collectively as the "**Deposit**". The Deposit shall be held and distributed as follows:

2.1.1 The Deposit shall be held by the Escrow Agent in a non-interest bearing account.



2.1.2 If the Closing takes place in accordance with the terms and conditions of this Agreement, the Escrow Agent shall deliver and pay the Deposit to Seller on the Closing Date, and the amount so delivered shall be credited to Buyer against the Purchase Price due Seller in accordance with the terms and conditions of this Agreement.

2.1.3 If this Agreement is terminated by Buyer in accordance with the terms and conditions of this Agreement prior to the expiration of the Inspection Period (defined below), then the Escrow Agent shall promptly deliver the Initial Deposit to Buyer.

2.1.4 If this Agreement is terminated by Buyer in accordance with the terms and conditions of Paragraph 7 of this Agreement, then the Escrow Agent shall deliver the Deposit to Buyer promptly in accordance with the provisions of this Agreement.

2.1.5 If the Closing does not take place under this Agreement by reason of the failure of either party to comply with its obligations hereunder, the Escrow Agent shall promptly deliver the Deposit to the party entitled thereto in accordance with the provisions of this Agreement.

2.1.6 Except for a demand made by Buyer pursuant to a termination of this Agreement by Buyer prior to the expiration of the Inspection Period, upon receipt of a written demand from Seller or Buyer claiming the Deposit, the Escrow Agent shall promptly forward written notice of Escrow Agent's receipt of such demand together with a copy thereof to the other party hereto. Unless such other party, within seven (7) days after actual receipt of such notice, notifies the Escrow Agent in writing of any objection to such requested delivery of the Deposit, the Escrow Agent shall deliver the Deposit to the party demanding the same and thereupon shall be released and discharged from any further duty or obligation hereunder by all parties hereto. Notwithstanding anything to the contrary contained herein, the Escrow Agent shall not deliver the Deposit pursuant to any such demand for the same unless and until the Escrow Agent has received confirmation that the party not making the demand for the Deposit has actually received notice of said demand and that the time for responding to said demand has passed.

2.2 *Payment at Closing.* At the consummation of the transaction contemplated hereby (the "**Closing**"), Buyer shall deliver to the Escrow Agent by federal wire transfer in an amount equal to the Purchase Price less the Deposit. The Purchase Price, subject to adjustments and apportionments as set forth herein, shall be paid at Closing by wire transfer of immediately available federal funds, transferred to the order or account of Seller or such other person as Seller may designate in writing, for receipt by the bank designated by Seller not later than 1 P.M., Eastern Daylight or Standard (as applicable) Time.

3. *Escrow Agent.* The Escrow Agent shall hold the Deposit as escrow agent in accordance with the terms and provisions of this Agreement, subject to the following:

3.1 *Obligations.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against the Escrow Agent.

3.2 *Reliance.* The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and any statement or assertion contained in such

writing or instrument, and may assume that any person purporting to give any writing, notice, advice, or instrument in connection with the provisions of this Agreement has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same.

3.3 Indemnification. Unless the Escrow Agent discharges any of its duties under this Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Agreement, Seller and Buyer shall indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as escrow agent under this Agreement; and in such connection Seller and Buyer shall indemnify the Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity.

3.4 Disputes. If the parties (including the Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by the Escrow Agent, or the application of the Deposit, the Escrow Agent shall have the right to hold the Deposit until the receipt of written instructions from both Buyer and Seller or a final order of a court of competent jurisdiction. In addition, in any such event, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. The Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as escrow agent hereunder in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

3.5 Counsel. The Escrow Agent may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.

4. Buyer's Due Diligence Inspection and Termination Rights; "As Is" Sale

4.1 Inspection of Property. Buyer and its appointed agents or independent contractors shall, at all reasonable times prior to the Closing Date, have the privilege of going upon the Property to, at Buyer's sole cost and expense, inspect, examine, test, appraise, and survey the Property, including, but not limited to, investigations of the physical condition thereof provided, however, that no intrusive testing, drilling or similar testing to determine the status of the land with respect to geotechnical matters and/or hazardous materials and oils shall be performed without Seller's consent which may be withheld at Seller's sole discretion. Before entering upon the Property, Buyer shall obtain and maintain for itself and on behalf of each of its contractors and agents (and shall deliver to Seller evidence thereof), at Buyer's sole cost and expense, general liability insurance, from an insurer reasonably acceptable to Seller, in the amount of One Million Dollars and 00/00 (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policies to name Seller and Seller's trustees additional insured parties, which insurance shall provide coverage against any claim for personal liability or property damage

caused by Buyer or Buyer's contractors or agents in connection in with Buyer entry, tests and inspections upon the Property. Buyer shall, and does hereby covenant and agree to, repair any and all damage caused by the activities of Buyer or its agents on the Property and to indemnify, defend and hold Seller harmless from any actions, suits, liens, claims, damages, expenses, losses and liability arising out of any such entry by Buyer or its appointed agents or independent contractors or any acts performed in exercising Buyer's rights under this Paragraph 4.1 (including without limitation, any rights or claims of materialmen or mechanics to liens on the Property, but excluding matters merely discovered by, and not caused by, Buyer, its agents or contractors).

4.2 *Inspection of Documents.* Without any representation or warranty as to the completeness of any deliveries or the accuracy of any information provided in said documents as may be delivered. Seller shall deliver to Buyer within five (5) days after the Effective Date copies of the following documents, that it has readily in his possession if any (the documents described below herein referred to as the "Due Diligence Documents"):

4.2.1 Existing building permits, if any;

4.2.2 The most recent existing survey of the Property;

4.2.3 A copy of Seller's policy of title insurance on the Property and all title exception documents that are listed therein;

4.2.4 Maintenance agreements, and other agreements relating to the operation of the Property, if any;

4.2.8 Real estate tax bills with respect to the Property for the immediately prior and current tax fiscal years;

4.2.9 Existing reports and correspondence in Seller's possession relating to the environmental status of the Property;

4.3 *Termination.* The term "Inspection Period," as used herein, shall mean the period ending at 5:00 P.M. Eastern Daylight or Standard (as applicable) Time Sixty (60) days from the Effective Date. Buyer may terminate this Agreement in its sole discretion by giving written notice of such election to Seller prior to the end of the Inspection Period, in which event (i) the Initial Deposit shall be returned promptly to Buyer; subject to Buyer's right to terminate and receive the return of the entire Deposit under Section 4.4 (Title) and 6.2 (Condemnation) of this Agreement and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. In the absence of timely delivery by Buyer to Seller of such written notice, Buyer shall be deemed to have waived its right to terminate this Agreement under this Paragraph 4.3, and this Agreement shall continue in full force and effect.

4.4. *Title and Survey Matters.*

4.4.1 Buyer shall promptly at its sole cost and expense obtain a title commitment ("**Title Commitment**") from a nationally recognized title insurance company and a survey ("**Survey**") of

the Property. Buyer shall have until the end of the Inspection Period to give written notice to Seller of any objections with respect thereto ("**Buyer's Title Objection Notice**"), indicating in reasonable detail the nature and reasons for Buyer's objections and including with such notice a copy of the Title Commitment and Survey, together with copies of any documents containing matters objected to in such notice. Failure to give such notice shall constitute Buyer's approval of (i) all title and survey matters as a matter of record title and/or physically existing upon the Property as of the expiration of the Inspection Period, and (ii) all matters set forth in the Title Commitment and the Survey.

4.4.2 Seller shall have the right, but not the obligation, to attempt to cure any objections set forth in Buyer's Title Objection Notice. Seller shall notify Buyer within five (5) business days after receipt of Buyer's Title Objection Notice ("**Seller's Title Objection Response Period**") whether Seller agrees to attempt to cure any objections set forth in Buyer's Title Objection Notice. If Seller so agrees to attempt to cure any objections, then Seller shall have a period of up to thirty (30) days after the end of the Inspection Period ("**Title Cure Period**") in order to effectuate such cure. If the Closing Date is scheduled to occur prior to the end of the Title Cure Period, then, upon written notice from Seller to Buyer delivered not less than three (3) business days prior to the then scheduled Closing Date, the Closing Date shall be extended until a date not later than three (3) business days after the end of the Title Cure Period in order for Seller to continue to effectuate such cure.

4.4.3 If Seller fails to give notice to Buyer prior to the expiration of Seller's Title Objection Response Period that Seller will attempt to cure all objections set forth in Buyer's Title Objection Notice, Buyer may, within five (5) business days after the expiration of Seller's Title Objection Response Period, terminate this Agreement by written notice to Seller, in which event (i) the Deposit shall be returned promptly to Buyer, and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement within said five (5) business days after the expiration of Seller's Title Objection Response Period, Buyer shall be deemed to have waived its objections set forth in Buyer's Title Objection Notice that Seller has not agreed in writing to attempt to cure, and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.4 In the event Seller gives timely notice to Buyer that Seller will attempt to cure any objections set forth in Buyer's Title Objection Notice, and if this Agreement is not terminated pursuant to Paragraph 4.4.3 above, Seller shall use commercially reasonable efforts to cure such objections and deliver evidence of such cure satisfactory to the Escrow Agent and Buyer within the Title Cure Period, but in no event shall Seller be required to expend more than a maximum amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) Dollars in the aggregate to effectuate the cure of all such objections (excluding Monetary Liens (defined below), as to which such maximum amount shall not apply). If despite Seller's commercially reasonable efforts Seller fails to cure all such matters within the Title Cure Period, Buyer's sole right with respect thereto shall be to terminate this Agreement within two (2) business days after the expiration of the Title Cure Period, in which event (i) the Deposit shall be returned promptly to Buyer; and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived its objections and to have agreed to accept title to the Property subject thereto, without reduction in the Purchase Price.

4.4.5 Notwithstanding the foregoing, Seller agrees to cure at or prior to the Closing all "Monetary Liens" at Seller's sole cost and expense. As used herein, "Monetary Lien" means any security deed, mortgage, lien, security interest, monetary judgment, past due taxes or assessments or similar monetary encumbrance upon the Property created by Seller or placed on the Property by Seller's actions or inaction except as provided in Section 4.4.6.3. A Monetary Lien shall be deemed cured by Seller if such Monetary Lien is released, satisfied or canceled of record at or prior to the Closing at no additional cost to Buyer, provided, however, that as to any institutional mortgage, the lien of such mortgage shall be deemed satisfactorily released if written confirmation is received from the mortgagee stating the amount to be delivered at the Closing to discharge such mortgage, in form and substance satisfactory to the Escrow Agent to remove such mortgage from the list of encumbrances in Buyer's title insurance policy upon payment of such amount to said mortgagee out of Seller's proceeds at the Closing.

4.4.6 If Buyer does not terminate this Agreement pursuant to this Paragraph 4.4, the following matters shall be deemed accepted by Buyer and shall be referred to herein as "**Permitted Encumbrances**"

4.4.6.1 All matters disclosed in the Title Commitment and the Survey, or which exist as of record title and/or are physically existing upon the Property as of the expiration of the Inspection Period to which Buyer does not object or which Buyer is deemed to have accepted pursuant to the terms and conditions of this Paragraph 4.4, other than Monetary Liens;

4.4.6.2 Except as provided in Section 4.4.6.3, any liens for such taxes for the then current year as are not due and payable on the Closing Date, and any liens for municipal betterments assessed after the Effective Date; and the provisions of any building, zoning, subdivision, and similar laws applicable to the Property.

4.4.6.3 The tax taking and all obligations for any real estate taxes of any kind or nature as to that part of the Property known as 363 West Street, Hopedale, Massachusetts and any rollback, reassessed taxes or similar changes resulting from the conversion of that portion of the Property known as 364 West Street, Hopedale, Massachusetts pursuant to the Forest Lien.

4.5 "*As Is*" Sale. Except as expressly set forth in this Agreement, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability or fitness for a particular purpose or environmental matters of any kind. Buyer acknowledges and agrees that upon closing Seller shall sell and convey to Buyer and Buyer shall accept the Property "*as is, where is, with all faults,*" except to the extent expressly provided otherwise in this Agreement. Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations, or information pertaining to the Property or relating thereto (including specifically, without limitation, any prospectus distributed with respect to the Property) made or furnished by Seller, the managers of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Agreement. Buyer also acknowledges that the purchase price reflects and takes into account that the Property is being sold "as-is." Buyer represents to

Seller that Buyer has conducted, or will conduct prior to closing, such investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary or desirable to satisfy itself as to the condition of the Property and the existence or nonexistence or curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties, and covenants of Seller as are expressly set forth in this Agreement. Upon closing, Buyer shall assume the risk that adverse matters, including, but not limited to adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and Buyer, upon closing, shall be deemed to have waived, relinquished and released Seller (and Seller's trustees, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, *known or unknown*, which Buyer might have asserted or alleged against Seller (and Seller's trustees, employees and agents) at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Property. The provisions of this paragraph shall survive closing or any termination of this agreement.

4.6 Buyer's Waiver and Release of Seller as to Certain Actions after Closing. Buyer agrees that, if at any time after the Closing, any third party or any governmental agency seeks to hold Buyer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials (as hereinafter defined) in, on, above or beneath the Property or emanating therefrom, Buyer waives any rights it may have against Seller in connection therewith including, without limitation, under CERCLA (defined below), and Buyer agrees that it shall not (i) implead the Seller, (ii) bring a contribution action or similar action against the Seller or (iii) attempt in any way to hold the Seller responsible with respect to any such matter. The provisions of this Paragraph 4.6 shall survive the Closing. As used herein, "Hazardous Materials" shall mean and include, but shall not be limited to, any petroleum product and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitated concentration, chemical, or active, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any hazardous or toxic waste or substances which are included under or regulated by law, governmental rules or regulations (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., similar state laws and regulations adopted thereunder.

4.7 Notice to the Town Pursuant to MGL c. 61B. Buyer shall file with the Town of Hopedale ("Town") notice required of Seller pursuant to MGL c. 61, that Property is intended to be conveyed to Buyer within fifteen (15) days following the Effective Date. Buyer shall incur and pay all expenses of filing, advertising, and other requirements related thereto and shall provide Seller with copies of all filings and advertisements promptly upon filing. Seller shall fully cooperate with Buyer as may be required for all matters related to notice requirements and other statutory compliance, including but not limited to executing all required applications, notices, and other documents, and appearing before any boards or commissions if so required. All correspondence

or communications by and between Buyer and the Town of Hopedale or any state agency shall promptly be provided by Buyer to Seller. In the event the Town exercises the right of first refusal pursuant to MGL C.61, this Agreement shall terminate, the Deposit shall be returned to Buyer and neither party shall have further recourse against the other whether in law or equity.

5. *Seller's Covenants Regarding Operation of Property.* From and after the Effective Date until the Closing or earlier termination of this Agreement, Seller agrees as follows:

5.1 *Notice of Defaults.* Seller will promptly deliver to Buyer any written notice received by Seller relating to the occurrence of any default or alleged default by Seller.

5.2 *Leases.* During the term of this Agreement, Seller will not enter into any lease for any portion of the Property without the prior written approval of Buyer.

5.3 *Encumbrances.* Seller will not grant or purport to create in favor of any third party any interest in the Property or any part thereof without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned, or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.4 *Other Agreements; Property Contracts.* Seller will not enter into any maintenance, management, or other service contracts relating to the Property without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed prior to the end of the Inspection Period but which may be withheld in Buyer's sole and absolute discretion after the end of the Inspection Period.

5.5 *Insurance.* Seller will continue to maintain in full force and effect all insurance as presently carried by Seller.

5.6 *Violations of Law.* Seller will promptly notify Buyer in writing of any violation of any law, regulation, ordinance, order, or other requirement of any governmental authority having jurisdiction over or affecting the Property, or any part thereof, of which Seller receives written notice.

5.7 *Structural Modifications.* Seller will not permit any structural erections to the Property without the prior written consent of Buyer which may be withheld in Buyer's sole and absolute discretion.

5.8 *Operation of Property.* Seller shall continue to maintain, operate and manage the Property in the same manner that Seller has heretofore maintained and operated the Property.

6. *Casualty and Condemnation.*

6.1 *Casualty.* Intentionally Omitted.

6.2 *Condemnation.* If prior to the Closing any portion of the Property is actually condemned by means of a recordation of an order at the Worcester District Registry of Deeds prior to the Closing Date by a body having the power of eminent domain or condemnation, or sale in lieu thereof,

which either (A) in Buyer's reasonable judgment adversely affects access to the Property, or (B) is reasonably estimated to cost in excess of \$200,000.00 for restoration and repair of the remaining Property then Buyer shall have the right, by giving Seller notice within ten (10) days after receipt of notice from Seller of such occurrence (with the Closing Date to be postponed, if necessary, to give the Buyer the benefit of the full ten (10) day period) to elect to: (i) terminate this Agreement, in which case the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder; or (ii) close the sale contemplated herein. If Buyer does not have the right to terminate this Agreement or having such right elects or is deemed to have elected not to terminate this Agreement, then this Agreement shall remain in full force and effect and the purchase contemplated herein, less any portion of the Property taken by eminent domain or condemnation, shall be effected without reduction in the Purchase Price. In such event, Seller shall at the Closing assign, transfer and set over unto Buyer all of Seller's right, title and interest in and to any awards paid or payable in connection with such taking. The pendency of the condemnation proceedings referred to in Section 15.1.4 shall not constitute a condemnation pursuant to this Section unless an actual order of taking is recorded at the Worcester District Registry of Deeds prior to the Closing Date.

7. Conditions Precedent to Buyer's Obligations.

7.1 Buyer's obligation to purchase the Property at the Closing hereunder is expressly conditioned on the satisfaction at or before the time of Closing hereunder, or at or before such earlier time as may be expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Buyer, at Buyer's option):

7.1.1. *Accuracy of Representations.* All of the representations and warranties of Seller contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the date of Closing with the same effect as if made on and as of such date.

7.1.2. *Performance.* Seller shall have performed, observed and complied with all material covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.1.3. *No Material Adverse Change.* Seller shall not cause to be removed any trees, clear the property, or otherwise cause a material adverse change to the Property between the Effective Date and the Closing.

7.1.4. *Condition of Title.* No new encumbrances or exceptions to title have been recorded for the first time pertaining to the Property between the date of the Title Commitment and the Closing that have not been approved by Buyer or that are not removed by Seller or agreed to be removed by Seller prior to or contemporaneously with the Closing, and the Escrow Agent is prepared to issue at the Closing an owner's policy of title insurance at commercially customary rates, subject only to the Permitted Encumbrances.

7.2. *Failure of Conditions.* In the event Seller shall not be able to convey the Property on the Closing Date in accordance with the provisions of this Agreement, then Buyer shall have the option, exercisable by written notice to Seller at or prior to Closing, of (i) accepting at Closing the

Property in such condition as Seller is able, waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, (ii) extending the Closing Date one time only for an additional five (5) business days, or (iii) terminating this Agreement, in which event the Deposit shall be returned promptly to Buyer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder.

8. *Closing; Deliveries.*

8.1 *Time of Closing.* The Closing shall take place at 10 a.m. on October 30, 2020 (the “Closing Date”) (subject to extension as expressly set forth herein) at the Law Office of Sandra Rennie Austin, 24 Bolton Street, Marlborough, MA 01752, unless otherwise agreed to in writing by both Seller and Buyer. If any date on which the Closing would occur by operation of this Agreement is not a business day in the Commonwealth of Massachusetts or Boston, Massachusetts, the Closing shall occur on the next business day. The Closing shall be conducted through an escrow agreement by means of document delivery of Seller’s Deliveries (as herein defined) and Buyer’s Deliveries (as herein defined). Buyer and Seller may execute supplemental escrow instructions as may be appropriate to enable compliance with the terms of this Agreement so long as such instructions are not in conflict with this Agreement.

8.2 *Seller Deliveries.* At Closing, Seller shall deliver to Buyer the following, and it shall be a condition to Buyer’s obligation to close that Seller shall have delivered the same to Buyer:

8.2.1 A Massachusetts Quitclaim Deed (“Deed”) to the Property from Seller, duly executed and acknowledged by Seller in the form of Exhibit B, subject to the Permitted Encumbrances which shall be listed in Exhibit B of the Deed.

8.2.2 A certification by Seller that all representations and warranties made by Seller in Paragraph 15 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.2.3 Such affidavits or letters of indemnity as the title insurer shall require in a usual and customary format in order to issue, without extra charge, an owner’s policy of title insurance free of any exceptions for unfiled mechanics’ or materialmen’s liens, or for rights of parties in possession.

8.2.4 A Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act (“FIRPTA”), as amended, in the form of Exhibit C, duly executed by Seller.

8.2.5 All utilities layout plans, topographical plans and the like in Seller’s possession and owned by Seller used in the construction, improvement, alteration or repair of the Property.

8.2.6 Originals or copies certified by Seller of all books, records and files maintained by Seller and Seller’s property manager, if any, relating to the operation and maintenance of the Property.

8.2.7 All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

8.3 *Buyer Deliveries.* At Closing, Buyer shall deliver to Seller the following, and it shall be a condition to Seller's obligation to close that Buyer shall have delivered the same to Seller:

8.3.1 Funds by wire transfer in the amount required under Paragraph 2.2 hereof (subject to the adjustments provided for in this Agreement).

8.3.2 A certification by Buyer that all representations and warranties made by Buyer in Paragraph 16 of this Agreement are true and correct in all material respects on the date of Closing, except as may be set forth in such certificate.

8.3.3 All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

9. *Apportionments; Taxes; Expenses.*

9.1 *Apportionments.*

9.1.1. *Taxes and Operating Expenses.* All real estate taxes, charges and assessments affecting the Property relating to the 364 West Street, Hopedale, Massachusetts portion of the Property shall be prorated on a per diem basis as of the Closing Date, with the exception of the Forest Lien. All roll back taxes or other charges resulting from the conversion of the property subject to the Forest Lien shall be the obligation of the Buyer. All unpaid taxes and charges relating to that portion of the Property at 363 West Street, Hopedale, Massachusetts shall be paid by the Buyers including tax taking on 363 West Street. If any Taxes have not been finally assessed as of the Closing Date for the current fiscal year of the taxing authority, then the same shall be adjusted at Closing based upon the most recently issued bills therefor, and shall be readjusted when final bills are issued. Buyer hereby agrees to assume all nondelinquent assessments affecting the Property, whether special or general.

9.2. *Expenses.* Each party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (1) all costs and expenses stated herein to be borne by a party, and (2) all of their respective accounting, legal and appraisal fees. Buyer, in addition to its other expenses, shall pay at Closing (1) all recording charges incident to the recording of the deed for the Property; (2) the premium for Buyer's title insurance policy; and (3) one-half of the escrow fee of the Escrow Agent. Seller, in addition to its other expenses, shall pay at Closing (1) all documentary stamps, excise taxes and real estate transfer taxes, (2) all recording charges incident to the recording of any instruments to discharge or remove encumbrances not approved (or deemed approved) by Buyer, and (3) one-half of the escrow fee of the Escrow Agent.

10. *Remedies.*

10.1. *Buyer Default.* In the event Buyer breaches or fails, without legal excuse, to complete the purchase of the Property or to perform its obligations under this Agreement, then, except as otherwise expressly set forth in this Agreement, Seller shall, as its sole remedy therefor, be entitled to receive the Deposit as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Seller against Buyer by reason of such default, upon

receipt of which this Agreement shall terminate and the parties shall be relieved of all further obligations and liabilities hereunder, except as expressly set forth herein. Buyer and Seller acknowledge that the damages to Seller resulting from Buyer's breach would be difficult, if not impossible, to ascertain with any accuracy, and that the liquidated damage amount set forth in this Paragraph represents both parties' best efforts to approximate such potential damages.

10.2. *Seller Default.* If Seller fails to perform any of its obligations under this Agreement, then Buyer, as its sole remedy for such failure, may either: (i) terminate this Agreement by written notice to Seller and Escrow Agent given prior to or on the Closing Date whereupon (x) Escrow Agent shall pay the Deposit to Buyer, and (y) if, but only if, the closing of the purchase of the Property does not occur as a result of Seller's intentional and willful failure to close, then Buyer the Seller shall pay to Buyer an amount equal to the out-of-pocket expenses (not to exceed Twenty Thousand and 00/100 Dollars (\$20,000.00) in the aggregate) incurred by Buyer in finalizing this Agreement and in performing Buyer's due diligence with respect to the Property, said amount to be paid within thirty (30) days after Buyer delivers to Seller written demand therefor accompanied by commercially customary third party receipts therefor; or (ii) enforce specific performance of Seller's obligations under this Agreement; provided, however, that if Seller willfully and intentionally conveys the Property to a bona fide third-party buyer or encumbers the Property in favor of a bona fide third party in a manner the result of which is that specific performance is not an available remedy, then Buyer may seek to recover Buyer's actual damages arising therefrom. The exercise by the Town of the right of first refusal as referred to in Section 4.7 shall not be deemed a breach by Seller.

11. *Confidentiality.* Buyer agrees to keep confidential and not to use, other than in connection with its determination whether to proceed with the purchase of the Property in accordance with the terms and conditions of this Agreement, any of the documents, material or information regarding the Property supplied to Buyer by Seller or by any third party at Seller's request, including, without limitation, any environmental site assessment reports furnished to Buyer, except to Buyer's, attorneys, accountants, consultants, investors and lenders on a "need to know" basis, unless Buyer is compelled to disclose such documents, material or information by law or by subpoena. In the event that the Closing does not occur in accordance with the terms of this Agreement, Buyer shall return to Seller all of the documents, material or information regarding the Property supplied to Buyer by Seller or at the request of Seller. The provisions of this Paragraph 11 shall survive the termination of this Agreement but shall no longer be applicable following Closing in accordance with the terms of this Agreement.

12. *Possession.* Possession of the Property shall be surrendered to Buyer at Closing.

13. *Notices.* All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

13.1. If to Seller:

One Hundred Forty Realty Trust
Charles E. Morneau and _____, Trustees

31 Conant Road
Lincoln, MA 01773
E-mail:

With a copy to:

Mark L. Donahue, Esquire
Fletcher Tilton PC
370 Main Street
Worcester, MA 01608
Email: mdonahue@fletchertilton.com

13.2. If to Buyer:

Grafton & Upton Railroad Company
7 Eda Ave
Carver, MA 02330
E-mail: jcotter@firstcolonydev.com
and mmilanoski@graftonuptonrr.com>

With a copy to:

Sandra R. Austin, Esquire
Law office of Sandra Rennie Austin
24 Bolton Street
Marlborough, MA 01752
E-mail: sandra@attyaustin.com

13.3. If to the Escrow Agent to:

Mark L. Donahue, Esquire
Fletcher Tilton PC
370 Main Street
Worcester, MA 01608
Email: mdonahue@fletchertilton.com

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by email to the address indicated above with receipt confirmed and with an original by regular mail. Any such notice or communication shall be effective when delivery is received or refused.

14. *Brokers.* N/A.

15. *Representations and Warranties of Seller.*

15.1. Subject to all matters disclosed in any document delivered to Buyer by Seller or on any exhibit attached hereto, and subject to any information discovered by Buyer or other information

disclosed to Buyer by Seller or any other person after the Effective Date and prior to the Closing, including, without limitation, any information contained in the Survey or the Title Commitment (all such matters being referred to herein as "Exception Matters"), Seller represents and warrants to Buyer as follows:

15.1.1. *Authority.* Seller is a nominee trust duly organized and validly existing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. The execution and delivery of this Agreement have been duly authorized pursuant to the terms and conditions of the Trust as recorded.

15.1.2. *No Conflict.* The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the Property of the Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at Closing. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

15.1.3. *Bankruptcy.* Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets.

15.1.4. *No Condemnation.* >

To Seller's knowledge there are no there pending condemnation, eminent domain or similar proceedings other than the current Petition of Grafton & Upton Railroad Company which is currently before the Department of Public Utilities (case number: D.P.U. 19-39), with respect to all or any portion of the Property.

15.1.5. *Compliance.* Seller has not received written notice of any existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting the Property which have not been cured with the exception of Seller's refusal or failure to pay real estate taxes and municipal charges relating to 363 West Street, Hopedale, Massachusetts.

15.1.6. *Litigation.* With the exception of the potential taking of the Property which Seller has advised Buyer, there is no action, suit or proceeding pending or, to the best of Seller's actual knowledge, threatened against or affecting the Property, or arising out of the ownership, management or operation of the Property, this Agreement or the transactions contemplated hereby.

15.1.7. *Leases.* The Property is not leased nor subject to any occupancy agreements covering any portion of the Property and there are no written or oral promises, agreements, amendments,

addenda, modifications, supplements, understandings, or commitments between Seller and any tenant of any nature whatsoever related to the Property and Seller agrees that it will not enter into any such agreements.

15.1.9. *Hazardous Materials*. INTENTIONALLY OMITTED. SELLER MAKES NO REPRESENTATION, WARRANTY OR STATEMENT OF ANY KIND RELATIVE TO HAZARDOUS MATERIALS.

15.1.10. *Other Agreements*. There are no written agreements affecting the Property to which Seller is party that will be binding on Buyer. Excepting the rights granted pursuant to the Forest Lien, Seller has not entered into and will not during the term of this Agreement enter into, any other agreement giving any other party a right to purchase the Property.

15.1.11. *FIRPTA*. Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

15.2. *Definition of Seller's Knowledge*. As used in this Agreement, or in any other agreement, document, certificate or instrument delivered by Seller to Buyer, the phrase "to the best of Seller's actual knowledge," "to the best of Seller's knowledge" or any similar phrase shall mean the actual, not constructive or imputed, knowledge of Charles E. Morneau without any obligation on their part to make any independent investigation of the matters being represented and warranted, or to make any inquiry of any other persons, or to search or examine any files, records, books, correspondence and the like.

15.3. *Survival of Seller's Representations and Warranties*. The representations and warranties of Seller set forth in this Paragraph 15 shall survive Closing for a period of Ninety (90) days and shall not be merged with the execution and delivery of the Deed and other closing documents hereunder.

16. *Representations of Buyer*. Buyer represents and warrants that:

16.1. *Authority*. Buyer is a Massachusetts trust, duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized.

16.2. *No Conflict*. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer does not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Buyer is a party or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at Closing. No action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Buyer in accordance with its terms.

17. *Miscellaneous.*

17.1. *Assignability.* Buyer may assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual or entity without the consent thereto by Seller. Further, Buyer may assign or transfer such rights and obligations to an entity controlling, controlled by or under common control with Buyer without Seller's consent, with prior notice to Seller. No assignment or transfer by Buyer will be permitted if such assignment or transfer would, in Seller's opinion, cause this transaction to violate any provision of applicable law.

17.2. *Governing Law; Bind and Inure.* This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

17.3. *Recording.* This Agreement or any notice or memorandum hereof shall not be recorded in any public record. A violation of this prohibition by Buyer shall constitute a material breach of this Agreement by Buyer, entitling Seller to terminate this Agreement and retain the Deposit.

17.4. *Time of the Essence.* Time is of the essence of this Agreement.

17.5. *Headings.* The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

17.6. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic means, such as a facsimile or email of .pdf signature pages, which shall have the same force and effect as the delivery of an original signature.

17.7. *Exhibits.* All Exhibits which are referred to herein and which are attached hereto constitute a part of this Agreement.

17.8. *Survival.* Unless otherwise expressly stated in this Agreement, each of the warranties and representations of Seller and Buyer shall not survive the Closing and delivery of the Deed and other closing documents by Seller to Buyer and shall be deemed to have merged therewith. Unless expressly made to survive, all obligations and covenants of Seller contained herein shall be deemed to have been merged into the Deed and shall not survive the Closing.

17.9. *Use of Proceeds to Clear Title.* To enable Seller to make conveyance as herein provided, Seller may, at the time of Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that provision reasonably satisfactory to the Escrow Agent and Buyer's attorney is made for prompt recording of all instruments so procured in accordance with conveyancing practice in the jurisdiction in which the Property is located.

17.10 *Submission not an Offer or Option.* The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Property, and neither party shall be bound to the other with respect to any such purchase and sale until a definitive

agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

17.11 *Entire Agreement; Amendments.* This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

17.12 *Section 1031 Exchange.* Seller may consummate the sale of the Property as part of a so-called like kind exchange (the “**Exchange**”) pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the “**Code**”), provided that: (i) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller’s obligations under this Agreement; (ii) Seller shall affect the Exchange through an assignment of its rights under this Agreement to a qualified intermediary; (iii) Buyer shall not be required to take an assignment of the purchase agreement for the replacement property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (iv) Seller will reimburse Buyer for any additional costs and fees (including, without limitation, attorneys’ fees) incurred by the Buyer in connection with the Exchange. Buyer shall not by this Agreement or acquiescence to the Exchange (i) have its rights under this Agreement affected or diminished in any manner or (ii) be responsible for compliance with or be deemed to have warranted to Seller that the Exchange in fact complies with §1031 of the Code.

17.13 *Compliance with Federal Laws; OFAC.* Each of Buyer and Seller each, a “**Representing Party**”) represents and warrants to the other (i) that neither the Representing Party, nor any owner of a beneficial interest in it, nor any of its officers, directors, managers or managing members is a person or entity (each, a “**Prohibited Person**”) with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the “**Executive Order**”) signed on September 23, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental action, (ii) that the Representing Party’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “**Money Laundering Act**”), and (iii) that throughout the term of this Agreement the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

[The remainder of this page is intentionally left blank; signature page follows.]

[Signature page – Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER: One Hundred Forty Realty Trust

By: _____

Name: Charles E. Morneau

Title: Trustee

Date: _____

By: _____

Name: _____

Title: Trustee

Date: _____

BUYER: New Hopping Brook Realty Trust

By: 

Name: Jon M. Delli Priscoli

Title : Trustee

Date: June 26, 2020

[Signature page – Purchase and Sale Agreement]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER: One Hundred Forty Realty Trust

By: Charles E. Morneau

Name: Charles E. Morneau

Title: Trustee

Date: 6/27/20

By: _____

Name: _____

Title: Trustee

Date: _____

BUYER: New Hopping Brook Realty Trust

By: _____

Name: Jon M. Delli Priscoli

Title: Trustee

Date: _____

EXHIBIT A
Description of the Land

Parcel I.

A parcel of land, approximately 20.99 acres located on and known as 363 West Street, Hopedale, Worcester County, Massachusetts; shown of the Town of Hopedale Assessors Map as Map 2 Parcel 8 and being part of the premises conveyed to the Seller, One Hundred Forty Realty Trust in a deed dated September 16, 1981 and recorded at the Worcester District Registry of Deeds in Book 73.22 Page 181.

Parcel II.

A parcel of land, approximately 155 acres located on and known as 364 West Street, Hopedale, Worcester County, Massachusetts; shown of the Town of Hopedale Assessors Map as Map 2 Parcel 5 and being part of the premises conveyed to the Seller, One Hundred Forty Realty Trust in a deed dated September 16, 1981 and recorded at the Worcester District Registry of Deeds in Book 73.22 Page 181.

EXHIBIT B
Form of Deed

Quitclaim Deed

Charles E. Morneau and _____, Trustees One Hundred Forty Realty Trust u/d/t September 16, 1981 and recorded at the Worcester District Registry of Deeds in Book 7322 Page 177 with an address of 31 Conant Road, Lincoln, MA 01773 grants to

New Hopping Brook Realty Trust u/d/t June 5, 2000 recorded at Middlesex South District Registry of Deeds in Book 31501 Page 89 with a principal address of 7 Eda Avenue, Carver, Massachusetts 02330

For consideration paid in the amount of One Million One Hundred Seventy Five Thousand and 00/100 Dollars (\$1,175,000.00)

With Quitclaim Covenants

The land in Hopedale, Worcester County, Massachusetts, bounded and described as follows:

Tract 1: All and the same parcel of land described in the deed of Paul Doane to Draper Company, dated October 13, 1915, recorded with the Worcester District Registry of Deeds in Book 2090 Page 314 being parcel 2-8 on the Hopedale Assessors Map containing 20.52 acres, more or less.

Tract 2: All and the same parcel of land described in the deed of Leo P. Taylor to Draper Company dated July 25, 1929, recorded with the Worcester District Registry of Deeds in Book 2500 Page 428 being parcel 2-8 on the Hopedale Assessors Map containing .4750 acres, more or less.

Tract 3: All and the same parcel of land described in the deed of Nancy C. Tisdale to Hemphill Company dated December 9, 1959, recorded with the Worcester District Registry of Deeds in Book 4085 Page 552 being parcel 2-5 on the Hopedale Assessors Map containing 82.35 acres, more or less.

Tract 4: All and the same parcel of land described in the deed of Sylvester L. Madden to Draper Company dated August 30, 1907, recorded with the Worcester District Registry of Deeds in Book 1863 Page 124 being parcel 2-5 on the Hopedale Assessors Map containing 68.97 acres, more or less.

Tract 5: All and the same parcel of land described in the deed of George Otis Draper to Draper Company dated October 13, 1905, recorded with the Worcester District Registry of Deeds in Book 1816 Page 216 being parcel 2-5 on the Hopedale Assessors Map containing 3.884 acres, more or less.

For Grantor's title see deed of Hopedale Development, Inc. to Grantor dated September 16, 1981 recorded in the Worcester District Registry of Deeds in Book 7311 Page 181.

Executed as a sealed instrument this ___ day of _____ 2020.

Charles E. Morneau, Trustee
One Hundred Forty Realty Trust

_____, Trustee
One Hundred Forty Realty Trust

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___ day of _____ 2020, before me, the undersigned notary public personally appeared _____ trustee and _____ trustee of the One Hundred Forty Realty Trust, proved to me through satisfactory evidence of identification which was _____ to be the persons who signed the preceding or attached document voluntarily in my presence and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

is made as of this ___ day of June 2020 (“**Effective Date**”) by and between One Hundred Forty Realty Trust u/d/t September 16, 1981, Charles E. Morneau and _____, Trustees with an address of 31 Conant Road, Lincoln, MA 01773 (“**Seller**”), and New Hopping Brook Realty Trust with a principal address of 7 Eda Avenue, Carver, Massachusetts 02330 (“**Buyer**”).

EXHIBIT C

Form of Non-Foreign Affidavit
NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person.

To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a _____ ("Seller"), the undersigned hereby certifies the following:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Income Tax Regulations;
3. Seller's U.S. taxpayer identification number is [_____]; and
4. Seller's address is _____. The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Under penalties of perjury, the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct, and complete, and further declares that it has authority to sign this document.

Date: As of _____, 2019

EXHIBIT D
Form of Guaranty

EXHIBIT

B



LIMITED DESKTOP SITE SCREENING REPORT

Town of Hopedale, MA

October 22, 2020



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1.0 INTRODUCTION

The Town of Hopedale is considering purchasing one privately held parcel at the north end of Town known as 364 West Street (Parcel 2-5-0)(herein referred to as the "Chapter 61 Parcel"). The Chapter 61 Parcel is currently owned by the One Hundred Forty Reality Trust and a portion of the parcel is currently managed as forest lands under M.G.L. c. 61 (herein referred to as the Chapter 61 Forest Land). The landowner provided a Notice of Intent to sell 364 West Street to the Town of Hudson on July 9, 2020. Pursuant to M.G.L. c. 61, the Town has the right of first refusal to purchase the chapter 61 Forest Land portion of the Chapter 61 Parcel. Environmental Partners Group, Inc. (EP) on behalf of the Town and Mackie Shea Durning PC (MSD) conducted a limited desktop evaluation of the Chapter 61 Parcel as a potential new public water supply source. Figure 1 is a topographic map showing the location of the Chapter 61 Parcel.

1.1 Background

The 364 West Street parcel is 155.24 acres in area, including 25.06 acres of wetlands that are excluded from the Chapter 61 Forest Land designation (Figure 2). Thus, the Chapter 61 Forest Land covers 130.18 acres. The Town is currently evaluating whether to exercise its right of first refusal for the Chapter 61 Forest Land, and it may seek to include the 25.06 acre "excluded wetland parcel" in the acquisition. For purposes of this desktop evaluation, EP has assumed that this wetland parcel is included in the purchase and can also be utilized for water supply protection purposes.

The Chapter 61 Parcel abuts the northern end of a 279.7 acre parcel owned by the Town of Hopedale Parks Commission (herein referred to as the Town Parcel) and is situated just north of Hopedale Pond (Figure 1). The Mill River runs north to south through the eastern portion of the Chapter 61 Parcel. Wetland Resource Areas (as mapped by Massachusetts Department of Environmental Protection) cover a section of the parcel's eastern portion that contains the Mill River. The Grafton-Upton Railroad (GUR) right-of-way crosses north-south through the Chapter 61 Parcel and the Town Parcel. Additionally, a gas line easement runs through the western edge of both parcels.

There are currently no public water supply wells located on the Town Parcel; however, the Zone II for the Town's public water supply wells extends onto the Town Parcel as shown on Figure 3. The Chapter 61 Parcel and Town Parcel are both located hydraulically upgradient of all of the Town's public water supply sources and these parcels provide an important buffer for protection of the Town's public water supply wells.

The existing public water supply wells in the Town of Hopedale consist of 33 wells within the Mill Street Wellfield, 3 gravel pack wells at Green Street, and 2 bedrock wells at Green Street (Figure 3). The combined permitted capacity of these three sources is 307.67 million gallons per year (MGY) or a combined pumping rate capacity of approximately 582 gallons per minute (gpm). The actual combined current capacity of these three sources is 136.91 MGY or approximately 260 gpm.

The Town has conducted limited desktop and field water supply exploration on both the Chapter 61 Parcel and Town Parcel in the past, but the two test borings did not identify productive well sites (Figure 4) and access to the larger portion of the parcels is a limiting factor. The combined addition of the Chapter 61 Parcel with the Town Parcel will provide a much larger available area for water supply exploration and development.

Based on existing service connections and water demands, the current water supply sources are pumping at full capacity and the Town is limited on any future development without a new or expanded water supply source.

The Town has interconnections with the water distribution system of neighboring communities for emergency service or to help meet high demand periods. A new water supply source would provide the Town with the additional capacity and add redundancy and resilience to the water system.

1.2 Desktop Study Area

As discussed above, the Town is considering acquiring all of 364 West Street for public water supply protection and possible development of a new public water supply source. The Chapter 61 Parcel is a 155.24 acre, undeveloped property consisting primarily of forestland and wetland and abuts the north end of a 279.7 acre undeveloped Town Parcel.

If the Town would like to develop a new public water supply source, then Massachusetts Department of Environmental Protection (MassDEP) Water Supply Regulations 310 CMR 22.21 require that the Town own or control a Zone I protective radius around the well or wellfield. Current and/or future land uses within the Zone I must be limited to those directly related to the provision of public drinking water or have no significant adverse impact on water quality. For public water supplies pumping greater than 100,000 gpd, the Zone I protective radius for a single well is 400 feet and for a wellfield is 250 feet.

The potential area for development of a new source public water supply well was determined by mapping the potential land area where the Town could own a Zone I protective radius. A 400-foot buffer for a single well and 250-foot buffer for a wellfield was mapped around the perimeter of the parcel boundaries and land within those buffers could be used for development of a public water supply well or wellfield, provided suitable aquifer material is present.

Figure 5 shows the 400-foot and 250-foot Zone I buffers on the Town Parcel and Figure 6 shows these buffers with the addition of the Chapter 61 Parcel. As shown, addition of the Chapter 61 land would significantly expand the potential area for public water supply development. Both the Chapter 61 Parcel and Town Parcel and are the focus of this desktop study.

This report presents the results of the potential water supply development desktop screening study. This desktop study evaluates the Chapter 61 Parcel in conjunction with the Town Parcel against a defined set of criteria to assist the Town in determining whether these parcels individually or combined may be suitable for further exploration for a potential public water supply source or as water supply protection for the Town's existing sources.

2.0 METHODOLOGY

The physical characteristics of the Chapter 61 Parcel and Town Parcel were compiled and evaluated based on criteria described in Massachusetts Department of Environmental Protection (MassDEP) guidance for siting new public water supplies (*MassDEP Chapter 4 – Groundwater Supply Development and Source Approval Process – Section 4.3*). The following information was developed:

1. The location of the Chapter 61 Parcel was displayed over a topographic map (Figure 1), Town of Hopedale parcel data (Figure 2), and aerial photograph (Figure 3).
2. A map was prepared showing the 400-foot Zone I areas for a single well and 250-foot Zone I area for a wellfield for both the Chapter 61 Parcel and the Town Parcel. Hydrologic constraints, including a 100-foot wetlands and 150-foot surface water buffer were also mapped (Figures 5 and 6).
3. Mapped USGS Surficial Geology was examined and mapped in relation to potential Zone I areas (Figure 7).
4. The following features within the parcel of study and within a 0.5-mile radius of the parcel were mapped using data from Massachusetts Bureau of Geographic Information (MassGIS), United States Geologic Service (USGS), and Environmental Data Resources (EDR) Record Search, and other readily available public information.
 - Areas of Critical Environmental Concern
 - Priority habitats for rare and endangered species
 - Proximity to surface water bodies (lakes and ponds) and certified vernal pools
 - Wellhead protection areas
 - Private water supplies
 - NPDES permit sites
 - Hazardous waste (21E) sites, as listed in the Department of Environmental Protection data base
 - Stocked trout streams and cold water fisheries
 - Automobile graveyards and junkyards
 - Petroleum and oil bulk stations and terminals
 - Agricultural uses
 - Proximity to industrial parks
 - Parcels with conservation restrictions
 - Proximity to landfill disposal sites
 - Proximity to wastewater treatment and effluent disposal facilities
 - Municipal Zoning

This information is shown in Figures 8 and 9.

5. A map was prepared showing land uses within the 0.5-mile radius of each site. Land uses within the Zone I of the well site that are not consistent with MassDEP regulations, or land uses within a 0.5 mile radius that could potentially impact water quality (i.e., industrial properties, multifamily residential properties with onsite septic, etc.) were identified. The land uses are shown on Figure 9.

6. The Sustainable Water Management Initiatives (SWMI) Basins were evaluated and mapped to determine the percent groundwater depletion, to determine if the basin is potentially suitable for permitting a new groundwater public water supply source (Figure 10).
7. The Chapter 61 Parcel was also mapped in relation to existing water supply protection areas, being existing Zone IIs (Figure 3).
8. A review was performed of MassDEP's Waste Site and Reportable Releases Database for oil and/or hazardous materials releases on or near the parcel of study.
9. An EDR report was reviewed to inventory underground storage tanks, Superfund, Brownfield, RCRA, and NPDES-permitted sites within 0.5 miles from the parcel of study, as well as environmental records for various other nearby sites that could generate hazardous waste (included in Appendix A).
10. A review of a previous fracture trace analysis (FTA) and exploratory borings was performed and results compared with finding from this study (Figure 4).

It should be noted that this desktop screening evaluation is based solely on database searches of readily available public information. Prior to property acquisition or initiating additional water supply development activities at the potential site, the results of this desktop evaluation should be assessed further and/or verified in the field.

3.0 SITE EVALUATION RESULTS

The information collected for the Chapter 61 Parcel and Town Parcel combined are described below and include the criteria discussed in Section 2.

Land Ownership

The Land Ownership criteria evaluates what land is available for groundwater supply exploration, and is based on ownership and control of the MassDEP required Zone I area.

- The parcel of study, the Chapter 16 Parcel, is owned by the One Hundred Forty Realty Trust and is currently partially managed as forest lands under Chapter 61. The Town has the right of first refusal to acquire the forestry lands subject to M.G.L. c. 61.
- Figure 6 shows the land area within the Chapter 61 Parcel where the Town could site a public water supply well. As shown, the potential area for exploration could extend southward onto existing Town Parcel and combined there is significantly larger, than either the Town Parcel or Chapter 61 Parcel individually.
- As shown on Figure 5, there is sufficient area on the Town Parcel to the south to locate a public water supply well or wellfield. However, should someone else acquire the Chapter 61 Parcel and the property developed use is not consistent with public water supply protection or Zone II land uses, then portions of the Town Parcel may no longer be suitable for public water supply development.
- The parcel of study includes 25.06 acres of wetland resource areas that are excluded from the Chapter 61 Forest Lands designation. If the Town acquires the Chapter 61 land, but does not acquire the excluded wetlands portion of the parcel, the potential land area to site a water supply well within this parcel is significantly reduced. The development potential of the wetland resource area was not evaluated as part of this study.

Hydrogeology

The MassGIS database for public water supply wells, water supply protection areas, and aquifers was reviewed to determine if existing water supply information indicate the area may be suitable for development of a new source water supply. The MassGIS layers indicate that the Chapter 61 Parcel is:

- Not within a MassGIS mapped high or medium yield aquifer.
- Not within a Wellhead Protection Area.
- Located approximately 4,000 feet from the northernmost edge of a previously permitted Zone II aquifer protection area for the Hopedale Public Water Supply Wells.

Surficial Geology (from MassGIS Surficial Geology Data)

Figure 7 shows the USGS mapped surficial geology in the vicinity of the Chapter 61 Parcel and the Town Parcel. The surficial geology is reviewed to determine if there is mapped potential aquifer material for development of an overburden water supply source. Surficial geology does not preclude the potential development of a bedrock water supply source.

- The Chapter 61 Parcel geology consists of coarse glacial stratified deposits, swamp deposits, thin till, and thick till. The Town Parcel contains the same surficial geology deposits. Glacial till and swamp deposits are not typically suitable material for water supply development. The areas mapped as coarse glacial stratified deposits could potentially provide suitable aquifer material for development of an overburden public water supply. Subsurface exploration would be required to determine if there is potential aquifer material at potential sites.
- The coarse glacial stratified deposits (potential aquifer material) are located within the Mill River valley and the surrounding area is mapped as thin and thick till. The Town's current overburden water supply sources are located within the Mill River valley coarse glacial stratified deposits.
- As shown on Figure 7, the Town Parcel has limited areas of surficial geology potentially suitable for water supply development. Purchasing the Chapter 61 Parcel provides a much larger area with potentially suitable surficial geology for exploration.

Sensitive Receptors (Within 0.5 miles of parcel)

Figure 8 is a map showing potential environment concerns within the vicinity of the Chapter 61 Parcel and the Town Parcel. This map shows potential environmental receptors that should be evaluated to determine if development of a public water supply well could have an adverse impact to the receptor.

- Areas of Critical Environmental Concern (ACEC) – No ACEC within 0.5 miles of the subject parcel.
- Priority Habitats – No Natural Heritage and Endangered Species Program (NHESP) Priority Habitats of Rare Species and NHESP Estimated Habitats of Rare Wetland Species mapped within 0.5 miles of the subject parcel.
- Vernal Pools – Two potential vernal pools are within 0.5 miles of the subject parcel.
- Lakes and Ponds – Mill Pond and Hopedale Pond are both within 0.5 miles of the subject parcel. Hopedale Pond extends into the southeastern corner of the parcel itself and Mill Pond is within 250 feet of the parcel. Mill Pond has been identified as a Category 5 water body on the 2016 Integrated List of Waters, meaning its impairments require a Total Daily Maximum Load (TMDL) for related to the impairments from non-native aquatic plants, macrophytes, PCB in fish tissue, and other unidentified impairment(s). Potential impacts from a public water supply source to these surface water features would need to be evaluated further.
- Protected Open Space – To the south, the subject parcel abuts Town-owned parkland, a protected open space. The Town has noted that the protected open space restrictions on the Town Parcel can be modified to allow development of a public water supply well. To the west, the subject parcel abuts DCR protected open space. Additionally, Town of Milford-owned and privately owned protected open spaces are located within 0.5 miles of the parcel, to the north and northeast.
- Stocked Trout Streams and Cold Water Fisheries – There are none within 0.5 miles of the subject parcel.

Potential Threats (Within 0.5 miles of parcel)

Figure 7 shows potential areas or sites of concern that could adversely impact water quality at the Chapter 61 Parcel or the Town Parcel. Figure 8 is a map showing land uses on these parcels or in the surrounding area.

- NPDES Permit/Discharge Sites – None within 0.5 miles of the subject parcel.
- 21E Release Sites – A parcel 2,000 feet away from the Chapter 61 Parcel is listed as having had a 17-gallon transmission oil spill. A permanent solution (Class A2 Response Action Outcome) was submitted in 1996, indicating that a condition of No Signification Risk has been achieved, but the contamination was not reduced to background.
- Automobile Graveyards and Bulk Oil Stations – None within 0.5 miles of the subject parcel.
- Active or Inactive Landfills – None within 0.5 miles of the subject parcel. The nearest landfill is the Draper Landfill, 4,100 feet south of the subject parcel. The Draper Landfill (a closed landfill) is listed as a Massachusetts state hazardous waste site with chlorinated solvents detected in surface water and groundwater. Although the Draper Landfill is located greater than ½ mile from the Chapter 61 Parcel, the landfill abuts the Town Parcel to the west and southwest and based on proximity could potentially adversely impact water quality on the Town Parcel. The Chapter 61 Parcel would be more advantageous.
- Wastewater Treatment Facility – None within 0.5 miles of the subject parcel.
- Other Non-Open Land Uses Present
 - Industrial land, including a nursing home, a removal and salvage company, and a landscaping supply store.
 - Commercial land, including auto repair shops, car dealerships, and a storage company.
 - Residential land.

Fracture Trace Analysis and Previous Borings Findings

Figure 4 summarizes existing borings that have been drilled on the Chapter 61 Parcel or the Town Parcel or within Town, as well as areas previously recommended for water supply exploratory drilling.

- The Town of Hopedale has previously conducted a bedrock exploratory boring in 2008. The test well was located in the southern portion of the Town Parcel and drilled to 600 feet below ground surface. This well did not produce any viable amount of water.
- Shallow test wells were drilled across town over the past 30 years. In 1988, the Town conducted an exploratory boring in the south of the Town. In the 1990s, additional test wells were drilled in the Chapter 61 Parcel, to the east of the Mill River; the drilling location was selected based on ease of access. Test wells were drilled in 2019 in the center of Town. All these test wells found material too fine to be suitable aquifer material.
- The results of the exploratory borings completed since 1988 indicate that potential water supply sources within the Town may be limited.

- A Fracture Trance Analysis (FTA) was completed in September 2019 and identified three locations on the Chapter 61 Parcel that contain a high concentration of photolinears (fracture traces) in the bedrock of a significant length. Two of the locations identified are within 100 feet of wetlands. The proximity to wetlands does not preclude water supply well development; however, additional steps need to be taken, including approval from the Hopedale Conservation Commission and MassDEP. The third potential bedrock well location is on the boundary between the Chapter 61 Parcel and the Town Parcel.

Sustainable Water Management Initiatives (SWMI) Basins

SWMI Groundwater Withdrawal maps show the level of groundwater depletion within a drainage basin to determine the extent of impact from groundwater withdrawal sources. SWMI Basin Groundwater Withdrawal categories are ranked from 1 to 5 with Category 5 having the highest level of groundwater depletion.

- As shown on Figure 10, the Chapter 61 Parcel and Town Parcel are located within a SWMI Basin that is Category 4: 25 to <55% depleted. Based on a Category 4, the basin has some depletion, but the MassDEP could consider permitting a new public water supply source.

New Source Capacity Estimation

A rough estimation of potential well capacity was performed based on the following steps.

- The area of aquifer material present up-gradient of the Chapter 61 Parcel that approximates the Zone II area was estimated to be 16 million square feet (367 acres).
- Average annual rainfall in the Hopedale area is 45 inches per year. USGS estimates of recharge to the aquifer in Massachusetts is approximately 24 inches annually.
- Assuming two feet of recharge per year, the total recharge to the aquifer would be 650,000 gallons per day.
- Assuming that the whole area mapped by USGS as coarse sand deposits is a potentially productive aquifer and that a well could effectively produce 40 percent of the available water in the aquifer, a well could produce up to 260,000 gallons per day. This well capacity is within the range of the permitted capacity of the existing water supply sources in the Town of Hopedale.

4.0 CONCLUSIONS AND RECOMMENDATIONS

EP performed a limited evaluation of the Chapter 61 Parcel as the site for a potential new public water supply source. The goals of the evaluation were to provide the Town with a preliminary assessment of water supply viability, identify potential site constraints, and evaluate related factors concerning suitability of the subject parcels. The objective of the evaluation was to develop recommendations as to whether the Chapter 61 Parcel should be considered further for public water supply exploration or if identified site constraints may preclude development of a new public water supply source. In addition, the Chapter 61 Parcel was evaluated to determine if the Town should consider ownership of the parcel for protection of their existing public water supply sources.

The desktop study also included the adjacent Town Parcel to the south, because if combined the two parcels could provide a significantly larger area for potential water supply exploration and reduce potential site constraints associated with property boundaries. Following is a summary of the key conclusions of the limited desktop study.

1. Limited areas for public water supply exploration are identified on the Town Parcel. The Chapter 61 Parcel significantly increases the potential area for public water supply exploration.

Figure 11 shows the potential area identified for potential water supply exploration. This mapped area only includes:

- Land where the Town could own and control a 250-foot or 400-foot Zone I protective radius;
- Land outside the 100-foot wetlands and 150-foot surface water buffers; and,
- Land with mapped potential aquifer material.

The parcel of study, the Chapter 61 Parcel, is located in the northern section of the Town of Hopedale. The optimal location for siting a new water supply source within this parcel is just west of the wetlands buffer in the eastern portion of this parcel. The potential well site location is on undeveloped forested and non-forested land.

As shown on Figure 11, the Town currently owns approximately 1.67 acres of land within the northern portion of the Town Parcel that could be suitable for a single well source and approximately 2.82 acres for a wellfield. If the Town acquires the Chapter 61 Parcel, then combined the suitable land within this area is increased to approximately 16.72 acres for a single well and approximately 21.09 acres for a wellfield.

2. Potential sensitive environmental receptors are identified within a ½-mile radius that would need to be evaluated further.

Mill Pond and Hopedale Pond are both within 0.5 miles of the Chapter 61 Parcel. Hopedale Pond extends into the southeastern corner of the parcel itself and Mill Pond is within 250 feet of the parcel. Hopedale Pond is located within the Town Parcel. In addition, two potential vernal pools are located within a ½-mile radius of the Chapter 61 Parcel. Potential water supply pumping impacts to these surface water features would need to be evaluated further.

3. No obvious potential areas of concern are identified that would preclude development of a public water supply source on the Chapter 61 Parcel with the exception of the existing Grafton-

Upton railway. Further expansion of the railway operations on the parcel could lead to additional site constraints on both the Chapter 61 Parcel and the Town Parcel.

The Draper Landfill is a closed landfill and is located over ½ mile to the south and downgradient of the Chapter 61 parcel, and as such is not anticipated to impact water quality. However, the Draper Landfill abuts the Town Parcel and could be a potential source of contamination to groundwater near the central or south portions of the Town Parcel.

4. Potential bedrock water supply locations identified are on or require portions of the Chapter 61 Parcel for the MassDEP required Zone I.

The Town had a fracture trace analysis conducted in September 2019 to identify potential areas for bedrock groundwater exploration. Three potential locations were identified, of which two are located on the Chapter 61 Parcel and one location is located along the parcel boundary, which would require ownership or control of part of the Chapter 61 Parcel for a 400-foot Zone I.

5. The Chapter 61 Parcel provides additional protection for the Town's existing public water supply sources.

The Chapter 61 Parcel is located within the Mill River valley, upstream and upgradient of the Town's three existing public water supply sources. Ownership or control of this parcel would provide additional water quality protection. In addition, ownership of the Chapter 61 Parcel would ensure that future land uses on the parcel are consistent with water supply protection and would not adversely impact groundwater quality.

Based on the preliminary desktop study the Chapter 61 Parcel should be considered for further groundwater supply exploration and to provide additional water quality protection for the Town's three existing public water supply sources.

DEFINITIONS

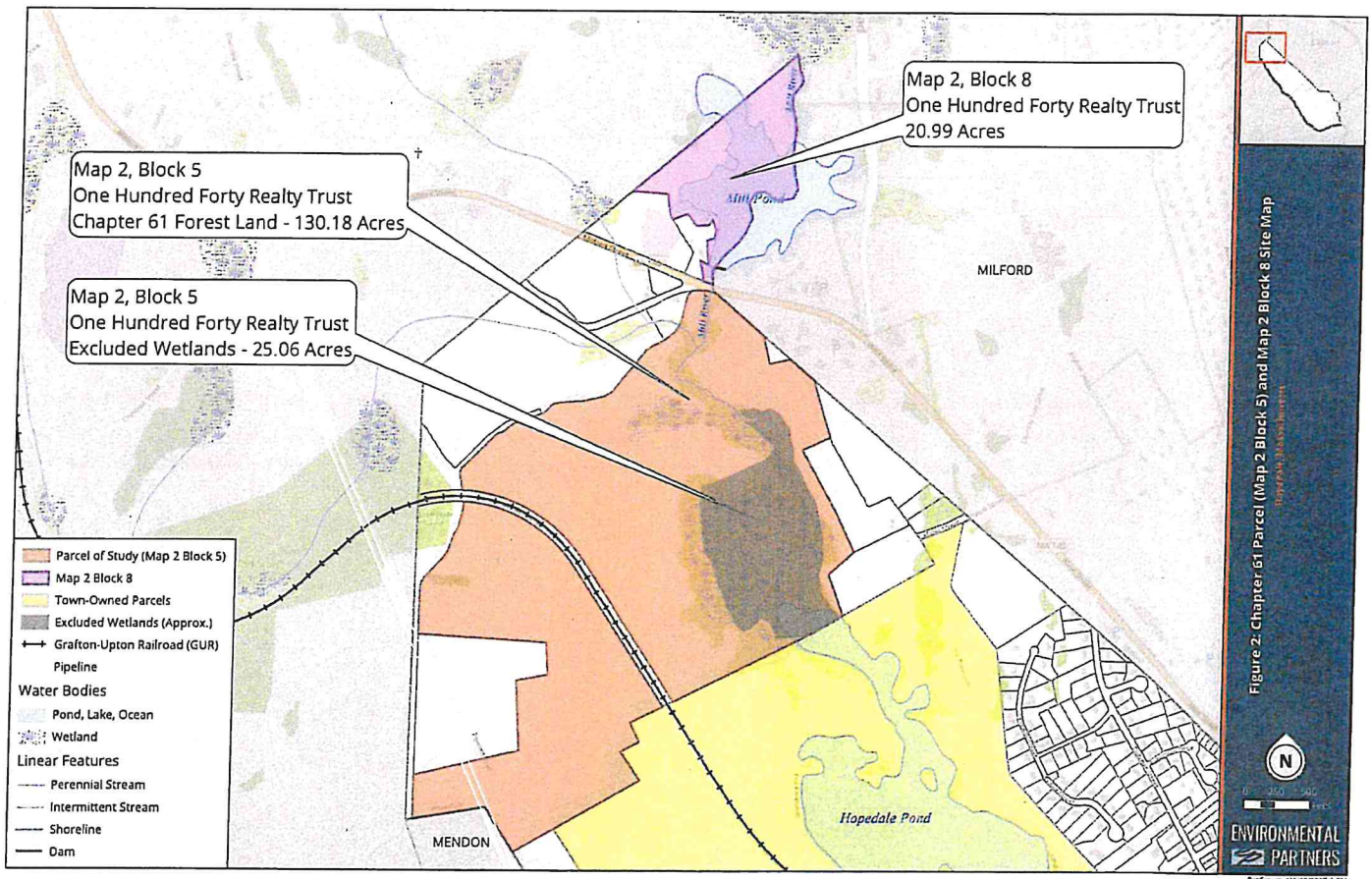
NHESP Priority Habitats of Rare Species – The Priority Habitats of Rare Species data layer contains polygons representing the geographic extent of Habitat of state-listed rare species in Massachusetts based on observations documented within the last 25 years in the database of the Natural Heritage & Endangered Species Program (NHESP). Priority Habitat polygons are the filing trigger for project proponents, municipalities, and all others for determining whether or not a proposed project or activity must be reviewed by the NHESP for compliance with the (MESA) and its implementing regulations. Areas delineated as Priority Habitats can include wetlands, uplands, and marine habitats.

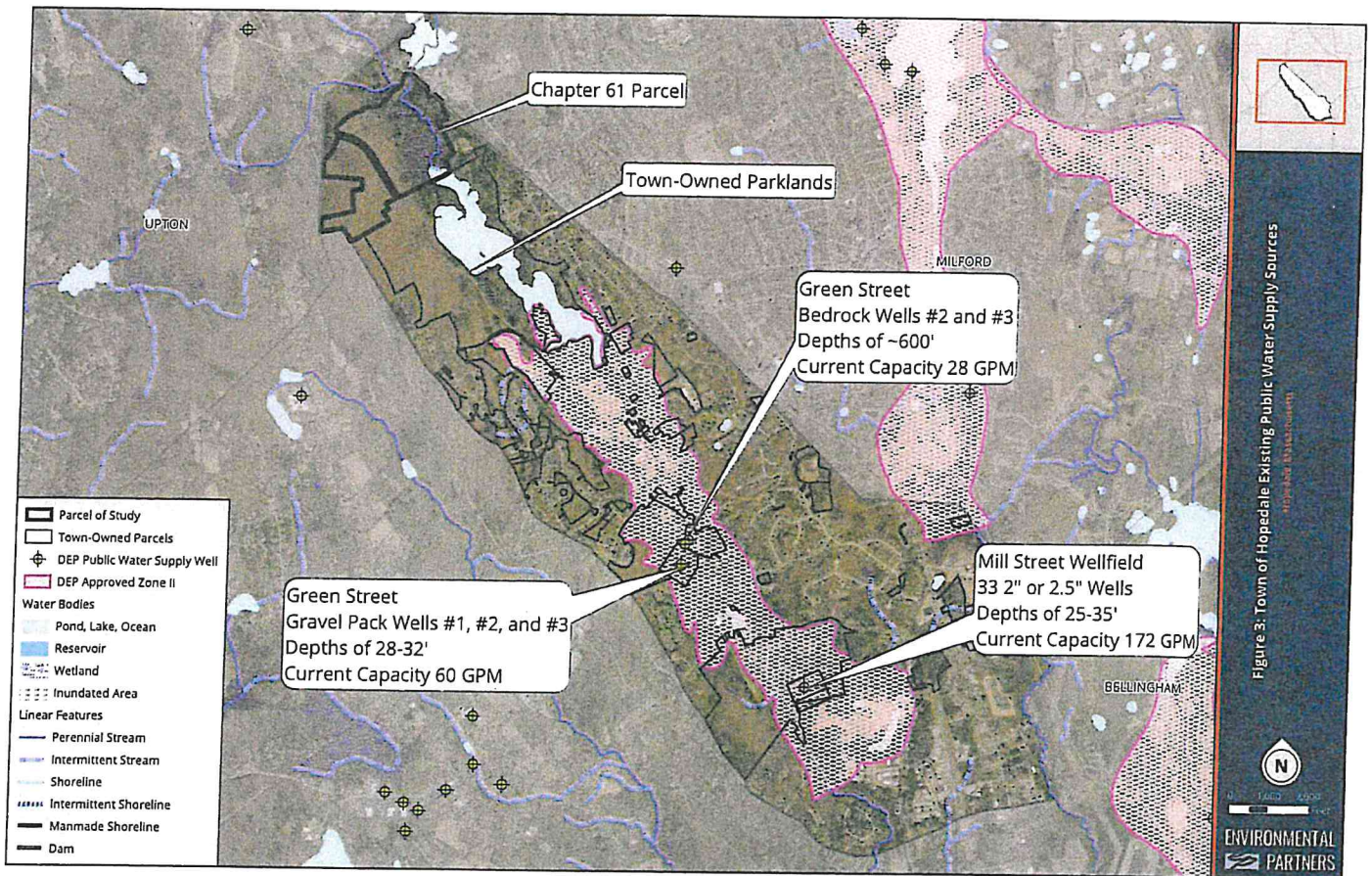
NHESP Estimated Habitats of Rare Wetland Wildlife – The Estimated Habitats of Rare Wildlife data layer contains polygons that are a subset of the Priority Habitats of Rare Species. They are based on occurrences of rare wetland wildlife observed within the last 25 years and documented in the NHESP database. They do not include those areas delineated as Priority Habitat for rare plants or for rare wildlife with strictly upland habitat requirements.

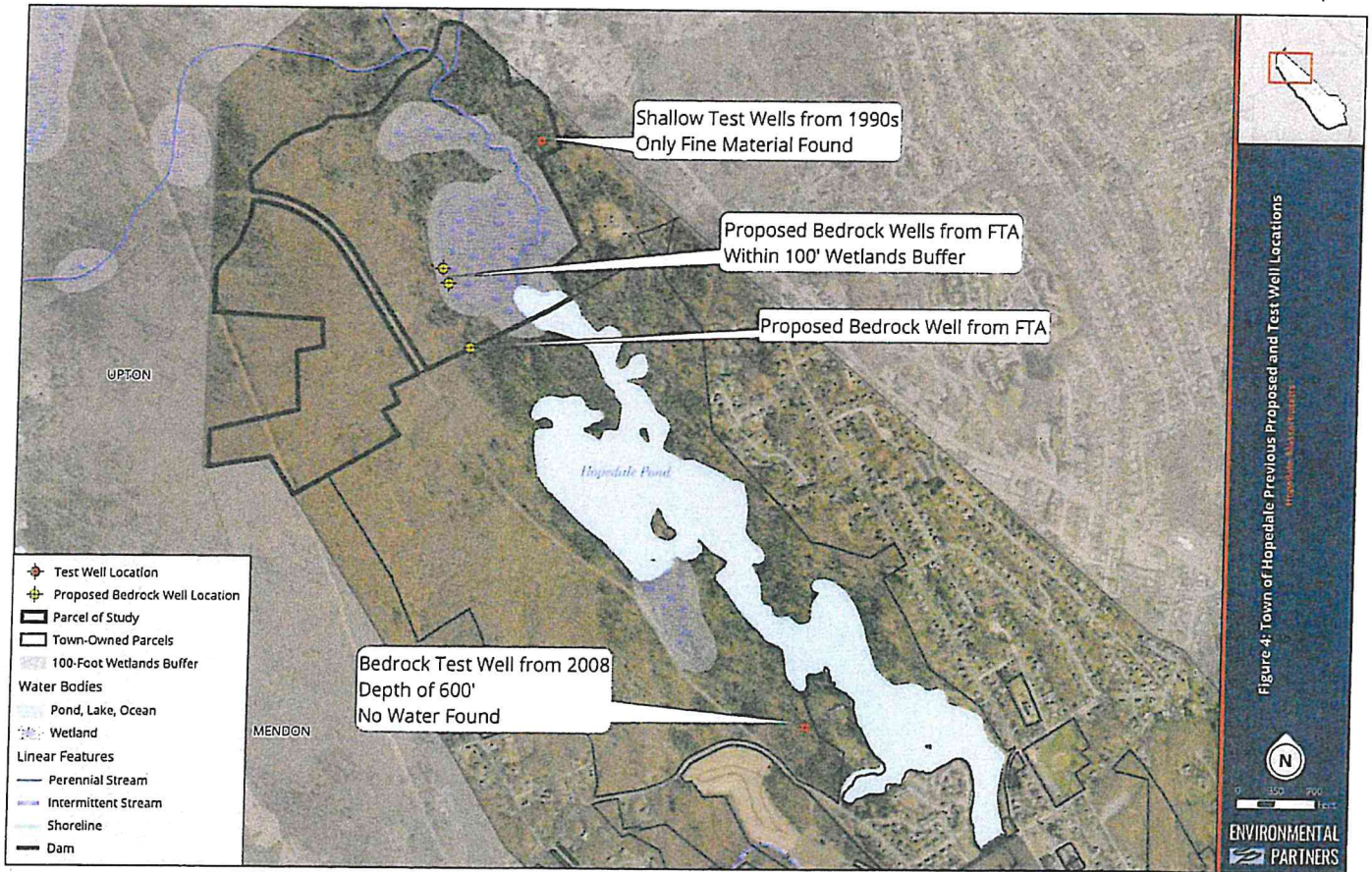
Zone I – Zone I means the protective radius required around a public water supply well or wellfield. For Public Water System wells with approved yields of 100,000 gallons per day (gpd) or greater, the protective radius is 400 feet. Wellfields and infiltration galleries with approved yields of 10,000 gpd or greater require a 250-foot protective radius. Protective radii for all other Public Water System wells, wellfields, and infiltration galleries are determined by the following equation: Zone I radius in feet = $(150 \times \log \text{ of pumping rate in gpd}) - 350$.

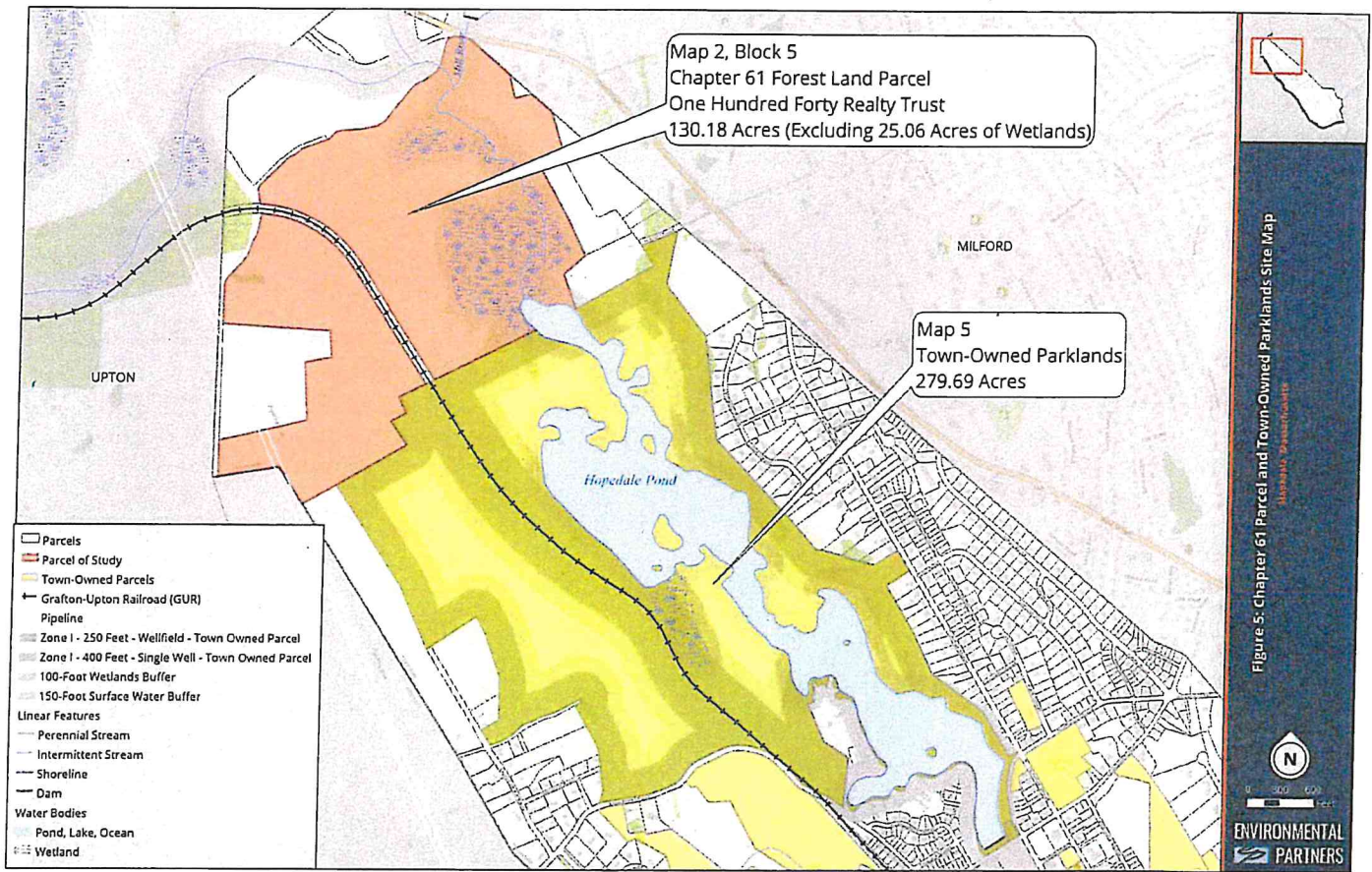
Zone II – Zone II means that area of an aquifer that contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary). The Zone II must include the entire Zone I area.

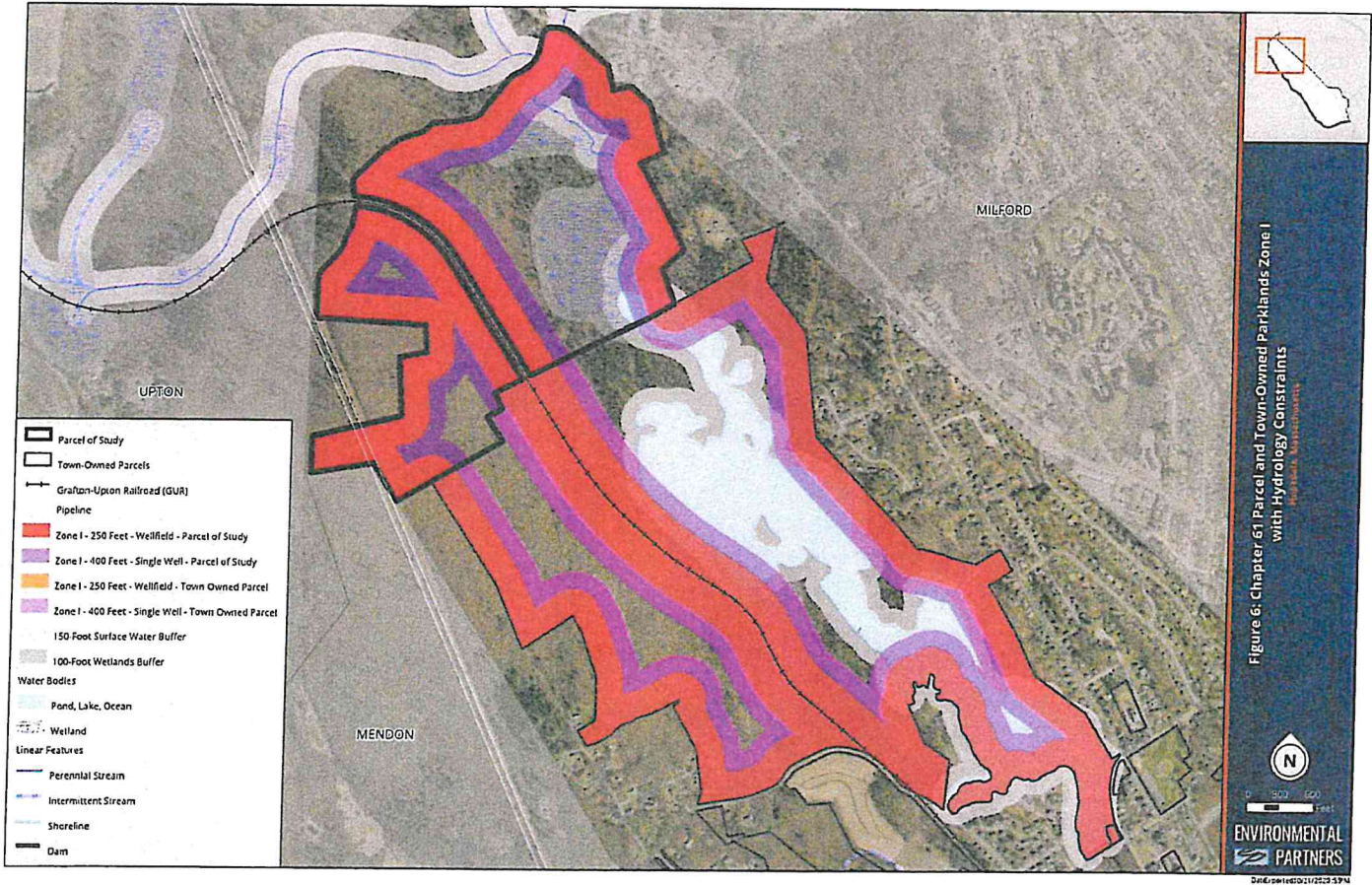
FIGURES



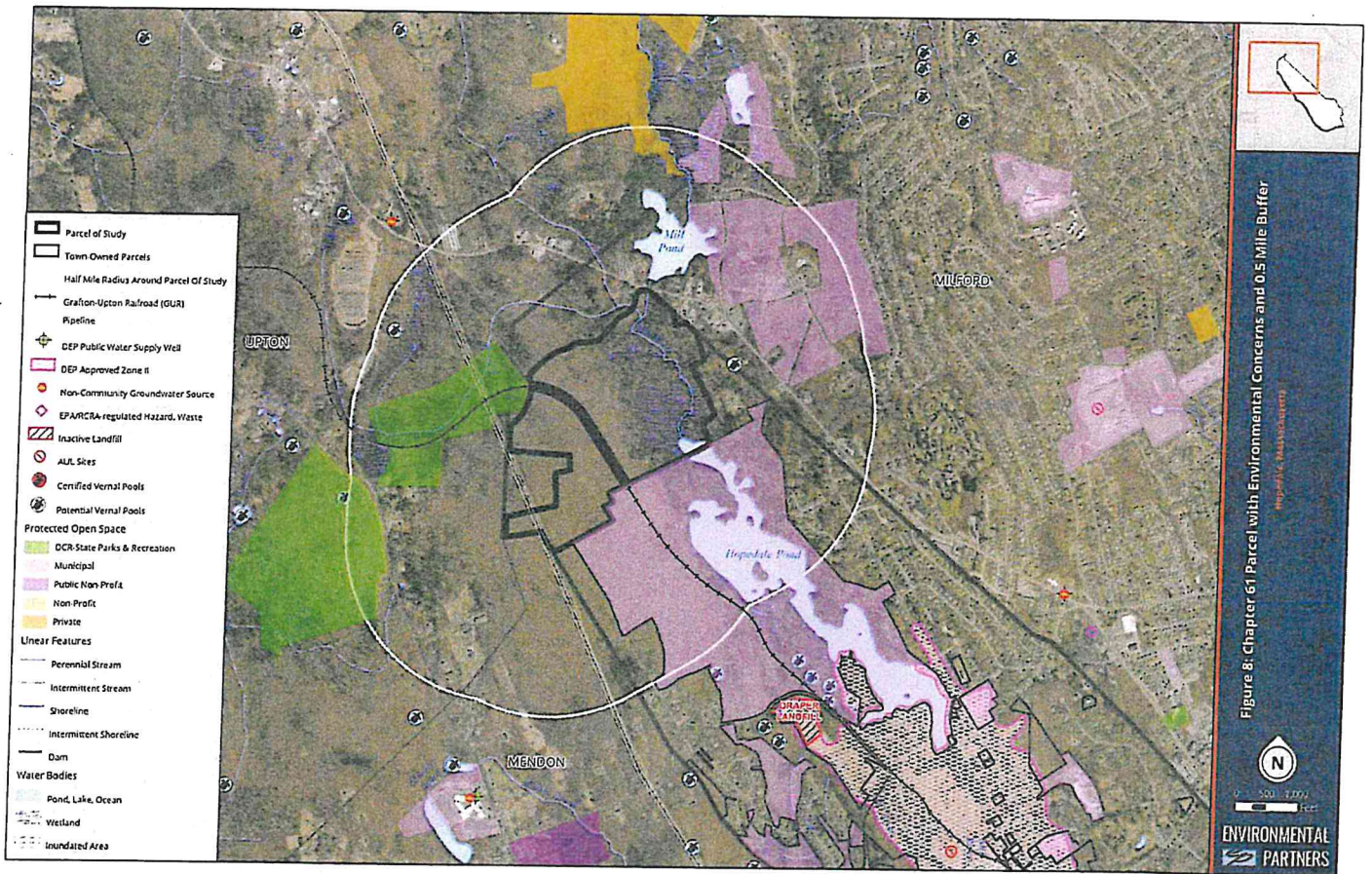


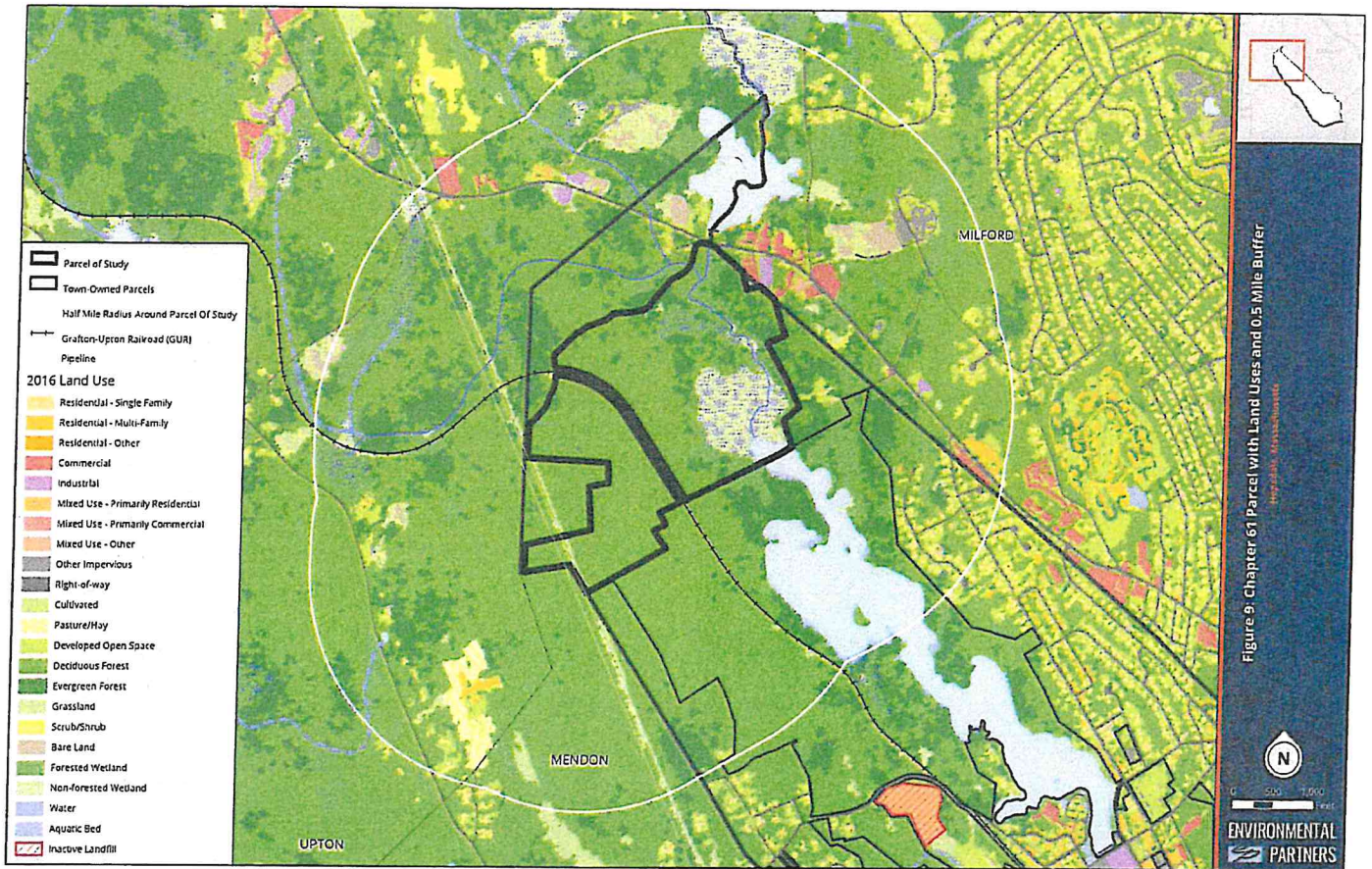


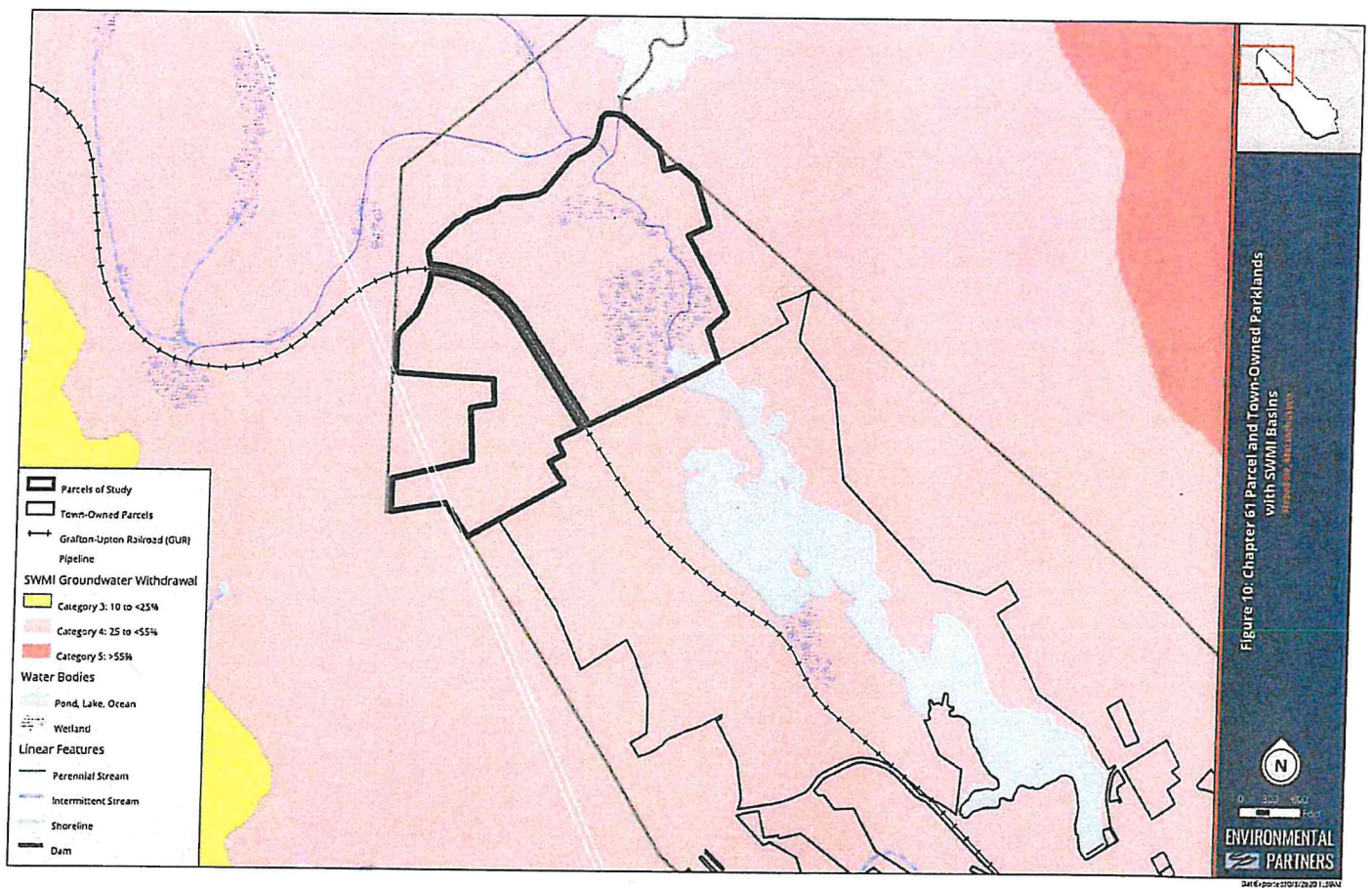


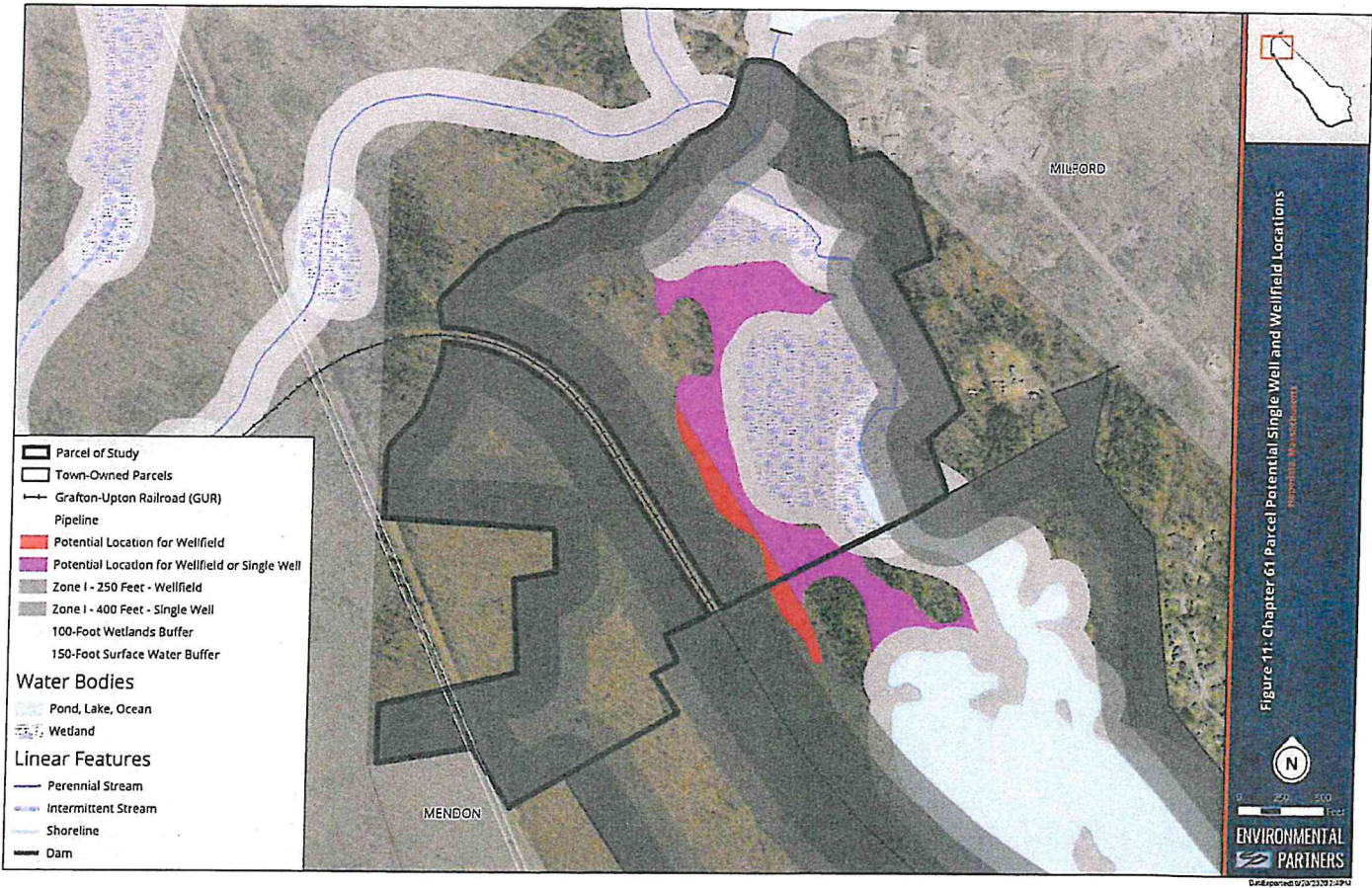












APPENDIX A

(provided as separate file)



ENVIRONMENTAL
 **PARTNERS**

1900 Crown Colony Drive, Suite 402
Quincy, MA 02169
P: 617.657.0200 F: 617.657.0201

envpartners.com

EXHIBIT

C

October 7, 2020

FEDERAL EXPRESS

Peter Durning, Esquire
Mackie Shea Durning PC
20 Park Plaza
Suite 1001
Boston, MA 02116

RE: Notice of Intent to Purchase Forest Land Classification subject to M.G.L. c., Section 61
("Notice of Intent")
364 West Street, Hopedale, Massachusetts
Assessors Map 2, Block 5

Dear Mr. Durning:

Please be advised this office represents One Hundred Forty Realty Trust.

Your correspondence of August 19, 2020 to my client is hereby acknowledged.

My client disputes that the Notice of Intent provided to the Town of Hopedale dated July 9, 2020 is defective in any fashion pursuant to the provisions of M.G.L.c., Section 61, §8. Notwithstanding, the Notice of Intent is hereby withdrawn in its entirety by One Hundred Forty Realty Trust, the property owner and shall be deemed of no further force and effect. My client is in the process of evaluating its options with regard to the property, subject to Forest Land Classification, but specifically withdraws its Notice of Intent to sell or convert the land that is currently in Forest Land subject to Chapter 61. Any further notice to sell or convert the land will be subject to a new Notice of Intent. To the extent that the Notice of Intent constituted an offer to sell to the Town of Hopedale, said offer is withdrawn.

Fletcher Tilton PC
Attorneys at law

Peter Durning, Esquire
Mackie Shea Durning PC
October 7, 2020
Page 2

Should you have any questions or wish to discuss this matter further, kindly feel free to contact the undersigned.

Very truly yours,



Mark L. Donahue
Fletcher Tilton PC
The Guaranty Building
370 Main Street, 11th Floor
Worcester, MA 01608
Tel: 508.459.8029
Email: mdonahue@fletchertilton.com

MLD/mmp

cc: Commissioner of the Department of Conservation and Recreation
via Certified Mail
Hopedale Board of Assessors
Hopedale Board of Selectman
Hopedale Planning Board
Hopedale Conservation Commission
Via Federal Express

EXHIBIT

D



COUNSELORS AT LAW

20 Park Plaza, Suite 1001, Boston, MA 02116 • p 617 266 5700 f 617 266 5237

www.mackieshea.com

October 8, 2020

VIA ELECTRONIC AND CERTIFIED MAIL

One Hundred Forty Realty Trust
c/o Charles E. Morneau, Trustee
31 Conant Road
Lincoln, MA 01773
Email c/o: mdonahue@fletcherilton.com

**Re: Notice of Intent to Purchase Forest Land Subject to M.G.L. c. 61
364 West Street, Hopedale, MA (Assessors Map 2, Block 5)**

Dear Mr. Morneau:

I received the letter sent on your behalf by Mark L. Donahue, Esq., of Fletcher Tilton PC, dated October 7, 2020, purporting to withdraw the above-referenced Notice of Intent to Sell Forest Land Subject to Chapter 61 Tax Lien, dated July 9, 2020 (the "Notice of Intent"). The purported withdrawal of the Notice of Intent has no effect.

Pursuant to M.G.L. c. 61, § 8, the Town of Hopedale holds a first refusal option for any sale of classified forest land. This first refusal option ripened into an irrevocable option to purchase which vested when the Town received the Notice of Intent. Massachusetts law is clear on this point. See Sudbury v. Scott, 439 Mass. 288, 297-98 (2003) ("[A] town's right of first refusal ripens into an option to purchase when the town receives notice of an intended sale of [the] land."); Town of Billerica v. Card, 66 Mass.App.Ct. 664, 669 (2006) ("The option vests in the town as soon as it receives a notice of intent, and any purported subsequent withdrawal of the notice can have no effect."); Stapleton v. Macchi, 401 Mass. 725, 729 n.6 (1988) ("An option is simply an irrevocable offer creating a power of acceptance in the optionee.").

Please be advised that the Town of Hopedale will proceed to consider whether to exercise its option to purchase the portion of the property located at 364 West Street which is classified forest land under Chapter 61 according to the terms of the offer contained in the Notice of Intent.

Hopedale respectfully reserves all rights and remedies available to it by law or in equity regarding its exercise of its right of first refusal and its option to purchase.

Thank you for your attention to this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Peter F. Durning". The signature is written in a cursive style.

Peter F. Durning

One Hundred Forty Realty Trust
October 8, 2020
Page 2 of 2



cc: Mark L. Donahue, Esq. (*via federal express and electronic mail*)
Commissioner of the Department of Conservation and Recreation (*via certified mail*)

(Via Electronic and First Class Mail)

New Hopping Brook Realty Trust c/o Michael Milanoski
Sandra R. Austin, Esq.
Brian Keyes, Hopedale Board of Selectmen, Chair
Diana Schindler, Hopedale Town Administrator
Hopedale Board of Assessors
Hopedale Planning Board
Hopedale Conservation Commission

EXHIBIT

E



**NOTICE OF EXERCISE OF FIRST REFUSAL OPTION
PURSUANT TO M.G.L. c. 61, § 8**

364 West Street, Hopedale, MA

The TOWN OF HOPEDALE, acting by and through its Board of Selectmen, after a public hearing held on October 30, 2020, duly noticed, and pursuant to M.G.L. c. 61, § 8, hereby exercises the option to purchase the real property located at 364 West Street in Hopedale, Worcester County, Massachusetts, shown as Block 5, Lot 0, on Assessors Map 2 in said Town, owned as of the date of the notice of intent required by said Chapter 61, § 8, by the ONE HUNDRED FORTY REALTY TRUST, and as of said date consisting of 155.24 acres, of which 130.18 acres is classified as forest land pursuant to M.G.L. c. 61, § 2, as indicated by the Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien dated September 3, 2014, recorded in said registry in Book 52875, Page 355, said option applying only to the portion of said property classified as such. For said owner's title, see the certificate recorded in said registry in Book 61533, Page 78.

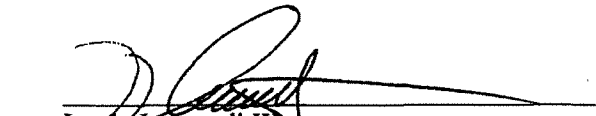
Subsequent to the notice of intent sent pursuant to Chapter 61, § 8, the above-named Trust: sold the non-classified portion of said property, consisting of 25 +/- acres, to the Grafton & Upton Railroad Company by quitclaim deed dated October 12, 2020, recorded in said registry in Book 63493, Page 34; had 100% of its beneficial interest assigned to the Grafton & Upton Railroad Company by assignment dated October 12, 2020, recorded in said registry in Book 63493, Page 39; resigned its trustees by notices dated October 12, 2020, recorded in said registry in Book 63493, Pages 43 and 45; and appointed successor trustees by notices dated October 14, 2020, recorded in said registry in Book 63508, Pages 8 and 11. Said Trust continues to hold record title to the classified Chapter 61 land over which the Town of Hopedale exercises its option to purchase.

Executed as a sealed instrument this 2nd day of November, 2020.

TOWN OF HOPEDALE

By and through its Board of Selectmen,

Brian R. Keyes, Chair

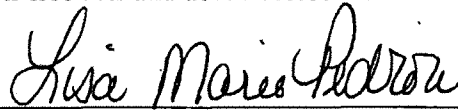

Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

November 2, 2020

Then personally appeared the above named, Brian R. Keyes and Louis J. Arcudi III, and acknowledged the foregoing document to be their free acts and deeds before me.


Notary Public
My commission expires: March 15, 2024





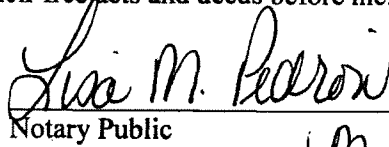
Louis J. Arcudi III

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

November 2, 2020

Then personally appeared the above named, Brian R. Keyes and Louis J. Arcudi III, and acknowledged the foregoing document to be their free acts and deeds before me.



Notary Public

My commission expires: March 15, 2024



EXHIBIT 2

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement is made and entered into this 8th day of February 2021, by and between the following parties (the “Parties”): plaintiff Town of Hopedale, by and through its Board of Selectmen (the “Town”), defendants 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 may be referred to as 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 reached a preliminary agreement on the principal terms of a settlement of the Litigations, which was memorialized in a document entitled Settlement Term Sheet;

WHEREAS, the preliminary agreement memorialized in the Settlement Term Sheet was subject to a formal vote by the Town’s Board of Selectmen, in a public meeting on Monday, January 25, 2021;

WHEREAS, the Board of Selectmen voted to adopt and approve the terms of the preliminary agreement memorialized in the Settlement Term Sheet at the January 25, 2021 public meeting;

WHEREAS, in order to avoid the time and expense of litigation and without any admission of liability by any of the Parties, the Parties desire to settle fully and finally all differences between them regarding the Litigations, including specifically legal rights to real property located at 364 West Street, Hopedale, MA and any and all claims that were raised or could have been raised therein and any and all defenses and counterclaims that were raised or could have been raised therein;

NOW THEREFORE, in consideration of the promises and covenants set forth below, including, but not limited to, the Mutual Release of Claims, and for other good and valuable consideration as set forth in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Division of Property: The property subject to division by agreement 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 26, 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. Parcel A:

- i. Within 60 days of the date of the execution of this Agreement, the Defendants, in consideration of the payment of \$587,500, shall effectuate the conveyance of Parcel A by quitclaim deed(s) 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(s) or well fields for the benefit of the grantors and their successors. The date of the conveyance referenced in the prior sentence may be extended by written agreement of the Parties. Any water supply well(s) or wellfields installed pursuant to the third easement mentioned above shall be abandoned when a public water supply becomes available and operational on Parcel A; provided however, that the Trust shall have the right to connect to the public water supply in consideration for its abandonment of its private well(s). In other words, other than the usual and customary cost of connecting to a public water supply, the only consideration owed by the Trust, or its designee and/or successors to the Town for connecting to a public water supply on Parcel A shall be its abandonment of its private well/water supply. Any hydrogeological analysis performed as part of the exercise of the easement for the installation of a water supply well shall be performed by a licensed engineer and any results from such hydrogeological analysis shall be shared with the Town. The Trust or its designee and/or successors shall comply with all applicable health and safety state and federal laws and regulations regarding the development and operation of a water supply

well ; provided however, nothing herein shall be interpreted as subjecting any such work to any local preclearance requirements.

- ii. In addition to the consideration of \$587,500 being paid by the Town for the conveyance Parcel A, the Parties agree that the Town shall agree to increase the purchase price to cover the cost of any roll back taxes that may be due by the Trust as a result of the change in use of the land in 364 West Street being classified as forestry land under Chapter 61 as determined by the Hopedale Board of Assessors as of the date of the Closing. Within five (5) business days of the Closing, the Trust shall pay the full amount of the roll back taxes to the Town.
- iii. Parcel A shall 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 a new water supply well or wellfield for the Town, and for the benefit of the grantors and their successors 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.
- iv. The Town in its discretion may perform any hydrogeological analysis for the purpose of establishing a public drinking water supply well on Parcel A 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”) at any location on Parcel A that is more than 400 feet (or 250 feet for a wellfield) from Parcel E, Parcel C and Parcel B.

- v. Any such Hydrogeological Analysis commenced under paragraph 1(A)(v) must be performed by a licensed professional engineer and any results from such analysis must be shared with the Trust.
- vi. In the event that such analysis performed under paragraph 1(A)(v)) 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 Massachusetts Department of Environmental Protection (“MassDEP”) 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 the Defendants’ commitment to work in good faith. For the purpose of this sub-paragraph and this Agreement the term “feasible” shall mean a well capable of producing a water source that will supply greater than 10% of the Town’s water demand, and the term “financeable” shall mean that the Town has voted to appropriate the necessary funds to pay for the expenses associated with developing a well, or well field.
- vii. It is agreed that the intent of the well-testing process set forth in Section 1(a) 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.

viii. The Trust agrees to collaborate with the Town in good faith to establish a formula to share costs and expenses associated with any such testing and Hydrogeological Analysis, on a pro rata basis pursuant to the Cost Sharing Agreement attached hereto as Exhibit 2. In the event that the Parties and any third-party cannot come to an agreement on the terms of such a Cost Sharing Agreement in substantial compliance with Exhibit 2, each party shall be responsible for its own costs and expenses related to such Hydrogeological Analysis.

b. Parcel B:

- i. The Trust shall retain ownership in fee of Parcel B, subject to its unconditional right to convey this Parcel to a designee;
- ii. Parcel B shall not be subject to Chapter 61 of the Massachusetts General Laws.
- iii. The Trust at its own determination, and in its sole discretion as to location, shall install appropriate monitoring wells on Parcel B and hereby agrees to share data from such monitoring wells as required by applicable law.
- iv. The Trust, and/or its designee/successor agrees to construct an enclosed building/structure, or multiple enclosed buildings / structures on Parcel B.
- v. 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.
- vi. 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).

vii. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

c. Parcel C:

i. Defendants shall retain ownership in fee of Parcel C, subject to its unconditional right to convey this Parcel to a designee.

ii. Parcel C shall not be subject to Chapter 61 of the Massachusetts General Laws.

iii. Defendants at their own determination, and in their sole discretion as to location, shall install appropriate monitoring wells on Parcel C and hereby agree to share data from such monitoring wells as required by applicable law.

iv. 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.

v. The Defendants, their 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).

- vi. Defendants agree to record a deed restriction on Parcel C for groundwater protection, in the form attached hereto as Exhibit 3.
- vii. Consistent with their established practice, Defendants agree to keep state and local authorities apprised of any development plans/intentions.

d. Parcel D:

- i. Subject to approval by a majority vote at Town Meeting pursuant to G.L. c. 40, § 14, 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 the Hopedale, Upton, and Milford Conservation Commissions.
- ii. The Parties agree that should Parcel D shall be transferred to the Town, or its designee, it will be 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.

e. Parcel E:

- i. The Trust shall retain ownership in fee of Parcel E, subject to its unconditional right to convey this Parcel to a designee.
- ii. Parcel E shall not be subject to Chapter 61 of the Massachusetts General Laws.

- iii. The Trust at its own determination, and in its sole discretion as to location, shall install appropriate monitoring wells on Parcel E and hereby agrees to share data from such monitoring wells as required by applicable law.
- iv. 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, whichever occurs earlier. In consideration of this 5-year easement in Parcel E, the Trust will reserve and the Town agrees to a five-year replication easement under federal Army Corp of Engineer regulations of approximately 3 acres on Parcel A benefitting the Trust for potential wetlands replication in the area shown on Exhibit 1. Prior to performing any work within the replication easement area, the Trust shall share copies of plans used for the federal replication filings with the Board of Selectmen, the Hopedale Parks Commission and Hopedale Conservation Commission.

2. Waiver of Right of First Refusal: The Town acknowledges that it waives any and all claims and/or rights to acquire any property subject to this Agreement by right of first refusal under Chapter 61 or by eminent domain under Chapter 79 of the Massachusetts General Laws.

3. Roll Back Taxes: As noted in Section 1.a(ii) above, the Parties agree to that any and all claims to any roll-back taxes that may be owed by the Defendants and/or their predecessors in title as a result of property subject to this Agreement being classified, or having been classified under Chapter 61 of the Massachusetts General Laws, shall be addressed at the

Closing where the purchase price for the Chapter 61 forestry land shall be increased by the amount of roll-back taxes determined by the Hopedale Board of Assessors. The Town shall pay the increased purchase price and then within five (5) business days the Defendant shall pay the full amount of the roll-back taxes to the Town.

4. Execution of Purchase and Sale Agreement: The Parties shall execute a standard Purchase and Sale Agreement with respect to the conveyance of Parcel A based on the terms outlined in this Agreement when the survey work contemplated by this Agreement is complete.

5. Miscellaneous:

- a. The Town shall not unreasonably withhold support G&U's future application(s) for state and federal grants.
- b. The Town shall share proportionately in the engineering and legal title work expense associated with surveying Parcels A, B, C, D, and E based on the acreage of Parcel A compared to the combined acreage of Parcels B, C and E. Said survey work and expense shall include the placement of permanent monuments to properly stake these parcels to delineate ownership of the respective parcels.
- c. All land transferred by the Defendants to the Town shall be subject to an Army Corps of Engineers no-build restriction 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.
- d. The parties agree to make best efforts to close the contemplated transactions within 60 days of the execution of this Settlement Agreement (the "Closing").

- e. The Town shall not take any action inconsistent with the terms and intent of this Agreement to extinguish, restrict, eliminate or to take by eminent domain the easement areas delineated on Exhibit 1.
 - f. The Town acknowledges that the land subject to this Agreement has historically been zoned for Industrial uses within the Town, and further acknowledges that the Defendants relied on the zoning status of this land as allowing Industrial uses as a matter of right to initially acquire the subject land and thereafter to effectuate the allocation of Parcels, A, B, C, D and E in this Agreement. The Board of Selectmen shall continue to support the zoning of Parcels B, C and E as permitting Industrial uses as a matter of right.
 - g. The Board of Selectmen shall be designated as the decision-making body for the Town for the purpose of implementing the provisions of this Settlement Agreement. The Board of Selectmen shall have the right to consult with any such board, commission, or department as is necessary for carrying out any such terms of this Agreement, but shall retain decision-making authority to the extent permitted by law.
6. Mutual Releases:
- a. The Town's Release: In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Defendants, which covenants, promises and representations survive this Release, the Town hereby releases the Defendants and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Defendant Releasees")

from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Town had or has against any of the Defendant Releasees relating to the subject-matter of the Litigations, including but not limited to any claims with respect to ownership of real property located at 364 West Street, Hopedale, MA, including any claim asserting a right of first refusal under Chapter 61 of the Massachusetts General Laws. The Town specifically reserve its rights to seek enforcement of this Settlement Agreement.

- b. Defendants' Release: In consideration of the covenants, representations and promises set forth in this Settlement Agreement from the Town, which covenants, promises and representations survive this Release, the Defendants hereby release the Town and their representatives, agents, attorneys, employees, directors, officers, shareholders, members, managers, affiliates, subsidiaries, divisions, agents, successors, and assigns (together, the "Town Releasees") from any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, in law or equity, known or unknown, which the Defendants had or have against any of the Town Releasees relating to the subject-matter of the Litigations, including but not limited to any claims with respect to ownership of real property located at 364 West Street, Hopedale, MA, including any claim asserting a right

of first refusal under Chapter 61 of the Massachusetts General Laws. The Defendants specifically reserve their rights to seek enforcement of this Settlement Agreement.

7. Understanding and Counsel: The Parties represent and warrant that (i) they have read and understand the terms of this Agreement, (ii) they have been represented by counsel with respect to this Agreement and all matters covered by and relating to it, and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other person or party hereto.

8. Legal Fees and Costs: Each of the Parties shall pay its own respective costs and attorneys' fees incurred with respect to the Litigations and this Agreement.

9. Entire Agreement: This Agreement, constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties.

10. Severability: The provisions of this Agreement are severable and should any provision be deemed for any reason to be unenforceable the remaining provisions shall nonetheless be of full force and effect; provided however, that should any provision be deemed unenforceable by a court of competent jurisdiction, the parties shall negotiate in good faith to cure any such defect(s) in the subject provision(s).

11. Amendments: This Agreement may not be orally modified. This Agreement may only be modified or amended in a writing signed by all of the Parties.

12. Headings: All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

13. Execution in Counterparts; Execution by Facsimile or PDF: This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. The Parties agree that facsimile or Portable Document Format (“PDF”) signatures shall have the same binding force as original signatures, again as if all Parties had executed a single original document.

14. Actions to Enforce: Should any action be brought by one of the parties in a court of competent jurisdiction, including but not limited to the Massachusetts Superior Court and the Land Court to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys’ fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Provided however, that before any party to this Agreement files any such action, that party shall identify and inform the opposing party of any alleged violations of the Agreement and the parties shall work in good faith to resolve their dispute prior to filing any action to enforce.

15. Applicable Law: This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall not be construed against any of the Parties, including the drafter thereof, but shall be given a reasonable interpretation under the circumstances. Nothing in this Agreement shall abrogate the application of any applicable federal law with respect to any of the properties or activities referenced in this Settlement Agreement, including, but not limited to the Clean Water Act and the Safe Drinking Water Act, to the extent applicable.

16. Notice: All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, electronic mail with proof of

receipt, facsimile, or mailed by certified or registered mail, to the Parties' respective addresses as follows:.

To the Trust:

One Hundred Forty Realty Trust
c/o Michael Milanoski, Trustee
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik & Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To G&U:

Michael Milanoski, President
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik & Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To the Board of Selectmen:

Brian R. Keyes, Chair
Board of Selectmen
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
bkeyes@hopedale-ma.gov

With a copy to:

Diana Schindler
Town Administrator
Town of Hopedale
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
dschindler@hopedale-ma.gov

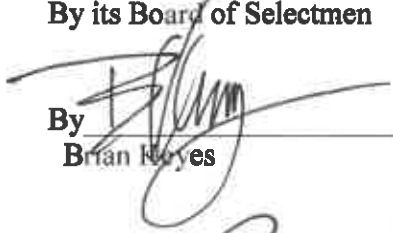
17. Dismissal of Litigations:

- 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 this 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 this Agreement.

[signatures on following page]

TOWN OF HOPEDALE

By its Board of Selectmen

By 
Brian Hayes

By 
Louis Arcudi

By _____
Glenda Hazard

**JON DELLI PRISCOLI and
MICHAEL R. MILANOSKI, as
TRUSTEES of the ONE HUNDRED
FORTY REALTY TRUST**

By 
Jon Delli Priscoli, Trustee

By 
Michael Milanoski, Trustee

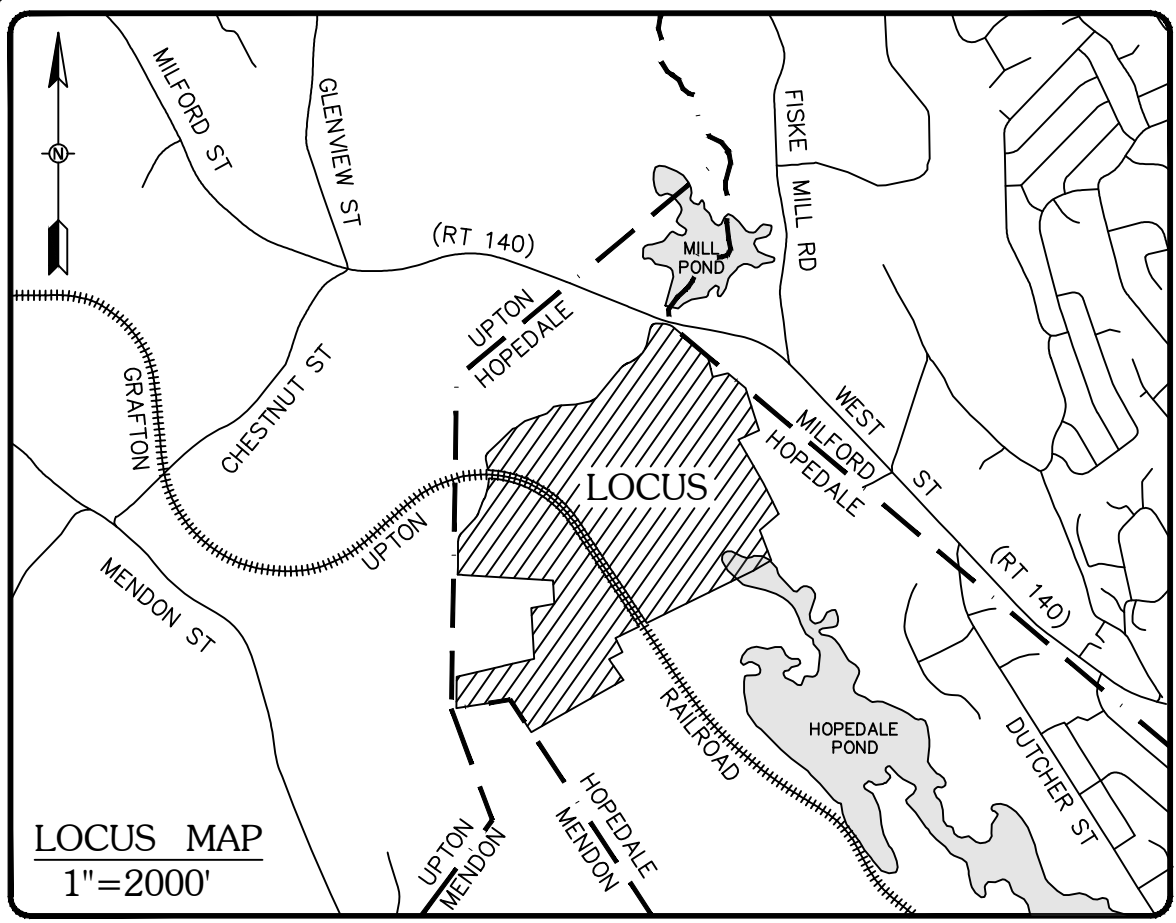
**GRAFTON & UPTON RAILROAD
COMPANY**

By 
Michael Milanoski, President

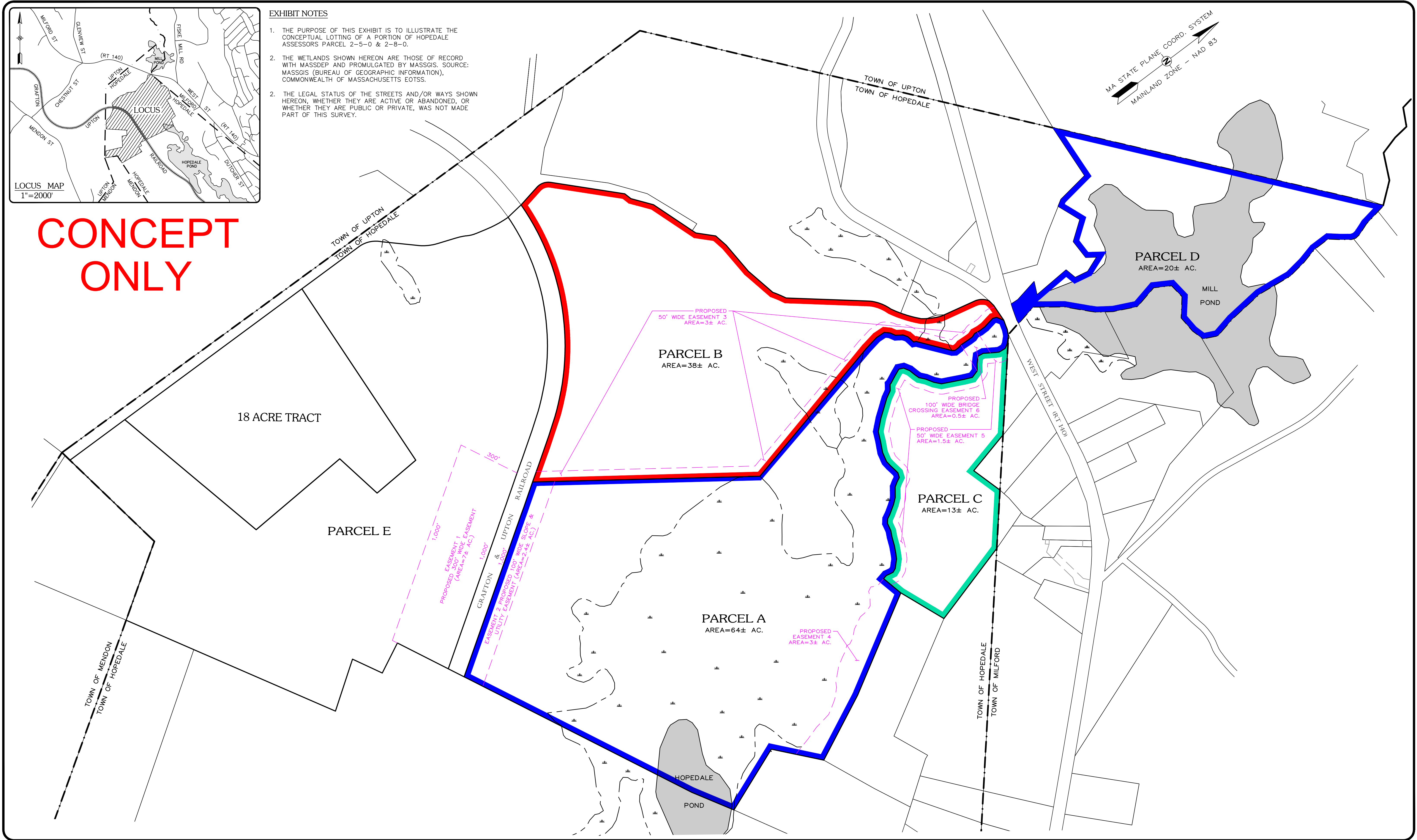
Exhibit 1

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.

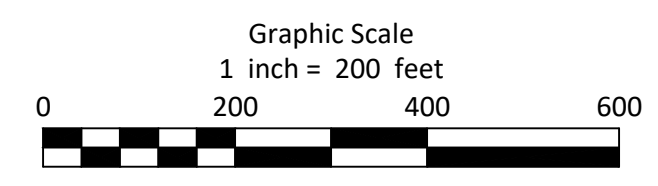


CONCEPT ONLY



| 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

COST SHARING AGREEMENT

This Cost Sharing Agreement (the “Agreement”) is made and entered into this ____ day of February 2021, by and between the following parties (the “Parties”): the Town of Hopedale, by and through its Board of Selectmen (“Board”) and its Board of Water & Sewer Commissioners (“Commissioners,” together with the Board, the “Town”), Jon Delli Priscoli and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust (the “Trust”), and Grafton and Upton Railroad Company (“G&U”) (the Trust and G&U may be referred to collectively as “GURR”).

WHEREAS, the Board and GURR are parties to a Settlement Agreement dated February ___, 2021, which, among other things:

- a. resolved outstanding claims in:
 - i. Town of Hopedale v. Jon Delli Priscoli, et al, Massachusetts Land Court No. 20MISC00467 (the “Land Court Matter”); and
 - ii. a Petition for Declaratory Order filed by G&U with the federal Surface Transportation Board, Docket No. FD 36464, (the “STB Matter”, together with the Land Court Matter, the “Litigations”);
- b. established an amicable division of property that was the subject of the Litigations, including the partition of 364 West Street into Parcels A, B, C and E as shown on a document entitled Conceptual Lotting Exhibit – January 26, 2021, which is attached hereto as Exhibit 1;
- c. provided for the conveyance of land registered under G.L. c. 61 within Parcel A by quitclaim deed(s) from GURR to the Town, or its designee, reserving to the grantor(s) and their successors a slope, grading, and 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(s) or well fields for the benefit of the grantors and their successors;

- d. acknowledged that G&U will donate the non-Chapter 61 land within Parcel A to the Town, or its designee, as is, including but not limited to with all existing encumbrances;
- e. provided that the Town, in its discretion, may perform any hydrogeological analysis for the purpose of establishing a public drinking water supply well on Parcel A pursuant to 310 CMR 22.00, including, but not limited to, activities to support a Site Screening for Siting a New Public Water Supply and a pumping test pursuant to applicable state regulations (collectively the “Hydrological Analysis”) at any location on Parcel A that is more than 400 feet (or 250 feet for a wellfield) from Parcel E, Parcel C, and Parcel B;
- f. provided that in the event the Hydrological Analysis performed by the Town indicates the feasibility and financial viability of a public water supply well or wellfield, GURR and its successors will work in good faith with the Town to satisfy Massachusetts Department of Environmental Protection (“MassDEP”) 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 Parcel B, Parcel C, or Parcel E to the Town, or its designee, to satisfy GURR’s commitment to work in good faith; and

- g. provided that GURR shall abandon any water supply well(s) or wellfields it may have installed on any of the subject parcel when a public water supply becomes available and operational on Parcel A, and that GURR shall have the right to connect to the public water supply in consideration for its abandonment of its private well.

WHEREAS, both GURR and the Town have an interest in exploring the water resources in Parcel A to determine whether the aquifer will support either a bedrock well or wells, or a well or well field within the groundwater in the shallow overburden in Parcel A;

NOW THEREFORE, the Parties agree as follows:

1. Description of Work: The Parties agree to work cooperatively and collaboratively for their mutual benefit in: (a) performing a Hydrogeological Analysis to assess the viability of a well or wells for water supply from the groundwater located in the shallow overburden in the areas shown as “Potential Aquifer Material” on the Figure prepared by Environmental Partners Group, Inc., attached hereto as Exhibit 2; (b) performing a Hydrogeological Analysis to assess the viability of a well or wells for water supply from bedrock sources in the three areas shown as “Potential Bedrock Well Location” in Exhibit 2; and (c) performing such other work as they mutually agree to undertake to assess the viability of a water supply and/or public drinking water supply on Parcel A (tasks (a), (b), and (c) collectively are referred to as the “Work”).

- a. For the avoidance of doubt, it is expressly acknowledged that the Work subject to this Cost Sharing Agreement is restricted to the Hydrogeological Analysis, and does not include costs associated with the permitting, construction, or operation of any water supply well, including, but not limited to, the costs for any other associated infrastructure for any well. All such costs for the permitting (beyond

the Site Screening and pumping test activity), construction, and operation of a water supply well(s), including any public water supply well(s), shall be borne by the Party deciding to pursue to the permitting, construction, and operation of such water supply well(s). Any Party deciding to pursue the permitting, construction, and operation of a water supply well(s) based on the information generated through the Work shall inform the other Parties in writing of their intent to establish a well or wells, including the precise location and anticipated yield from the well or wells.

- b. In the event the Parties seek to share any costs for the permitting, construction, and operation of a water supply well beyond the scope of the Work, such activity shall be separately negotiated and subject to a separate cost sharing agreement.
2. Cost Share.
- a. “Cost of Work” means the following costs associated with the Work: Joint Contractor (as that term is defined in Paragraph 3.b) fees consistent with the scope and budgets approved under Paragraph 1 and all other direct expenses mutually agreed upon in writing by the Parties. Subject to Paragraph 5 below regarding the Term of the Agreement, the Parties shall pay for the Cost of Work according to the following percentage shares: GURR shall pay 50% and the Commissioners shall pay 50%.
 - b. The Parties agree that the Joint Contractors shall be retained by, and shall be invoiced by, both G&U and the Commissioners for each Party’s respective share of the Cost of Work. Retention of any Joint Contractors shall be in compliance with any applicable state law relating to public contracting.

3. Responsibility for Management Work.
 - a. In furtherance of the Work and the purpose of this Cost Sharing Agreement, the Parties will coordinate their communications with third parties, including Joint Contractors, and to the extent necessary, MassDEP. Each Party shall have the right to be present in all meetings and telephone conferences with MassDEP with respect to matters involving the Work. All work plans, proposals, reports, and other written communication with MassDEP concerning the Work must be mutually approved in writing in advance by both Parties and will be jointly submitted to MassDEP.
 - b. The Parties will jointly select and manage technical consultants, advisors, and contractors, including a licensed professional engineer (collectively “Joint Contractors”), to perform the Work. Each Party will have open access to all Joint Contractors and will have the right to be present in meetings and telephone conferences with Joint Contractors. The Parties may jointly determine to terminate a Joint Contractor at any time and without cause.
 - c. All data, written analysis, reports, or laboratory results performed by or at the direction of a Joint Contractor shall be shared with all Parties.
 - d. Each Party will give the other Parties at least ten (10) days advance notice of any meeting and 20-hour advance notice (at least one business day) of any telephone conference scheduled with MassDEP or a Joint Contractor relating to matters involving the Work. Each Party, however, may contact the Joint Contractors independently regarding routine matters or to obtain information without providing advance notice to the other Party and without seeking to involve the

other Party in the communication, provided that the Parties shall instruct the Joint Contractors that such contacts are not confidential with respect to the other Party and that both Parties are to be involved in all calls involving non-routine matters and matters of strategic importance.

- e. Nothing in Paragraph 3.d. or Paragraph 3.a shall prevent either Party from accepting telephone calls from MassDEP. Each Party shall promptly report to the other Party the substance of any telephone calls or other communications with MassDEP relating to the Work that involve non-routine matters or matters of strategic importance.

4. Unilateral Assessment Work. If either Party unilaterally undertakes assessment activities beyond the scope of the Work, that Party shall be solely responsible for the cost of any such assessment. It is expressly acknowledged that there are Potential Aquifer Material areas show on Exhibit 2 that are located exclusively within Parcel B. Any Hydrological Analysis work performed by GURR on Parcel B is not subject to this Cost Sharing Agreement.

5. Term. This Agreement shall be effective on the date first written above (the “Effective Date”) and shall remain in effect until such time as the Work is completed, unless terminated earlier as provided herein. The Agreement may be extended only by written agreement of the Parties.

6. Termination. Any Party may terminate this Agreement upon thirty (30) days written notice to the other Parties. The terminating Party shall remain responsible for all of that Party’s share of the Cost of Work incurred through the effective date of the termination. The Agreement may also be terminated for breach pursuant to the terms of Paragraph 8.

7. Internal Costs. Each Party shall be fully responsible for its own internal costs, including but not limited to legal and consulting fees or the internal costs of the Hopedale Water Department, in implementing this Agreement. Such costs shall not be subject to the cost sharing outlined in Paragraph 2.

8. Breach. The Parties agree that in the event of a breach of this Agreement by any Party, the Parties shall attempt in good faith to resolve the dispute through a dialogue between responsible representatives of the Parties. If the Parties are unable to resolve any such dispute during the two-week period immediately following commencement of the discussion, then, at the written request of any Party, the Parties shall attempt to settle the dispute by non-binding mediation under the procedures of REBA Dispute Resolution, Inc. The neutral in any such proceeding shall be selected by and agreed to by both Parties, shall be an expert in the particular matter, and shall be available to serve on short notice. All statements of any nature made in connection with the non-binding mediation shall be privileged and shall be inadmissible in any subsequent court or other legal proceeding involving or relating to the same claim. The mediation process shall continue until the first to occur of: (a) resolution of the dispute; (b) the forty-fifth (45th) day after the Parties agree on the identity of the neutral for such mediation; or (c) a determination by the neutral that resolution is not reasonably possible in a mediation proceeding. The costs of the neutral shall be borne by the Parties jointly on an equal basis. The Parties shall pay their own attorneys' fees, consultant fees, and other costs of mediation. If at the end of the mediation process the Parties fail to resolve the dispute, the Party or Parties claiming breach shall have the right to take any action, in law or equity, available to such Party, including, but not limited to, bringing suit in the Massachusetts Superior Court or other court of competent jurisdiction for injunctive or other relief.

9. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation to make any payment or reimbursement hereunder will release the assigning Party without prior written consent of the other Parties hereto, which approval shall not be unreasonably withheld.

10. Waiver. The failure of any Party to enforce at any time or for any period of time any of the provision of this Agreement will not be construed to be a waiver of such provisions or of its right thereafter to enforce such provisions and each and every provision thereafter. Termination of this Agreement does not affect the accrued rights and remedies a Party may have prior to such termination.

11. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreements between the Parties.

12. Third Parties. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party, including, but not limited to, federal and state regulatory authorities.

13. Severability. The provisions of this Agreement are severable and should any provision be deemed for any reason to be unenforceable the remaining provisions shall nonetheless be of full force and effect; provided however, that should any provision be deemed unenforceable by a court of competent jurisdiction, the parties shall negotiate in good faith to cure any such defect(s) in the subject provision(s).

14. Amendments: This Agreement may not be orally modified. This Agreement may only be modified or amended in a writing signed by all of the Parties.

15. Headings. All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

16. Execution in Counterparts; Execution by Facsimile or PDF. This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. The Parties agree that facsimile or Portable Document Format (“PDF”) signatures shall have the same binding force as original signatures, again as if all Parties had executed a single original document.

17. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement shall not be construed against any of the Parties, including the drafter thereof, but shall be given a reasonable interpretation under the circumstances. Nothing in this Agreement shall abrogate the application of any applicable federal or state law, including, but not limited to, the Clean Water Act and the Safe Drinking Water Act, to the extent applicable.

18. Notice. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, electronic mail with proof of receipt, facsimile, or mailed by certified or registered mail, to the respective addresses as follows:

To the Trust:

One Hundred Forty Realty Trust
c/o Michael Milanoski, Trustee
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik &
Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

To G&U:

Michael Milanoski, President
Grafton & Upton Railroad Company
P.O. Box 952
Carver, MA 02330
mmilanoski@firstcolonydev.com

To the Board of Selectmen:

Brian R. Keyes, Chair
Board of Selectmen
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
bkeyes@hopedale-ma.gov

To the Board of Water & Sewer Commissioners:

Edward J. Burt, Chair
Hopedale Board of Water & Sewer
Commissioners
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
eburt.hd@gmail.com

With a copy to:

Donald C. Keavany, Esq.
Christopher Hays Wojcik &
Mavricos, LLP
370 Main Street, Suite 970
Worcester, MA 01608
dkeavany@chwmlaw.com

With a copy to:

Diana Schindler
Town Administrator
Town of Hopedale
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
dschindler@hopedale-ma.gov

With a copy to:

Tim Watson, Manager
Town of Hopedale Water &
Sewer Department
78 Hopedale Street
P.O. Box 7
Hopedale, MA 01747
twatson@hopedale-ma.gov

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed or have caused their proper representatives to duly execute this Agreement as of the Effective Date first written above.

TOWN OF HOPEDALE

**JON DELLI PRISCOLI and
MICHAEL R. MILANOSKI, as
TRUSTEES of the ONE HUNDRED
FORTY REALTY TRUST**

By its Board of Selectmen

By _____
Brian Keyes

By _____
Jon Delli Priscoli, Trustee

By _____
Louis Arcudi

By _____
Michael Milanoski, Trustee

By _____
Glenda Hazard

**GRAFTON & UPTON RAILROAD
COMPANY**

By _____
Michael Milanoski, President

By its Board of Water & Sewer Commissioners

By _____
Ed Burt

By _____
James Morin

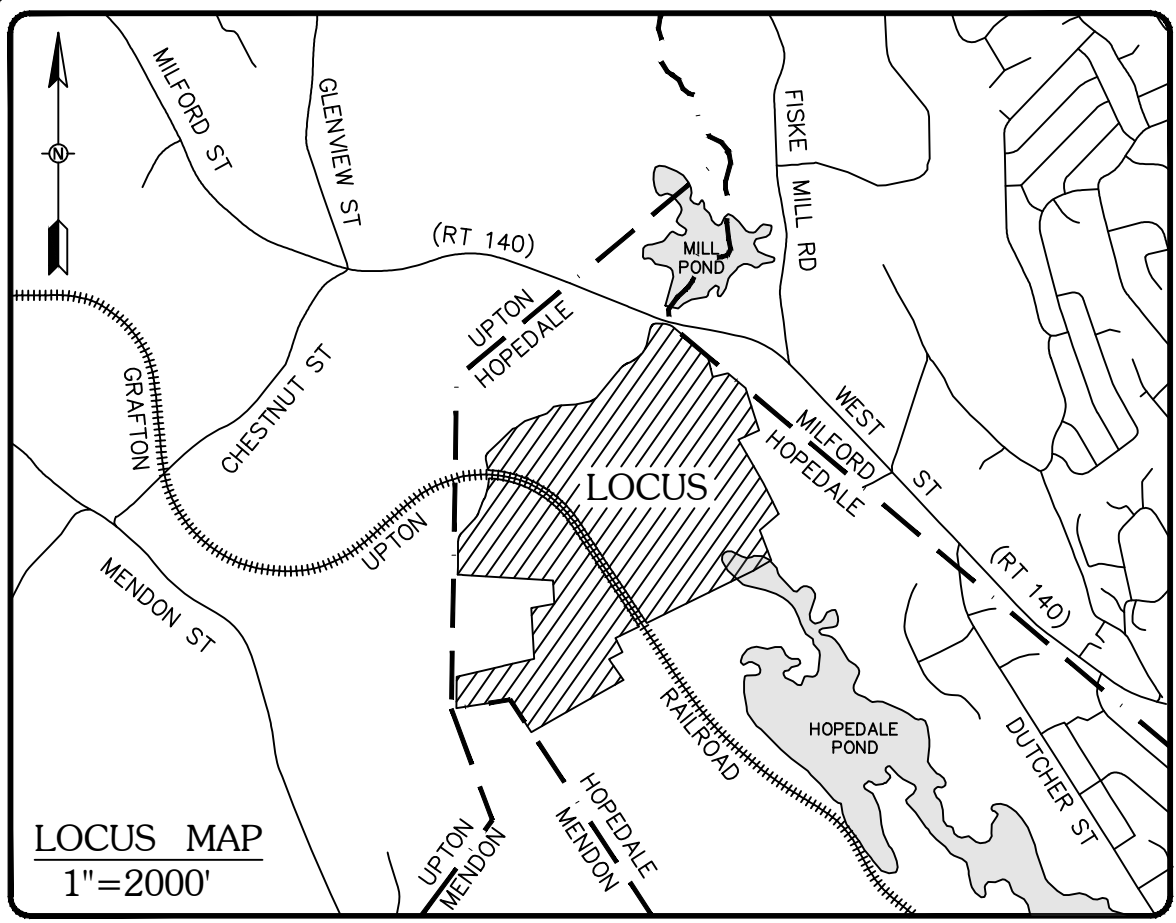
By _____

EXHIBIT

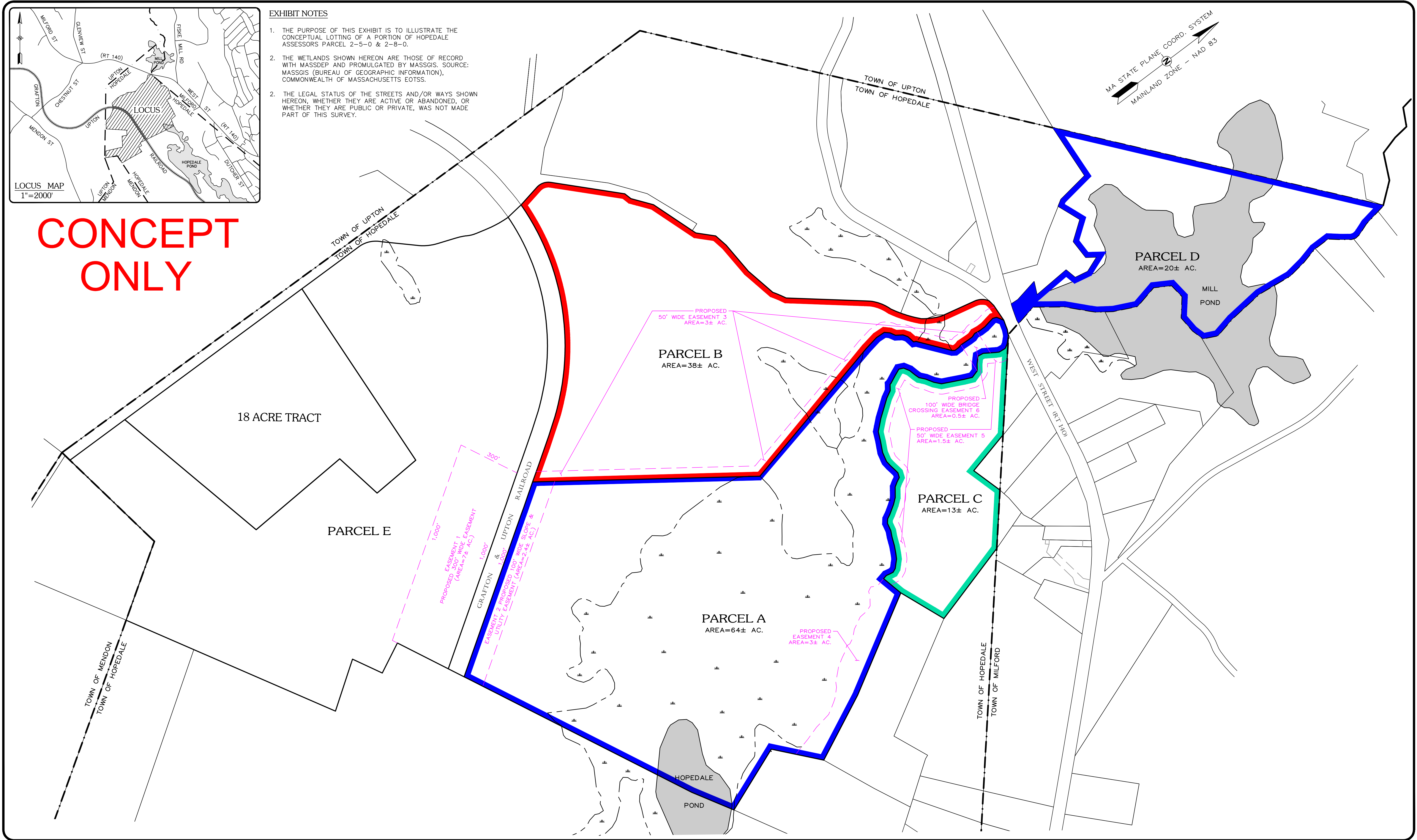
A

EXHIBIT NOTES

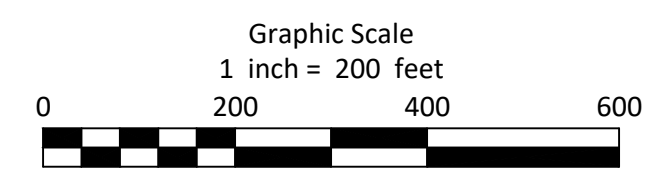
1. THE PURPOSE OF THIS EXHIBIT IS TO ILLUSTRATE THE CONCEPTUAL LOTTING OF A PORTION OF HOPEDALE ASSESSORS PARCEL 2-5-0 & 2-8-0.
2. THE WETLANDS SHOWN HEREON ARE THOSE OF RECORD WITH MASSDEP AND PROMULGATED BY MASSGIS. SOURCE: MASSGIS (BUREAU OF GEOGRAPHIC INFORMATION), COMMONWEALTH OF MASSACHUSETTS EOTSS.
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



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



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

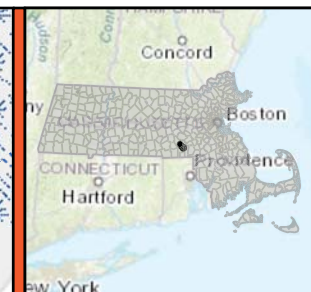
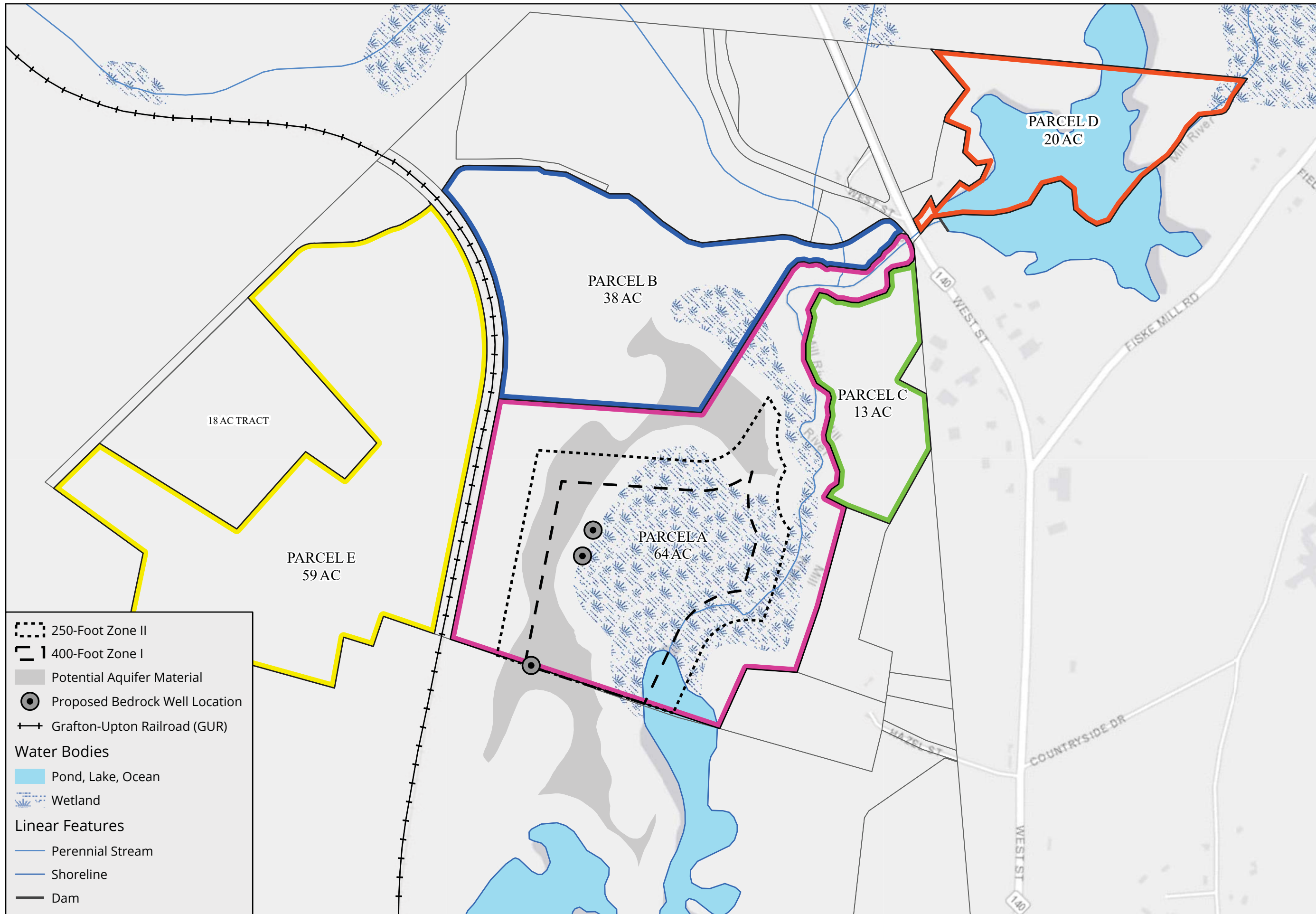
DATE:
 JANUARY 26, 2021

1 OF 1
 EDC PROJECT NUMBER
 3659

3659 EXH CONCEPTUAL LOTTING R7.DWG

EXHIBIT

B



Zone I for a Wellfield and a Single Well
Hopedale, Massachusetts

- 250-Foot Zone II
- 400-Foot Zone I
- Potential Aquifer Material
- Proposed Bedrock Well Location
- Grafton-Upton Railroad (GUR)
- Water Bodies**
- Pond, Lake, Ocean
- Wetland
- Linear Features**
- Perennial Stream
- Shoreline
- Dam



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.

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

TOWN OF HOPEDALE,

Plaintiff,

v.

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

Defendants.

No. 2022-J-0146
Lower Ct. No. 20MISC000467

AFFIDAVIT OF DIANA SCHINDLER

Now comes Diana Schindler, who on oath deposes and says as follows:

1. I am the Town Administrator for the Town of Hopedale, and I have personal knowledge of the facts set forth in this affidavit.
2. I have served as the Town Administrator for Hopedale since April 2020.
3. I have been aware of and involved with the issues related to the Grafton & Upton Railroad Company's ("GURR") interest in 364 West Street since at least their July 13, 2020, presentation regarding their plan to develop this property.

4. I have worked with and facilitated the Select Board's process with respect to their role under G.L. c. 61 regarding the sale or conversion of the portions of 364 West Street that was classified as forest land under the statute.
5. I have also worked with the Board to review the decisions of the Superior Court, Land Court, and Appeals Court with respect to this litigation, including the Town's efforts to exercise its right of first refusal under G.L. c. 61, § 8, the Special Town Meeting in October 2020, the negotiations over the February 2021 Settlement Agreement, and the recent Special Town Meeting in March 2022 that was scheduled as a result of the decisions in the Superior Court and Land Court.
6. On March 26, 2022, the Town held a Special Town Meeting vote on warrant articles authorizing the Parcel A acquisition under the Settlement Agreement and the appropriation of funds for the acquisition. The Town Meeting voted down the warrant articles and they did not pass.
7. I have reviewed the Affidavits submitted in this litigation by Mr. Michael Milanoski of the GURR asserting damages that would be caused by the imposition of an injunction.
8. I disagree with Mr. Milanoski's assertion that GURR experienced any damage from the failed attempt to establish a public-private partnership in July 2020. Affidavit of Michael R. Milanoski, February 21, 2022 (Milanoski

Feb. Aff.), ¶ 6. The Town was not obligated to enter into any such partnership and no damages could be attributed to a mere proposal.

9. To the extent GURR is able to articulate any legally-supportable damages for its cost of maintaining the status quo at 364 West Street, the Town likely has sufficient financial resources to satisfy actual reasonable damages GURR might incur as a result of the delays imposed by the appellate process.
10. Assuming for the sake of this affidavit that GURR could establish that it was entitled to damages from the imposition of an injunction pending appeal, the Town of Hopedale has a very low debt service. Town Meeting could vote, by two-thirds, to use borrowing to cover any liability – to the extent any liability could be established.
11. Similarly, the Town would have access, by vote, to its other available funds. As it has previously, the Town could potentially accept gifts or donations by concerned residents that could offset GURR's actual damages from an injunction during a meritorious appeal.
12. Accordingly, I believe that Town would have sufficient funds, or could raise sufficient funds, in the unlikely event the Town is ordered to pay for any damages GURR would face due to an injunction imposed by the Appeals Court after notice and briefing by the parties.

Signed under the pains and penalties of perjury this 7th day of April 2022.

A handwritten signature in blue ink that reads "Diana Schindler". The signature is written in a cursive style with a large initial 'D'.

Diana Schindler
Town Administrator, Town of Hopedale

CERTIFICATE OF SERVICE

I certify that on April 7, 2022, I served this Affidavit of Diana Schindler on the above-captioned Defendants by emailing a copy thereof to their attorney, Donald C. Keavany, Jr., Esq., of Christopher Hays, Wojcik & Mavricos, LLP, 370 Main Street, Suite 970, Worcester, Massachusetts.

Signed under the penalties of perjury.



Peter F. Durning

EXHIBIT 4



VOL.: I of I
PAGES: 1-26
EXHIBITS: 0

COMMONWEALTH OF MASSACHUSETTS
WORCESTER, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
*
REILLY, ELIZABETH ET AL. *
*
v. *
*
TOWN OF HOPEDALE ET AL. *
*
*
* * * * *

Docket No. 2185CV00238

MOTION HEARING
BEFORE THE HONORABLE KAREN L. GOODWIN

APPEARANCES:

For the Plaintiffs:
By David E Lurie, Attorney at Law
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
For the Defendant, Town of Hopedale, et al.:
By Brian Walter Riley, Attorney at Law
KP Law, P.C.
101 Arch St
Boston, MA 02110
For the Defendant, Grafton & Upton Railroad Company, et al.:
By Donald C Keavany, Attorney at Law
Christopher Hays, Wojcik and Mavricos LLP
370 Main St, Suite 970
Worcester, MA 01608

Hampden, Massachusetts
Courtroom 7
February 9, 2022

Written Record Produced By
Spencer Von Jarrett, CET
Approved Court Transcriber

I N D E X

EVENTS

| | |
|----------------------------|----|
| MOTION FOR EXTENSION | 4 |
| ARGUMENT BY MR. RILEY | 4 |
| ARGUMENT BY MR. KEAVANY | 12 |
| REBUTTAL BY MR. RILEY | 20 |
| REBUTTAL BY MR. LURIE | 20 |
| SURREBUTTAL BY MR. KEAVANY | 21 |
| FINDINGS | 22 |
| RULING | 23 |

1 [Case called at 9:15:15 a.m.]

2 [Appearances noted.]

3 THE COURT: If you are not muted, if you could please mute
4 yourselves, because we get some background noise here. And you
5 just unmute yourself before you have to -- you're speaking.

6 So there are a bunch of moving parts here, but unfortunately
7 I don't know that the case here that was in front of me is a
8 moving part any more. So that's something I want to address with
9 the parties.

10 It's my -- I'll just kind of set the stage as to how I --
11 what I understand the situation to be is that I entered a judgment
12 on the pleadings where I said ostensibly that the town didn't have
13 authority to agree to buy a smaller portion of the property from
14 the trust.

15 What then ensued -- and there were a few options I laid out,
16 just kind of a -- I guess, those options, I think, were dicta --
17 there's been some discussion as to what in my decision was
18 dicta -- some options that could potentially be pursued.

19 What the town did is went to land court seeking to reopen the
20 judgment. Because if the land court -- it's a land court
21 settlement that said the town would buy a smaller portion. The
22 judge in the land court declined to do that.

23 In the meantime, there was a motion -- at the end of my
24 decision, I entered an injunction for a certain period of time to
25 allow the town to deal with the change in circumstances that has

1 | been created by my decision. That time period expired. There was
2 | a motion to extend it which I don't believe the railroad opposed
3 | back then. And I did extend it.

4 | **MOTION FOR EXTENSION**

5 | THE COURT: And now we're -- what's in front of me now is a
6 | motion for a further extension until May to give the town an
7 | opportunity to pursue various options. I'm not sure what they're
8 | planning to do.

9 | My problem here -- and I'll be asking the town and then the
10 | adjoining party to address it -- is, I don't think I can do
11 | anything. This case is over as far as I understand it; my case is
12 | over. And I don't feel, unless I'm convinced otherwise, that I
13 | have the authority to extend an injunction.

14 | So let me hear from you first, Attorney -- I understand how
15 | these decisions have put the town in an awkward situation. And it
16 | may have put the 10 taxpayers in the situation of "be careful what
17 | you ask for," in that there's a possibility of ending up with
18 | nothing.

19 | But I'll ask Attorney Riley first to tell me why he thinks I
20 | can do anything here.

21 | **ARGUMENT BY MR. RILEY**

22 | MR. RILEY: Thank you, Your Honor. First of all, we -- I'm
23 | sure I speak for all of us -- we all appreciate the opportunity to
24 | address these issues. I know you've gotten a lot of papers sent
25 | your way in the past few weeks on this.

1 I'll just note upfront, first, that, you know, the original
2 emergency motion to extend this injunction was based in part --
3 well, really two parts. But one was that it didn't sound like we
4 were going to be getting anything from the land court until
5 perhaps sometime in March. Then, obviously, Judge Rubin bent over
6 backwards to accommodate us and gave us a decision just before the
7 end of January instead.

8 The other reason that we went to land court, which is where
9 this all started, was that while calling a special town meeting to
10 see what would happen, there was an option in December and
11 January. Given the, you know, COVID virus situation, that wasn't
12 just a bad idea, it was a public health risk, frankly. Knock on
13 wood, we may be getting closer to a position where the town would
14 be willing to call that meeting. The Board of Selectmen will be
15 at least talking about that in its meeting coming up on Monday.

16 The reason why I still wanted to be heard on this motion --
17 and I certainly understand what Your Honor is saying: that you've
18 given what you thought was the -- your last word on this case a
19 couple of times already and here we are.

20 But the Board of Selectmen is in a very tough position right
21 now. Now, whether that's -- has a legal way out, or it's just a
22 political one, yeah, that's up for debate. But, yeah, this Court,
23 as you know, did make some comments in memoranda of the possible
24 ineffectiveness of the settlement agreements that happened in the
25 land court.

1 And the -- not just the Plaintiffs in this case, but a fairly
2 substantial number of, you know, voters in town who were very
3 passionate on this issue have made it clear that if there was a
4 way to pursue getting all of this land, let's pursue it. And so
5 they, you know, kind of seized on that, you know, "Well, maybe the
6 whole settlement agreement is invalid or ineffective," or whatever
7 the right word might be.

8 And so as a result, if we do call a special town meeting, --
9 I referenced this in the motions -- I think there's a substantial
10 likelihood that the vote to ratify the acquisition of the smaller
11 amount of property will not pass. And I would note, just from
12 personal experience, whenever you have a controversial issue at a
13 town meeting, it's the people who are passionate about it who show
14 up. So that's, you know, -- and so the problem the board has in
15 calling that special town meeting is, you know, if in fact the
16 voters say, "No, we don't want to approve this settlement
17 agreement," or the act of acquiring the land as part of it, we're
18 not quite sure, because the agreement itself wasn't before Your
19 Honor -- wasn't really before Judge Rubin either, as she noted.

20 The board calls a special town meeting, the voters say no,
21 what does that mean for the town? Does it mean there's an
22 argument at least that the settlement agreement is invalid and
23 maybe we have to do something about that? Do we try to get a
24 declaratory judgment that says that, because, you know, neither
25 court really addressed it?

1 But the, you know, the answer to that is really critical,
2 because it changes the landscape for all the parties to this
3 action. But we would need -- you know, even if we do call a
4 special town meeting, that would probably be sometime in mid-March
5 at best to plan for it.

6 So we do feel we need some time to kind of sort of these
7 things out: figure out, you know, what, if any, -- if indeed --
8 and I would ask the Court just for your thoughts on this -- if
9 indeed there is no pass, you know, a special town meeting votes
10 no, well, the agreement is still there; it just means the town
11 doesn't buy the property. Then perhaps, you know -- then perhaps
12 one approach for the board and the town is, "Okay, we're really
13 left with do we want to buy the 65 acres or do we not," versus
14 trying to fight on in one form or another and get this property.

15 But the -- as I say, the board is really kind of in a bind
16 with not knowing what a no vote at special town meeting would
17 mean. And so for that reason, we still feel like we would like an
18 opportunity, without the railroad being able to go and start
19 clearing land again, to try and sort this all out, frankly.

20 I don't know if there's an avenue to address that question
21 before you in superior court. Would we have to go back to land
22 court? We're not quite sure. But that's the basis why I'm
23 still -- would ask the Court to consider my motion.

24 THE COURT: I certainly understand that. And I understand
25 the position the town is in. And I'm sorry to have, in one sense,

1 to have issued a decision that put you in that position, but I
2 felt that that was what was compelled by the law.

3 In an ideal world, I would hope that the railroad would agree
4 to hold off for a little while because there's nothing more
5 permanent than tearing down trees. Those trees have been there
6 for a long time and they're not going to grow back for a long
7 time. And so that, obviously, is something I have no control
8 over.

9 You pointed out, I think, that one of the key things is the
10 settlement agreement itself was not in front of me or in front of
11 the land court. And I read the land court's decision somewhat
12 narrowly in a way, that it said they could not or didn't feel it
13 was appropriate to open the judgment, but kind of left open the
14 possibility of challenging or claiming or filing some type of
15 action, whether it be in land court or in superior court, claiming
16 that the settlement agreement -- I'm not sure if that would be
17 a -- you're the lawyer -- trying -- essentially try to get out of
18 the settlement agreement on a possibility of performance --
19 lack -- I don't know, whatever grounds you would do. And then in
20 conjunction with that action, seeking injunctive relief.

21 But I -- so I understand where the town is, but I still don't
22 see where there's anything live in front of me that would allow me
23 to attach injunctive relief. Although, you know, I feel that that
24 would be fair in a way, I don't think that I can do it. Fair,
25 meaning that -- just looking at the permanency of removal of trees

1 and understanding the town's position of, in a sense, of being
2 between a rock and a hard place.

3 So, those are my thoughts for what they're worth.

4 Let me hear from Attorney Lurie. Would you like to weigh in
5 on this issue?

6 MR. LURIE: Yes, I would, Your Honor. Thank you for the
7 opportunity. So what we're left with here is Your Honor's ruling
8 that the town could seek to enforce its option --

9 THE CLERK: I can't --

10 MR. LURIE: -- or to seek ratification of it at a town
11 meeting and Your Honor's ruling that the settlement agreement is
12 in itself ineffective, but with the risk that the railroad will go
13 forward and never let us continue clearing land. So that would be
14 unjust for the railroad to be able to do that while this -- the
15 Court has already indicated that the settlement agreement is
16 ineffective and that, by implication, their waiver of their
17 Chapter 61 right, the town's waiver, is also ineffective.

18 So the question then is, how do we preserve the status quo
19 until there is some ruling -- which ultimately will have to be
20 made by an appellate court -- that resolves this issue and the
21 apparent inconsistencies with the land court.

22 So our view is that you do have authority to do that that
23 derives from the same authority that you've had in issuing the
24 injunction in the first place. You're keeping the status quo in
25 place until the town has the ability to enforce its option. It

1 has attempted to do that in a timely manner; the land court has
2 said no, not so fast. But the town still has the ability to
3 enforce that.

4 If Your Honor believes that you don't have authority in that
5 respect and that that authority now is solely within the land
6 court, that puts us in a hard position because the land court has
7 denied our attempt to intervene in that case. It's adjoined in
8 the town's motion to vacate. While we plan to appeal that
9 decision, right now we're not in that case. So we have to appeal
10 to you to preserve the status quo pending resolution of this
11 issue.

12 One alternative that we've suggested in our papers that we
13 filed yesterday is a report which we do feel is within Your
14 Honor's jurisdiction, notwithstanding the railroad saying that
15 it's not available because this is an interrogatory matter. And
16 in fact, there is an agreement on all the facts. Your Honor --
17 that's why Your Honor issued a ruling on a motion for judgment on
18 the pleadings: there is no dispute as to the facts. And it's
19 something that's appropriately reported to the appellate court
20 given the inconsistency between Your Honor's ruling and what the
21 land court has said. And the railroad has seized on this apparent
22 inconsistency by threatening the town that it's going to be in
23 breach of contract if it even pursues an appeal. So the issue is
24 right: it should be decided by an appellate court.

25 If Your Honor decides that a report is not appropriate for

1 whatever reason, we would ask you to at least continue this for a
2 few days. The railroad had already indicated, both to you and to
3 the land court, that it would keep the -- it would not alter the
4 land until February 14th, which is next Monday, by which time we
5 would seek to continue the injunction pending our appeal of your
6 ruling which denied our counts 2 and 3, where we sought to enforce
7 the option.

8 Now, I understand Your Honor has ruled that we do not have
9 standing to enforce that under Chapter 214, Section 310 or under
10 Article 97, 214, 7A. We do believe that there is grounds for
11 appeal of that ruling. We also believe that there are public
12 rights at stake that are enforceable via mandamus. We ought to
13 have the opportunity to get an appellate ruling on those issues
14 before the railroad clears its land. And one proper way for you
15 to consider that issue and preserve the status quo is via such a
16 motion to preserve the status quo pending appeal.

17 Bottom line: it's just unjust for the railroad to be able to
18 clear the land, given that the basis on which it purports to clear
19 the land is just -- is not there. And given the procedural
20 quandary that we're in right now, it's got to be preserved until
21 an appellate court can rule whether or not this settlement
22 agreement really is effectively rescinded as Your Honor implicitly
23 found and the stipulation of dismissal that was entered in the
24 land court can be vacated.

25 THE COURT: I don't think I rescinded the agreement, because

1 | it wasn't in front of me. So what would I be reporting to the
2 | appeals court? What is live in front of me to report? What
3 | question do I want the appeals court to answer?

4 | I mean, I do think that a consolidated appeal of both this
5 | case -- which I think there's been a notice of appeal by --
6 | perhaps by the town, I don't know if the railroad has appealed it,
7 | probably not, no -- by the town -- that maybe those appeals could
8 | be consolidated in the appeals court. But what would this court
9 | be reporting? Usually, you report something to the appeals court
10 | to decide some disputed issue of law that would then guide a
11 | further decision by the trial court.

12 | MR. LURIE: The issue of law would be whether or not the
13 | settlement agreement is ineffective such that the stipulation of
14 | dismissal pursuant to which the land court case was dismissed is
15 | ineffective and, therefore, the land court case can be -- the town
16 | can enforce its rights.

17 | THE COURT: Let me hear from Attorney Keavany.

18 | **ARGUMENT BY MR. KEAVANY**

19 | MR. KEAVANY: Thank you, Your Honor. And thank you again for
20 | agreeing to hear us today. I'm going to start backwards with
21 | respect to your inquiry and Attorney Lurie's request in his most
22 | recent filing to report this.

23 | The case he cited, Cepeda vs. Kass, 62 Mass. App. 732, has a
24 | footnote that describes the three situations in which a reporting
25 | of a case is appropriate. And this situation we are -- in front

1 of you does not fit into one of those three categories.

2 The only one that I think he cites would be where the whole
3 case is reported for determination at the request by the parties
4 and the agreement is to all material facts. But as noted in
5 footnote three, that only applies when a decision has not been
6 made by the judge. And respectfully, Your Honor, you did make the
7 decision. Judgment entered three months ago, on November 10th.

8 And judgment entered in favor of the 10 taxpayers on count 1.
9 And that enjoined the town from using money that was appropriated
10 in October of 2020 to buy the land in the settlement agreement.
11 Counts 2 and 3 were dismissed.

12 The town was the moving party on this emergency motion. They
13 never asserted any claim against the railroad or the trust. The
14 only count that was asserted against the railroad and the trust
15 was count 2, and that's been dismissed. We did not appeal count
16 2, the only count against us, because it was entered in our favor.

17 The 10 taxpayers have filed appeals of counts 2 and 3, but
18 there's no pending claim against us. And the 10 taxpayers,
19 frankly, I think take great liberties with the judgment that
20 entered and, you know, continue to say things that the judgment
21 doesn't say.

22 Count 1 was a Chapter 40, Section 53 10-taxpayer claim
23 seeking injunctive relief alleging that there was going to be an
24 unlawful expenditure, -- what they believed to be an unlawful
25 expenditure -- and they sought injunctive relief to prevent the

1 town from spending those funds that they believed were -- they
2 were not permitted to do. They succeeded on that, Your Honor.
3 The railroad and the trust were never part of count 1; the town
4 never asserted a claim against the railroad in this Court, in
5 superior court.

6 The only parties to the settlement agreement, Your Honor, are
7 the trust, the railroad, and the town. And as we sit here today,
8 on February 9, 2022, no party has challenged that settlement
9 agreement; no party has sought the -- to rescind that settlement
10 agreement.

11 The town took your decision, your memorandum of decision and
12 order, and took that -- I would say that they took some options
13 that you provided them and they apparently deliberated those two
14 options which would be, "Do we go to town meeting and schedule a
15 vote to acquire the property at the lesser amount of money?", or,
16 "Do we go back to land court and try to vacate the stipulation of
17 dismissal that entered last February and, if successful, pursue
18 our chapter 61 rights?"

19 They chose, they voted -- the board voted and they chose
20 option 2. They chose to go to land court.

21 They filed a motion in land court on December 30 of 2011
22 seeking to vacate the stipulation of dismissal. When we heard
23 back from the land court in early January, Your Honor, it appeared
24 that we would not be heard on that motion until the end of
25 February. That is what motivated the town to come to this -- back

1 to superior court seeking by emergency motion -- seeking to a
2 further extension.

3 And the railroad did agree to initially extend the time to
4 January 31. And we thereafter agreed to extend it to February 14,
5 2022, Your Honor.

6 But the two options that were available to the town: they
7 voted and chose option 2. They voted -- and the land court worked
8 with us and we did an expedited briefing schedule and we had a
9 hearing on January 24th. And the Court issued its decision on
10 January 28th, Your Honor.

11 So the two reasons -- or the primary reason that the town
12 came back to superior court to seek an extension of that
13 injunction that you entered under count 1 was because there was a
14 fear that the land court would not hear their motion before the
15 January 31 deadline.

16 But the court did; the land court did hear the matter and
17 decided the matter, Your Honor. And they decided that matter and
18 the -- certainly, the town is free to move for -- to file an
19 appeal of that land court case. They haven't yet; they're free to
20 do it.

21 But that was a Rule 60(b)(6) motion to vacate, Your Honor.
22 That's an incredibly high standard -- incredibly high burden that
23 the land court found that they did not meet. And I frankly,
24 respectfully, say that I don't think on appeal they'll be
25 successful on that.

1 But nonetheless, we are here today because, as part of their
2 motion to vacate in land court, they sought injunctive relief.
3 And by the denial of the motion to vacate, their request for
4 injunctive relief was denied.

5 So they want to land court -- reading between the -- reading
6 the tea leaves of your decision, they went to land court, "Let's
7 go try to exercise our chapter 61 rights. Let's get an injunction
8 there." Denied.

9 So then they come back to superior court and want you to do
10 what the land court refused to do. And respectfully, as you noted
11 on page 11 of your memorandum of decision, your judgment
12 effectively ends this litigation. And that is true: this case is
13 over. It went to judgment on November 10. You granted the town
14 60 days to decide what to do as a result of the judgment: go to
15 town meetings, go to land court and try to exercise your Chapter
16 61 rights. They've made that decision, Your Honor. The intent
17 and purpose of your 60-day order, which we agreed to extend to
18 January 31, and agreed to extend to February 14th, has been met.
19 The town acted. The town failed; they lost.

20 They have not filed a new lawsuit and I, frankly, -- the
21 purpose of my letter, frankly, was to discourage them from filing
22 another lawsuit because there is an attorney's-fee-shifting
23 provision in that settlement agreement and we would certainly
24 fully defend the settlement agreement. And we think it's fully
25 enforceable with or without the land transfer. And that's the

1 intent of the letter. That -- "be careful about seeking to seek
2 rescission of this agreement because if we prevail, and we think
3 we're going to, we're going to seek attorney's fees." And that is
4 entirely appropriate, nothing inappropriate about it at all.

5 We've been -- as much as my brother accuses us of not
6 listening to orders or abiding by orders, every order that's been
7 issued, we've complied with, Your Honor. And now, we're at the
8 point where enough is enough.

9 They have tried to get injunctive relief in another forum and
10 it was denied and they have no basis. The town certainly has no
11 basis to seek injunctive relief in front of this Court, because
12 they have no claims against us in this Court.

13 We were aligned at the hip in this Court. We fully defended
14 the settlement agreement; they never alleged it was unlawful. The
15 10 taxpayers asserted one count against us and that's count 2.
16 That's been dismissed. There is no legal basis for continuing
17 this injunction any further.

18 And respectfully, Your Honor, if there was even an appetite
19 by this Court to say, "Let's give the town an opportunity to
20 schedule a town meeting" -- even though they've done nothing to do
21 that for 90 days -- but let's say, "Okay, let's have them schedule
22 it in March:" it does not matter, Your Honor.

23 If they vote to approve it, we're obligated to convey the
24 land. If they vote not to approve it, we're still subject to all
25 of the restrictions that are in that settlement agreement that we

1 | agreed to.

2 | We dismissed our STB appeal. We did a lot of different
3 | things pursuant to that settlement agreement that are -- continue
4 | to be enforceable. And if the town fails initially and then they
5 | go back, we're still obligated to sell it to them, Your Honor. We
6 | can't touch that 65 acres of land.

7 | So even if they go back to town meeting and town meeting
8 | votes to approve it, we have to sell it to them. If town meeting
9 | doesn't vote to approve it, we're still subject to a no-touch
10 | rule. We can't go near that 65 acres. So any work we do on 364
11 | Forest -- 364 West Street does not approach that 65 acres, Your
12 | Honor.

13 | And so I respectfully request that the -- they have not met
14 | their burden; they haven't even talked about -- the town hasn't
15 | even talked about establishing a likelihood of succeeding on any
16 | claim.

17 | If they believe that they're entitled to rescind this
18 | settlement agreement, let them go file a lawsuit in superior court
19 | or land court seeking to rescind the settlement agreement. I
20 | discourage them from doing that, but that's the forum: that's the
21 | appropriate place for any further injunctive relief to be
22 | considered by a court.

23 | And so I respectfully request, Your Honor, that the motion be
24 | denied. They have not met the merits establishing entitlement to
25 | any further relief.

1 I do this case think is over, that you have no jurisdiction
2 to enter any additional orders extending the injunctive relief.
3 The reporting of this case to the appeals court is not appropriate
4 because it doesn't fit into the three particular areas that have
5 been identified in the Cepeda v. Kass case.

6 And so I respectfully request that enough is enough. They've
7 done what they could do. They have lost in land court and it's
8 not appropriate for them to, really, do judicial forum shopping to
9 come back to this Court to ask for something that was denied in
10 another court. So I respectfully request that the request to
11 extend beyond February 14th be denied.

12 THE COURT: I'll give Attorney Riley just a brief
13 opportunity, and Attorney Lurie, if they'd like to respond to
14 anything. Attorney Riley.

15 [Indiscernible at 9:43:17 - telephonic distortion]. Where is
16 Attorney Riley? Looks like Attorney Riley has -- oh, he's
17 reentering, so. No, that's not him.

18 Ms. Ramos, can you see Attorney Riley here? Or trying to get
19 in?

20 THE CLERK: Oh, there's someone in the waiting room now, Your
21 Honor.

22 THE COURT: He's in the waiting room?

23 THE CLERK: He must have been bumped off. He's connecting
24 now.

25 THE COURT: Okay. Great. Here he is.

1 MR. RILEY: I'm sorry, Your Honor. I lost the connection on
2 my computer for a few minutes.

3 THE COURT: All right. I'm not sure when you lost it. What
4 I was doing was giving you and Attorney Lurie a very brief -- a
5 chance to briefly respond to anything Attorney Keavany said.

6 **REBUTTAL BY MR. RILEY**

7 MR. RILEY: Well, I guess I would just add that, you know, we
8 feel this is kind of an extraordinary circumstance. And the
9 town -- the board is left deciding whether to address the
10 residents and say, you know, "This is our only option, to purchase
11 this property," versus, you know, there may be grounds to try and
12 enforce and acquire all the property which is what the -- you
13 know, almost a year and a half ago now -- but the residents are
14 overwhelmingly in support of.

15 And, you know, we understand we're left with the judgments
16 that we've received from the Court. But all I'm asking is that,
17 you know, to the extent Your Honor can answer that question I
18 had, -- about what happens if the town meeting votes no regarding
19 the settlement agreement -- we're just looking for a little more
20 time and preserving the property while we try and see if we can
21 get to that answer.

22 THE COURT: Attorney Lurie, anything that you would like to
23 add?

24 **REBUTTAL BY MR. LURIE**

25 MR. LURIE: Yes, Your Honor. Very quickly, first of all,

1 while Attorney Keavany says they're not going to touch the 65
2 acres -- you know, 25 of that is wetlands -- the vast majority of
3 the forest land is at issue. You've already seen the effects of
4 the railroad's altering of that. We can't let that continue to be
5 altered while this matter is still being adjudicated in the
6 courts.

7 The second thing: I disagree with Attorney Keavany about
8 whether or not a report is appropriate. But the prong where there
9 is an agreement as to material facts is satisfied here. The fact
10 that you've already issued a decision on the motion for judgment
11 on the pleadings does not preclude your reporting this
12 inconsistency between your ruling and the land court ruling to the
13 appellate courts.

14 And finally, you do continue to have jurisdiction over this
15 case in the context of an injunction pending on our appeal and it
16 would be entirely appropriate for you to give us the opportunity
17 to explain why the injunction should be continued while we seek
18 appellate resolution which we're prepared to do by Monday if the
19 Court requires that.

20 MR. KEAVANY: Your Honor, may I just briefly be -- real
21 briefly be heard?

22 THE COURT: Very briefly.

23 **SURREBUTTAL BY MR. KEAVANY**

24 MR. KEAVANY: Very briefly. No, no. It is very briefly.
25 Again, there's no -- we keep on hearing inconsistencies. There

1 are no inconsistencies. If the land court said the settlement
2 agreement wasn't before her -- and the settlement agreement wasn't
3 before you. What was before the land court was a motion to vacate
4 under Rule 60(b)(6). What was before you was a request for an
5 injunction under Chapter 40 Section 53 to enjoin the payment of
6 funds from October of 2020 to buy the land described in the
7 settlement agreement. So there are no inconsistencies to be
8 reported. So -- and again, I refer to you footnote 3 of that
9 decision that my brother cited, Cepeda v. Kass, that is
10 dispositive of whether it's an appropriate case to report. Thank
11 you.

12 FINDINGS

13 THE COURT: So, number one, I don't think I have anything to
14 report. I think the fact that this has gone to judgment really
15 precludes me from sending anything up to the appeals court, even
16 though -- I mean, Attorney Riley just -- Attorney Riley came off.
17 Let me wait for a minute.

18 THE CLERK: He's reconnecting now.

19 THE COURT: Okay. Are you with us, Attorney Riley?

20 MR. RILEY: I am. I'm not sure what the problem is. But I'm
21 back.

22 THE COURT: Okay. So I was just indicating that I don't
23 think I have any authority. I don't think any of the grounds for
24 a report to the appeals court applies here.

25 I'd also like to remark that in kind of setting out three

1 potential options to the town as a result of my decision, I did
2 not mean to say that those were the only things the town could do.
3 Obviously, I'm not the town's lawyer, I was just trying to make
4 the point that I understood that my decision kind of left things
5 in limbo and I was, you know -- maybe I should not have said
6 anything about what the town could do. But I believe there are
7 probably a number of different things that you can do and I'm not
8 going to opine about those here today; that wouldn't be
9 appropriate, I don't think.

10 As far as what Attorney Lurie was saying with an injunction
11 pending appeal, no such motion is front of me, I don't think. If
12 a motion -- if an appeal does get filed and there's a motion
13 pending appeal, I'll have to ask on it. I don't think, though,
14 with respect to -- you know, just kind of talk off the top of my
15 head, but I will look at it carefully if it comes in front of me.

16 But I don't see that there is much likelihood of success on
17 the merits on the taxpayer's claim against counts 2 and 3. But
18 then, of course, the taxpayers could then go to the appeals court
19 and seek a stay.

20 So those options -- appeals and motions to stay pending
21 appeals -- are on the table, other options are on the table, I'm
22 not really sure. And I really do understand the quandary the town
23 is in. But I'm kind of throwing my hands up. I don't think I can
24 do anything here.

25

RULING

1 THE COURT: So I am going to deny the motions to extend the
2 injunction. I'm just going to do it with a marginal endorsement.
3 And if the parties need the grounds set forth, I can have my
4 comments here transcribed.

5 Anything else, Attorney Riley?

6 MR. RILEY: No. That addresses me, Your Honor.

7 THE COURT: Attorney Lurie?

8 MR. LURIE: No, Your Honor. Except to, I would ask that you
9 either order or ask the railroad to agree to confirm that no work
10 will begin at least before Monday to give us an opportunity to
11 file the motion that we were describing.

12 THE COURT: Attorney Keavany?

13 MR. KEAVANY: Your Honor, so I have to get confirmation from
14 my client. But I will certainly represent to you I will not
15 advise them not to do anything, even though the spirit of my
16 agreement or my client's agreement to extend the February 14th
17 was, really, because we weren't expecting the land court's
18 decision before the 14th. But nonetheless, today is the 9th. I
19 will talk to them and recommend and advise. And I can report back
20 to you, Your Honor, through the clerk, their decision on that.
21 But I expect that they will agree to do that.

22 THE COURT: Okay. Very good.

23 MR. RILEY: Thank you.

24 THE COURT: Thank you, all. And thank you for all the
25 taxpayers for being present at this hearing.

1 MR. LURIE: Thank you.

2 MR. KEAVANY: And representatives of the railroad and of the
3 trust are here as well, Your Honor.

4 THE COURT: Yeah, I appreciate that. It's always good when
5 parties are interested in the case, even if they're not getting
6 good news.

7 MR. KEAVANY: Absolutely. Thank you.

8 THE COURT: Thank you.

9 MR. LURIE: All right. Thank you, Your Honor.

10 MR. RILEY: Thank you.

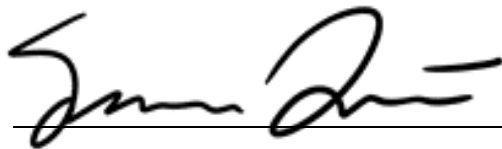
11 [Adjourned at 9:51:37 a.m.]

C E R T I F I C A T I O N

I, Spencer Von Jarrett, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the above-entitled matter provided to me in the form of an electronic sound recording.

I, Spencer Von Jarrett, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Spencer Von Jarrett, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



February 15, 2022

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AUDIO ASSESSMENT FORM

TODAY'S DATE: February 15, 2022 **TRANSCRIBER NAME:** Spencer Von Jarrett

CASE NAME: REILLY, ELIZABETH ET AL. v. TOWN OF HOPEDALE ET AL.

DOCKET NUMBER: 2185CV00238

RECORDING DATE: February 9, 2022 **TRANSCRIPT VOLUME:** I OF I

TYPE: FTR JAVS **QUALITY:** EXCELLENT GOOD FAIR POOR

ISSUES: **Time stamp(s) of indiscernible word(s):**

background noise

low audio

low audio at sidebar

simultaneous speech

speaking away from mic.

other: telephonic distortion **9:43:17**

COMMENTS: Although this was an entirely virtual hearing and the audio quality was very poor, the participants did a great job of speaking in their turn and clarifying the record when needed. Only one utterance of the judge was indiscernible.

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1 [5] 13, 8; 13, 22; 14, 3; 15, 13; 25, 21;
10 [6] 4, 16; 13, 8; 13, 17; 13, 18; 16, 13; 17, 15;
10-taxpayer [1] 13, 22;
10th [1] 13, 7;
11 [1] 16, 11;
14 [1] 15, 4;
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2 [9] 11, 6; 13, 11; 13, 15; 13, 16; 13, 17; 14, 20; 15, 7; 17, 15; 23, 17;
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action [3] 7, 3; 8, 15; 8, 20;
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