

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Plaintiffs )

vs. )

TOWN OF HOPEDALE, THE HOPEDALE )  
SELECT BOARD, by and through its members, )  
GLENDA HAZARD, BERNARD STOCK, )  
and BRIAN KEYES and THE HOPEDALE )  
CONSERVATION COMMISSION by and )  
through its members, BECCA SOLOMON, )  
MARCIA MATTHEWS and DAVID )  
GUGLIELMI )

Defendants )

Case No. \_\_\_\_\_

**AFFIDAVIT OF MICHAEL R. MILANOSKI**

Now comes Michael R. Milanoski, who on oath deposes and says as follows:

1. I am the President of Grafton & Upton Railroad Company (GURR), a position I have held since approximately May 2017. I have personal knowledge of the facts set forth in this Affidavit.

2. GURR is a short-line rail carrier incorporated in Massachusetts in 1873 and has been in continuous operation since that time. GURR owns and operates a 16.5-mile rail line that runs between North Grafton, through Upton and Hopedale to Franklin, Massachusetts. In addition, GURR leases and operates an 8.4-mile line that is owned by CSX between the terminus of the GURR owned line in Franklin and Milford, Massachusetts. A portion of the GURR rail line bifurcates and runs through property located at 364 West Street in Hopedale.

3. GURR is part of the national rail system that is critical to Massachusetts' economy and the efficient movement of goods by rail throughout North America. GURR's location is ideal for transloading—the transfer of commodities between rail cars and trucks--of products that move into and out of the greater Boston area. For example, the majority of liquid commodities used to support the Massachusetts economy and pharmaceutical industry are transloaded by GURR. GURR fulfills a national and state public purpose by being part of the flow of goods and materials necessary as a critical backbone of the national supply chain.

4. In recent years, GURR has invested a substantial amount of capital in order to upgrade its line and yard facilities in order to serve a substantial demand for transloading services for commodities that are shipped to Eastern Massachusetts by rail and transloaded into trucks for final delivery. GURR has transloading facilities in Upton, Massachusetts, where it handles a variety of chemicals and other bulk commodities, a facility in North Grafton, Massachusetts for the delivery by rail of liquid propane and transloading the propane to trucks for distribution and a facility in Hopedale, Massachusetts where it handles dry bulk materials, such as building materials.

5. GURR has experienced significant freight rail growth in recent years. In 2010, GURR handled approximately 200 rail carloads, but by 2020 the number of cars was approximately 3000 (15 times the volume a decade ago). GURR anticipates that its trans-load and other rail businesses will continue to grow year after year at this same volume growth. For example, the recently acquired line between Milford and Franklin is expected to generate approximately 400 carloads per year, and a new chemical transloading facility at Upton will produce additional business.

6. GURR anticipates continued steady growth in its business, and this projection is consistent with the expectations and estimates of Massachusetts. A 2018 State Rail Plan produced by the Massachusetts Department of Transportation projected that by 2040 the rail system in Massachusetts will need to accommodate approximately 19 million more tons of originating freight per year, 25 million more tons of terminating freight and 34 million more tons of rail freight traffic moving within Massachusetts. The plan recognizes that a well utilized rail network has many benefits for the state and its residents, including the reduction of greenhouse gases, less motor vehicle congestion, reduced wear and tear on the highways, travel time savings and economic development.

7. The additional existing traffic and the anticipated future growth of traffic on the line have created a need for additional yard and track space in order to support and handle efficiently such rail traffic and rail transloading activities. In addition to the development of new facilities for the core GURR business of transferring commodities from railcars to trucks, there is a growing need for track space to temporarily store rail cars, switch cars moving to and from the trans-loading facilities, and to perform other routine rail transportation activities, such as maintaining locomotives, railcars and maintenance of way equipment.

8. Part of the increase in business will be met by the expansion and upgrading of the track and facilities at the small GURR yard in Hopedale. GURR has recently constructed additional yard tracks at Hopedale and has reconfigured other tracks in order to accommodate new business. In addition, GURR is in the process of upgrading its main north-south line at the northern end of the Hopedale yard. Even with all of the expansion and improvement projects already undertaken, it is clear that additional yard and transloading facilities will be required in order to meet the anticipated levels of business.

9. In or around 2010 GURR identified two parcels of Industrial zoned real estate in Hopedale, just north of the existing yard, to expand its rail transportation facilities to meet the current needs of customers and to meet the expected increase in business. In 2018 GURR commissioned independent appraisals for both properties. The parcels were located at 364 West Street, a 155-acre parcel, and 1 Carpenter Road, a land-locked 17.76-acre parcel that is adjacent to the 364 West Street parcel.

10. At the time, 364 West Street was owned by The One Hundred Forty Realty Trust (the "Trust") and 130 acres+- of the 155 acre +- parcel was classified as forest land under Massachusetts G.L.c 61 by the Trust and was under a forest management plan approved by the Commonwealth of Massachusetts Department of Conservation and Recreation. The forestland classification of the 130 acres+- was scheduled to expire in the Fall of 2022.

11. The two parcels (364 West St. and 1 Carpenter Rd) were both zoned for Industrial Uses in the Hopedale Zoning By-laws and likewise the parcels are referenced as Economic Development Assets in the Hopedale Master Plan/Community Development Plan. A true and accurate copy of the Town of Hopedale's Zoning Map is attached hereto as Exhibit 1, which shows the location of the Industrial Zone in the northern-most part of Hopedale.

12. It is my understanding that 364 West Street and 1 Carpenter Road have always been zoned industrial since Hopedale first adopted zoning in or around 1973.

13. Having identified the two parcels it initially hoped to acquire to support its rail operations to meet current customer needs and expected growth, GURR followed its established practice of reaching out to the respective owners to explore a private negotiation and ultimate purchase. While GURR has the ability to petition the Department of Public Utilities (DPU) under Massachusetts G.L.c. 160 to acquire land by the eminent domain process set forth in

Chapter 79, GURR prefers to negotiate in good faith with the owners and also work with the local communities where its rail lines are located.

14. After some inconclusive initial discussions with the Trust regarding the acquisition of 364 West Street, GURR re-initiated communications with the Trust in 2018 regarding acquiring this parcel. GURR also initiated communications with the owners of 1 Carpenter Road.

15. In March 2019, GURR reached agreement to acquire 1 Carpenter Road and acquired the parcel on March 20, 2019.

16. GURR continued to be unsuccessful with respect to acquiring 364 West Street by agreement with the Trust. As a result, in March 2019, GURR filed a Petition with the DPU pursuant to G.L.c. 160 seeking to acquire the 364 West Street parcel by eminent domain, which remains an active and pending case.

17. The Town of Hopedale filed a motion to intervene in the DPU Petition proceeding, which was allowed. Hopedale never mentioned any intention to seek to acquire the 364 West Street parcel at the DPU through Chapter 61, or through any other mechanism.

18. Fully expecting to acquire the 364 West St. parcel either through eminent domain or through a direct private sale, GURR continued private negotiations with the Trust. Again, fully expecting to acquire 364 West Street, GURR also initiated communications with the Town because the Town had expressed its interest in promoting economic development to create tax revenue and to test a portion of the 364 West St. property as a potential future water supply.

19. While GURR was working on the public- private partnership with the Town, we continued private negotiations with the Trust to acquire the 364 West St. parcel.

20. In June 2020, GURR and the Trust reached agreement in principle on the terms of a private sale of the 364 West St. parcel to GURR that also included a separate 20 acre +- parcel across the street at 363 West Street, which was a requirement of the seller.

21. Having a 25-year career in the public sector including serving as Town Manager/CFO among other executive positions for several other towns in Massachusetts including Cohasset and Carver, discussions with the Town of Hopedale were initially very positive and seem to have the potential to create a win-win solution for all parties. The parties framed a public-private partnership with respect to the 364 West St. parcel which was summarized and presented by the Selectboard Chairman on July 13, 2020 at an open and public meeting that was estimated to have a value of \$3,000,000 to the benefit of the town as follows:

- Protect 3 Potential Municipal Well Location from development impacts;
- Provide Water distribution easement along railroad exclusive right-of-way to connect to town water system – an estimated \$2,000,000+ value;
- GU would build an additional 1.5 miles of Parkland Trails to Rt 140 on both sides of pond;
- Partially fund by GU the Park Commission to develop Park/Open Space Plan;
- GU to build a Kayak Launch Area at the Mill Pond-North location for Park Commission;
- GU to repair 3 rock structures including the historic rock “Rustic” bridge on the pond;
- Land Swap 1.5 to 1 (estimated at 30 acres in exchange for 75 new acres to Town Parklands)
- Increasing the Town Parklands to Rt 140 (Mill Pond-North) by 25% more public land;
- The Town would release any rights it may have in the temporary 61B forestry land as part of the PPP and land swap.

22. In accordance with G.L.c. 61, the Trust had sent a Notice of Intent to the Town, notifying the Town of its intentions to sell the 364 West Street parcel to GURR. The Notice of Intent was apparently defective because it did not segregate or allocate the purchase price between the 130 acres+- of forest land and the 25 acres+- of non-forest land according to the Town attorney.

23. The Town's attorney initially sent a letter to the Trust and to GURR stating that the Notice of Intent was defective which led the Trust and GURR to believe that the Notice of Intent process had been terminated. While the Town's attorney subsequently sent a letter claiming that the Notice of Intent was valid despite what he had stated earlier, GURR believed that the initial letter from the Town's attorney invalidated the Notice of Intent.

24. Thereafter, the Trust and its beneficiaries agreed to transfer 100% of the beneficial interest in the Trust to GURR rather than to transfer ownership of the property. As a result of this transfer of beneficial interest, which occurred on October 12, 2000, GURR obtained full and complete ownership of the beneficial interest of the Trust that owned the 155-acre+- parcel at 364 West Street. GURR also separately acquired the 20 acre+- parcel across the street at 363 West Street on the same day.

25. Additionally, in April 2021, GURR acquired approximately 23 acres of land abutting the 364 West Street parcel and the 1 Carpenter Road parcel. As a result of its acquisition of 155 acres at 364 West Street, its acquisition of 17.76 acres at 1 Carpenter Road, the acquisition of 23 acres+- in directly abutting 364 West Street and 1 Carpenter Road, GURR has site control over 198 acres+- (including the GURR right-of-way land of 4.5 acres, which had been under railroad control since 1873), of contiguous Industrial Use zoned land in the most

northern part of Hopedale to meet its current rail transportation operations and expected future growth in business. In June 2021, a Plan of Land was recorded at the Worcester District Registry of Deed Book 957 and Plan 48 showing the assemblage of parcels, a true and accurate copy of this Plan is attached hereto as Exhibit 2.

26. After GURR had acquired controlling interest in 364 West Street, the Town held a Special Town Meeting to vote to authorize the Selectboard to exercise a right of first refusal option under G.L.c 61 that the Town believed it possessed with respect to 130.18 acres at 364 West Street. The Special Town Meeting voted to authorize the Selectboard to exercise the purported right of first refusal option. Days later, the Selectboard filed suit in the Land Court seeking to enforce the right of first refusal option it believed the Town possessed as a result of the October 2020 transfer of beneficial interest in the Trust to GURR. See, Town of Hopedale v. Grafton & Upton Railroad Company, et al, 20 MISC00467(DRR) (the “Land Court Action”)

27. In response to the Town’s Land Court lawsuit, GURR filed a Petition for Declaratory Order with the Surface Transportation Board (STB) seeking a declaration that the Town’s Land Court action was preempted by the Interstate Commerce Act as amended by the Interstate Commerce Commission Termination Act (ICA). The STB Petition noted that GURR is a rail carrier and the Town’s efforts to use Chapter 61 to take the land GURR acquired at 364 West Street would adversely affect the transportation services provided by GURR.

28. The Town moved for a preliminary injunction in the Land Court Action, which the Land Court (Rubin, J.) denied after specifically noting that it did “not appear that the Town's right of first refusal ripened into an option on July 9, 2020” and that as a result she could not “determine whether the [ICA] preempts the Town's right to purchase land which the Defendants contend is land intended for use as transportation by rail.” A copy of the Land Court Docket



entry reflecting Judge Rubin's decision is attached hereto as Exhibit 3. Judge Rubin then ordered the parties to mediation screening.

29. The Town and GURR voluntarily agreed to mediate their dispute and after two days of mediation in January 2021 with retired Land Court Judge Leon Lombardi, the Town and GURR reached a Settlement Agreement in the Land Court Action.

30. The Town later acknowledged that it decided to settle the Land Court Action because it "understood the [Land] Court to be expressing that mediation was advisable as the Town's claims to the 155 acres may not be successful," and because Judge Lombardi "also expressed doubts as to the Town's likelihood of success against the Railroad and encouraged a settlement."

31. As part of the Settlement Agreement, the Town relinquished its contested G.L. c. 61 ROFR claim to acquire all 130+ acres of forestland, in exchange for an uncontested right to acquire 40+- acres of forestland plus an additional 44+- acres of non-forest land. GURR promised to transfer 64+- acres (the "Settlement Parcel") to the Town in consideration of a payment of \$587,500 and further promised to donate an additional 20 acres to the Town. The Selectboard agreed to release and waive the Town's purported c. 61 ROFR.

32. On February 10, 2021, the parties filed a Stipulation of Dismissal With Prejudice of the Land Court Action. A true and accurate copy of the Stipulation of Dismissal With Prejudice is attached hereto as Exhibit 4.

33. On or around February 17, 2021, GURR filed Motion with the STB to dismiss its Petition for Declaratory Order, which was allowed. A true and accurate copy of the Dismissal is attached hereto as Exhibit 5.

34. In March 2021, ten taxpayers of Hopedale filed a Verified Complaint in Massachusetts Superior Court “bringing three counts: (1) to enjoin the Board from making expenditures and entering obligations under the Settlement Agreement; (2) to obtain a declaratory judgment that the Town’s c. 61 rights remain fully enforceable and enforce the same through transfer of title to the Forestland to the Town; (3) a declaratory order that the Forestland is protected under Article 97 and to protect against any change from Article 97 use.” See, Reilly et al v. Grafton & Upton Railroad Company, et al, 2185CV00238D (the “Superior Court Action”).

35. GURR and the Trust moved for Judgment on the Pleadings on the only Count asserted against them in the Superior Court Action: Count II. The ten taxpayers and the Town cross-moved for Judgment on the Pleadings on all claims: Counts I, II and III. The Town asserted in its cross-motion that the decision to exercise or not exercise a G.L.c. 61 right of first refusal is “an executive action whose sole authority resides with the Board of Selectmen...There is nothing Town Meeting or anyone else can do to exercise the right of first refusal in such a case.”

36. On November 10, 2021, the Superior Court (Goodwin, J.) entered Judgment in favor of the ten taxpayers on Count I, in favor of GURR, the Trust and the Town on Count II and in favor of the Town on Count III. A true and accurate copy of this Judgment is attached hereto as Exhibit 6.

37. As a result of the Judgment that entered under Count I in the Superior Court Action, the Town was enjoined from using funds appropriated at the October 2020 Special Town Meeting to purchase the 64 acres+- at 364 West Street described in the Settlement Agreement.

In other words, the Judgment that entered on Count I requires a new Town Meeting vote to appropriate a lesser sum for the acquisition of a parcel that is smaller than 130.18 acres.

38. In December 2021, the Town moved in the Land Court pursuant to Mass. R. Civ. P. 60(b)(6) Motion to Vacate the Judgment that entered through the February 2021 Stipulation of Dismissal with Prejudice filed by the parties.

39. In January 2022, the Land Court (Rubin, J.) denied the Town's Motion to Vacate the February 2021 Judgment. A true and accurate copy of the Land Court's Decision Denying the Town's Motion to Vacate is attached hereto as Exhibit 7.

40. In February 2022, the Town appealed the Land Court's denial of its Rule 60(b)(6) motion and moved for an injunction pending its appeal.

41. In April 2022, a Single Justice of the Appeals Court (Desmond, J.), denied the Town's Motion for Injunction pending appeal, finding that the Town was not likely to succeed on the merits. See, Town of Hopedale v. Grafton & Upton Railroad Company et al, 2022-J-0146. Justice Desmond wrote in part that "the select board was authorized to settle the matter and did so. That the town was unwilling to correctly appropriate the funds to fully recognize the benefit of that agreement does not entitle the town to relief from judgment." A true and accurate copy of this docket entry is attached hereto as Exhibit 8.

42. In May 2022, the Town moved to voluntarily dismiss its appeal, which was allowed by the Land Court.

43. Later in May 2022, a new Selectboard was elected. At the first meeting of the newly constituted Selectboard on May 23, 2022 the newest member, Bernard Stock stated:

"So I'll warn everybody going forward, I am not a friend of the railroad through this process until we see a lot of changes. And I've got an arm's length of them...."

See p. 6 of the transcript from the May 23, 2022 Selectboard Meeting, a true and accurate copy of which is attached hereto as Exhibit 9.

44. Mr. Stock later stated at the May 23 meeting that he had not read the Land Court Settlement Agreement (Id., p. 55) but that in spite of his not reading it, he preferred “to open it up again so that I can look at it and have a piece of the action on the thing.” Id., pp. 55-56.

45. On June 16, 2022, the new Selectboard posted the Agenda for its scheduled June 21, 2022 meeting. The posted Agenda included an Executive Session to discuss, inter alia, “the acquisition of real property...” A true and accurate copy of the June 21, 2022 Agenda is attached hereto as Exhibit 10.

46. The Selectboard asserted that Executive Session scheduled for June 21 was appropriate because having a discussion in open session to consider taking real property by eminent domain “may have a detrimental effect on the negotiating position of the public body”, citing to G.L.c. 30A §21(a)(6). Id.

47. It is now clear and confirmed that the new Selectboard intended to discuss the taking of 130 acres of 364 West Street from GURR in its June 21 Executive Session.

48. After returning to open session from its unlawful Executive Session on June 21, 2022, the new Select Board voted to pursue an eminent domain taking of 130 acres of real property at 364 West Street.

49. At its June 21 meeting, the new Selectboard scheduled a Special Town Meeting (STM) for July 11, 2022, less than three weeks from its June 21 meeting.

50. At its June 21 meeting, the new Selectboard voted to open the Warrant for the July 11 STM and include only one article and no opportunity for citizen petitioned articles on that Warrant – an Article to authorize the Selectboard to take 130 acres of 364 West Street from

GURR and to appropriate funds to pay for the eminent domain taking. The Selectboard then immediately voted to close the Warrant. A copy of Article 1 of the July 11 STM is attached hereto as Exhibit 11.

51. Upon information and belief, the Selectboard scheduled the STM for July 11, 2022 even though it had not retained the services of an real estate appraiser for purposes of establishing the fair market value of the real property that was subject of the eminent domain taking article.

52. At its July 6 meeting, the Selectboard announced that its new special counsel had retained the services of a real estate appraiser to provide a fair market value analysis of the real property that the Selectboard was pushing to take by eminent domain from GURR. The Selectboard also announced at its July 6 meeting that an anonymous donor had agreed to pay for the appraisal. One Selectboard member expressed at the meeting that he was not aware that the special town counsel had been authorized to retain a real estate appraiser and that an anonymous donor had agreed to pay for the appraisal, which was confirmed by the Chair.

53. The Selectboard continued to press forward with the July 11 STM even though it had not obtained an appraisal of the property as of 7pm on July 6 and thus, could not share with the town residents the expected cost to take the property from GURR.

54. I went to Hopedale Town Clerks Office on July 11, 2022 to review the 130-acre portion of the 199 acres owned by GURR that the town was attempting to take under Article 1 of the July 11 Warrant. The only plan that was provided to the Town Clerk from the Town Administrator was for 199 acres, which is the same plan GURR recorded in June 2021, a copy of which is attached hereto as Exhibit 2. There was no plan on file for the public to review or GURR, the 5<sup>th</sup> largest commercial tax payer in the town, to review to see precisely what portion

of our land was being taken. The plan on file at the Town Clerk's office did not delineate or highlight in any way the 130 acres that was subject to Article 1 of the July 11 Warrant.

55. On July 11, 2022, the Selectboard met in open session immediately before the STM and incredibly disclosed that it still did not possess the appraisal for the property that was subject to the eminent domain taking article. The Selectboard disclosed that the appraiser had not completed the appraisal but had verbally conveyed an opinion that the real property was likely worth up to \$3,900,000.

56. The Selectboard then voted to amend the draft motion to move Article 1 to take approximately 130 acres at 364 West Street for the sum of \$3,900,000. Again, the Selectboard voted to amend the motion to reflect an acquisition cost of \$3,900,000 even though it had not received an appraisal and even though the sketch on file at the Town Clerk's office did not identify the 130 acres+- that was subject to Article 1.

57. At the Selectboard meeting on July 11, 2022 I specifically asked about the precise portion of the land that is proposed to be taken and was told the plan was on file with the Town Clerk. However, the plan I reviewed was not the plan of a proposed taking but rather a plan of all 198.607 acres the land that GURR owns at 364 West Street. See Exhibit 2 attached hereto.

58. The Selectboard adjourned from its July 11 meeting and went to the Special Town Meeting even though they had not received an appraisal of the property that was subject to the eminent domain taking article.

59. The Town voted at the July STM to authorize the Selectboard to take 130.18 acres of land at 364 West Street that is owned by GURR.

60. If permitted, the Town's taking by eminent domain of GURR's property at 364 West Street would have a significant adverse effect on GURR's current and future rail

transportation operations. As described above, GURR needs the acreage at 364 West Street to meet the needs and handle the business of current customers as well as to handle the expected continuing growth in business.

61. Since GURR acquired the assemblage of parcels that now make up 364 West Street, GURR has spent hundreds of thousands of dollars on engineering and site development and stormwater plans. GURR has removed trees and done grading work in order to create an access road and to clear space for the imminent construction of sidetracks into the property for the initial transloading and maintenance operations. Recognizing that it must comply with generally applicable local health and safety regulations, GURR has performed site work and water exploration activities, including water testing for quantity and quality to support the transportation services and facilities in coordination with the Massachusetts Department of Environmental Protection, the US Army Corps of Engineers and Federal Railroad Administration as it always does, including as a courtesy, direct collaboration meetings with Massachusetts Department of Environmental Protection.

62. The entire property is owned and controlled by GURR and all of the track and other facilities will be likewise owned and controlled by GURR and used for transloading and other rail transportation purposes. GURR has secured private financing to undertake the initial site improvements for this project and has pending private financing for the full development of roads, rail and other infrastructure for this rail development. This additional financing is in jeopardy as result of the potential condemnation. The attached preliminary plan (Exhibit 12) shows the following for the rail development at 364 West Street:

- All roadways in the property to access the rail facilities

- All the new track development in the property that will provide access directly or indirectly to the buildings and other facilities;
- All the stormwater detention areas to support the facility
- Well location and buffer zone as well as water storage tank on top the property for fire suppression and water pressure for site.
- Sewer treatment plant area and buffer zone
- Stormwater basins for the full development of the infrastructure.
- More than 1,500,000SF of space for transloading and temporary storage broken down into the following categories:
  - Railroad Transloading and Temporary Storage Building (on rail spur)
  - Railroad Temporary Storage Building (off rail spur but near outside rail laydown area)
  - Railroad trucking terminal located next to silos that are piped from rail siding to be transloaded into trucks.
  - Railroad support buildings for rail related contractors that work on GURR rail equipment and infrastructure including specialized trades like Positive Train Control installation. <https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc>).
  - Areas for temporary railcar storage, switching, building trains, and railcar repair

63. Upon information and belief, the Massachusetts Freight Rail Association is working with the State Legislature and the Governor's Office to create regional public/private partnerships for rail logistic hubs to maximize freight hauling efficiency while decreasing carbon emissions and road usage that 364 West Street is uniquely designed for.



64. GURR's anticipated transloading and logistics center is under construction and agreements are being finalized to service current and new customers that are in need of transloading of products. In spite of past delays, GURR expects to be able to open its new facility at 364 West Street by next Spring or Summer (2023), which will have a positive impact on national supply chain issues that have been adversely affecting the local, state and national economy over the past few years.

65. In sum, GURR has been working for an extended period to acquire and develop the property to support rail transportation that will include on the entirety of the site transloading, temporary storage, services related to transloading or temporary storage, and whatever additional rail activities are necessary or required in order to support the rail business that currently exists and is anticipated in the future, such as repairs to rail related equipment and the construction and operation of switching tracks, storage tracks, yard tracks to relieve congestion and facilitate service. In addition, given that no public water or sewer service currently exists on the site, GURR will need to use the entire parcel in order to accommodate the well protection zone, the wastewater treatment plant recharge area, ample land to protect and build stormwater run-off protection, and a noise buffer zone for abutting residential property. Therefore, it is necessary to reserve and plan for the use of all 198 acres+- of the 364 West Street property.

66. The assembled acreage and expected development at 364 West Street will provide GURR the opportunity to provide rail transportation facilities and services in order to meet current customer demand and expected future growth. In addition to serving the public interest by providing efficient rail transportation, the implementation of the plans for the property are anticipated to further promote the public interest by bringing hundreds of new jobs and millions of dollars in tax revenue to Hopedale.

67. Absent an injunction in this case, GURR will immediately lose all right, title and interest in approximately 130 acres of industrially zoned real estate uniquely situated on an operating railroad right of way. A taking also would render GURR's remaining property landlocked and undevelopable. A taking would suspend GURR's ongoing rail transportation development indefinitely, and would cause GURR to lose incalculable revenues, customer relationships, and financing.

68. 364 West Street is a unique large assemblage of several parcels of undeveloped, industrially zoned land bisected by an operating railroad right of way. As such, the property provides the opportunity for an integral hub in the supply chain for propane, lumber, sand, stone and gravel, metals, chemicals and other commodities. The size of the assemblage provides the opportunity for transloading operations in which GURR would unload products from railcars for distribution by truck to destinations in the Boston area, thereby supplementing and making more efficient GURR's current transloading business and anticipated future business. In addition, there is some additional transloading business involving the transfer from trucks to rail cars for movement to destinations throughout North America.

69. A taking by the Town would divest from GURR irreplaceable real estate and with it, a once in a lifetime railroad development opportunity. GURR could not simply take the proceeds from a taking and purchase replacement property similarly sized, zoned, situated, and suited to development as a railroad transloading operation.

70. The planned taking also would impair GURR's rail activities beyond the subject property. GURR would continue to own contiguous parcels, which post-taking would have no frontage on an existing public way, no access to GURR's rail right of way, and no access to any

well water. Thus, even the land remaining to GURR after the proposed taking would be incapable of development for the planned railroad use.

71. On July 14, 2022, I received an email from the Chairperson of the Hopedale Conservation Commission along with a purported Enforcement Order, claiming that GURR was violating the Massachusetts Wetlands Protection Act. A true and accurate copy of this Enforcement Order is attached hereto as Exhibit 13.

72. However, as Hopedale Conservation Commission is well aware, the work being performed at 364 West Street by GURR is not subject to the Massachusetts Wetlands Protection Act, but is instead subject to oversight by the United States Environmental Protection Agency and the United States Army Corp. of Engineers. I have attached hereto as Exhibit 14 a true and accurate copy of the June 2022 Inspection Report completed by EPA's field representative who inspected the 364 West Street site on May 26, 2022.

73. GURR is following all federal environmental regulations with respect to the rail transportation development.

74. In fact, G&U prepared a 232-page Stormwater Pollution Prevention Plan ("SWPPP") as it relates to construction activities at 364 West Street, Hopedale, MA. Excerpts of the SWPPP are attached hereto as Exhibit 15.

75. The SWPPP was filed with the Environmental Protection Agency in 2021 and courtesy copies of the SWPPP were provided to the Army Corp. of Engineers, the Hopedale Town Administrator, and the Hopedale Water and Sewer Manager.

76. The entire SWPPP process and our development plans and actions have been completely transparent.

77. The SWPPP requires maintaining stormwater during and after the work is completed. All work being performed at the site is being performed in accordance with the SWPPP including bridge improvements at the site.

Signed under the penalties of perjury this 18<sup>th</sup> day of July 2022



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Michael R. Milanoski