

Hopedale's Watershed Situation Summary

Hopedale Water & Sewer Commission Sept 2022

Previously owned by a private Trust and classified as forestry under MA State Chapter 61 Laws, the property at 364 West St in Hopedale *was* 155 acres of forestry and wetlands. As an official watershed the importance of the property to the public water supply cannot be overstated.

The Grafton Upton Railroad (GURR), a local 16 mile regional railroad, bought out the Trust, clear cut the site of ~100 acres of forest and prepared the site for roads and a bridge. All of this based on GURR's claim of a Federal Railroad preemption. And over Hopedale's Chapter 61 State Law rights which protected the property from development and provided the Town with a matching right to acquire the property if it changed ownership or changed its preservation status. A right which Hopedale executed.

How GURR has been able to do this while the court process continues to address the overall ownership issue is summarized by the following key points:

1. Hopedale's only recourse to dispute, or even confirm, GURR's preemption claim is a long, expensive court process. Knowing this GURR uses the preemption claim very broadly to essentially force their will.
2. GURR also uses the preemption claim to avoid all local and state environmental approvals and oversight. Hopedale's Conservation Committee Violation Notice has been completely ignored by GURR.
3. GURR has also used the EPA's General Construction Permit process to even deflect the Federal level environmental approvals and oversight related to the site work (i.e. land clearing, road and bridge construction). The GCP process is intended for building construction, in part based upon the assumption that the site work and overall plans have been approved at the local level.

While the court process continues, Hopedale is urging the environmental agencies to step in and stop the ongoing site work to at least ensure that work is not adversely, and potentially permanently, impacting the current public water supply.

Hopedale's Watershed Situation

The forestry, wetlands and overall topography of the 155 acres located at 364 West St in Hopedale is hydrologically connected to the Hopedale public water supply. Providing a natural filtration system for decades, this property is officially classified as a "Watershed". The importance of this Watershed to the public water supply cannot be overstated.

What's happened over the last 2 years has been Hopedale's expensive, disheartening attempt to save the Watershed while GURR aggressively wipes out the forest in the name of railroad development. Hopedale may never recover from GURR's "site work" and the ramifications may extend to the downstream water supplies of every community from Hopedale to the Narragansett Bay.

In short, without a single approval from any of the Local, State or Federal agencies, GURR has clear cut 100 acres of forestry, impacted tributaries and wetlands and continues to build out roads and even a bridge over the Mill River.

All of this based on GURR's "claim" that the US Federal railroad preemption allows them to do so. The preemption's basic purpose is to ensure that local and state regulations are not unduly restricting the railroad from conducting its existing operations, unreasonably burdening interstate commerce. Yet GURR's own marketing material highlights the property is to be used for future plans as defined by GURR's "build to suit" business model.

Incredibly, it has all been done even while the ownership of the property is an on-going legal matter.

How they have done this boils down to two primary aspects. The first is that Hopedale's only option to challenge, and resolve, GURR's preemption claim is a long, expensive, arduous legal course. Knowing this GURR threatened Hopedale, just as they have every town they operate within, with extremely broad based preemption claims and the threat of expensive legal actions.

Despite the legal uphill battle, Hopedale chose to challenge the preemption claim. What Hopedale wasn't expecting was a loop hole in the EPA's General Construction Permitting (GCP) process. This loop hole is the second aspect, which GURR continues to exploit to subvert standard approval and oversight. Thus performing the site work that is actually destroying the Hopedale watershed without approved plans or any environmental oversight.

The immediate requirement is for a Federal Level agency to step in and stop the ongoing site work until plans can be approved to ensure that it is adhering to the environmental requirements. Thus the request to emphasize the timing and overall urgency of the situation with the EPA.

Below are before (July 2020) and after (July 2022) pictures, along with the brief history of this situation.

Hopedale's Watershed Situation Pictures

Satellite property view	The Footbridge
July 2020	
 A satellite image showing a property with a stream flowing through it. A large, irregularly shaped area is highlighted in light green, indicating a cleared or developed area. The surrounding forest is dark green.	 A photograph of a wooden footbridge in a forest. The bridge is made of wooden planks and has a simple wooden frame. It is surrounded by lush green ferns and other vegetation. The background shows a dense forest of trees.
July 2022	
 A satellite image showing a property with a stream flowing through it. A large, irregularly shaped area is highlighted in light green, indicating a cleared or developed area. The surrounding forest is dark green.	 A photograph of a large cleared area in a forest. A yellow excavator is visible in the background, and a large pile of logs is in the foreground. The ground is dark and appears to be recently cleared. The surrounding forest is dense with trees.

Hopedale's Watershed Situation Event History

Although the property was not owned by the Town of Hopedale, in the early 1990's the Town and Trust that owned the property agreed to preserve it as forestry and wetlands using the Mass State Chapter 61 Law. Running through the western section of the property were abandoned rail tracks. Around 2012, the tracks were restored for use by a 16 mile regional railroad, the Grafton Upton Railroad, GURR.

In November of 2017, GURR presented the Future of Waste Transportation at the Economic Business Council, which included slides of the "build to suit" business model and a map claiming ownership of Hopedale property.

In July of 2019, GURR officially filed with the Department of Public Utilities to take this property by eminent domain to develop it for rail purposes, highlighting the need for a track expansion and possibly "a warehouse". The Town of Hopedale's Water & Sewer Commission immediately objected highlighting water supply concerns and was subsequently granted intervenor status.

In July of 2020, GURR agreed to a \$1.2 million purchase and sale with the property owner, which triggered Hopedale's Right of First Refusal to match the offer, per the Chapter 61 Laws.

In October of 2020 Hopedale Town Meeting overwhelming approved the matching \$1.2 purchase, and the Town initiated the steps to complete the Right of First Refusal. However, just prior to that October Town Meeting, GURR bought out and took over the Trust that owned the property. Without approved plans or even notice, GURR immediately began clearing the site, completely ignoring the State's Chapter 61 Law and the Town's ownership rights to the property.

Thus the beginning of a long, complicated legal battle between the Town and GURR which continues to this day. In February of 2021, over the objections from the Water & Sewer Commission, Conservation and Finance Committee, in a split decision, the Hopedale Select board approved a "Settlement Agreement" with GURR regarding the property.

The "Settlement" did everything but settle the issue. A citizen's group immediately organized and brought a law suit against the Select Board. This eventually led to a Worcester MA Superior Court Judge's written statement that the Select Board acted beyond their scope of authority to execute the Settlement and that "In the court's view, the actions of the Railroad were wrong. In addition, there appears to be grounds to rescind the Settlement Agreement. This case, however, does not present an opportunity for this court to address those issues". Thus the land ownership issue continues to work its way through the court system.

Since the eminent domain filing back in 2019, GURR's expansion desires have also expanded, from "maybe a warehouse" to 3 warehouses, then maybe 7 or some super warehouse combination, to the latest dream, made public in July of 2022 - a complex comprised of more than 20 buildings and at least 16 warehouses.

Unfortunately GURR has done far more than just dream. Without a single approved plan from any of the normal development oversight or environmental agencies, GURR has done significant, destructive damage to the property. GURR's "site work" includes clear cutting ~100 acres of forest land, causing tributary and wetland impacts while preparing roads and even a trucking bridge over the Mill River.

A Wetlands Violation Notice was served on July 14, 2022, but has been ignored by GURR.

How has GURR been able to destroy the watershed without approved plans, even while the property's ownership is still progressing through the court?

First, GURR "claims" that the Federal rail preemption has provided them with the right to do this site work. However that claim is just that, a claim. That position has NOT been validated by any court or federal agency. GURR has used the preemption as a broad based tool to steam roll their expansion desires over the local authorities.

The Town's recourse to the preemption claim is a long, expensive, arduous court process. Yet even knowing that was in front of Hopedale, the residents have, and continue to overwhelmingly support the court fight as confirmed in subsequent Town Meetings.

What was not expected was the environmental oversight loophole that GURR would utilize, and continues to do so, to perform that destructive site work without a single approved plan from any of the normal development processes. No plans, no approvals with the local planning board, conservation, State DEP, or Army Core. The only permit request submitted has been an EPA General Construction Permit (GCP), which is automatically authorized under the assumption that all local and state level approvals and planning has already taken place.

100 acres of forest have now been clear cut, wetlands violations have been reported by the local Conservation Committee, roads and even a bridge are being prepared, if not built, yet a not a single approval has been granted by any building or environmental agency. The Army Core of Engineers still has not received a plan even though a foot bridge over a US waterway is being replaced to transport equipment and is being prepared for truck traffic.

GURR has used the preemption claim and GCP to intentionally misdirect the environmental oversight agencies while racing forward to perform as much site work as possible before the courts resolve the preemption status.

But why? Even though the site work has a significant negative impact to the Town related to the water supply, it appears that completed site work provides a benefit to GURR. It may increase the property's eminent domain value, should the Town pursue the eminent domain option to acquire the property. And it may strengthen the preemption claim if/when the preemption issue is finally addressed in the courts.

To recap, the Town's only path to challenge the preemption for this specific situation is the long, expensive, arduous court process, while GURR skirts all environmental approvals and oversight during their "site work" development activities.

The immediate requirement is for a Federal Level agency to step in and stop the ongoing site work until it can be approved to ensure that it is adhering to the environmental requirements while the property's ownership issue is being resolved by the courts.

The broader, longer term aspect is to correct the RR's loophole related to a General Construction Permit and to provide municipalities with a process to resolve the preemption status with the Surface Transportation Board **BEFORE** this type of development begins.