

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

LAND COURT DEPARTMENT  
OF THE TRIAL COURT

TOWN OF HOPEDALE,

Plaintiff,

ELIZABETH REILLY, CAROL J. HALL,  
DONALD HALL, HILARY SMITH,  
DAVID SMITH, MEGAN FLEMING,  
STEPHANIE A. MCCALLUM,  
JASON A. BEARD, AMY BEARD,  
SHANNON W. FLEMING, and  
JANICE DOYLE,

Intervenor-Plaintiffs,

v.

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

Defendants.

CASE No. 20 MISC 000467 (DRR)

**VERIFIED COMPLAINT OF INTERVENOR-PLAINTIFFS ELIZABETH REILLY AND  
TEN CITIZENS OF HOPEDALE**

Intervenor-plaintiff Elizabeth Reilly and Ten Citizens of Hopedale (the "Citizen Plaintiffs"), join the action originally filed by the above-referenced plaintiff, the Town of Hopedale (the "Town"), seeking to vacate the dismissal of the Town's action; preliminarily enjoin any land-clearing activity in the M.G.L. c. 61 Forestland at 364 West Street in the

northern tip of Hopedale, Massachusetts; and declare that any settlement in this case between the Town and the Railroad Defendants cannot include the release, waiver or transfer of any part of the Town's c. 61 property interests without Town Meeting authorization, and that the Town's ultimate purchase price of the Forestland must be reduced due to the Railroad Defendants' unlawful land-clearing of the Forestland that it commenced during the pendency of the Hopedale Citizens' action and while under the Appeals Court injunction.

This is an action by more than ten taxpaying citizens of the Town to effectuate the order it obtained in its Superior Court action that the Settlement Agreement entered into between the Town and the Railroad Defendants is unauthorized and to protect public rights in property.

#### **PARTIES**

1. Intervenor-plaintiffs are Elizabeth Reilly, Carol J. Hall, Donald Hall, Hilary Smith, David Smith, Megan Fleming, Stephanie A. McCallum, Jason A. Beard, Amy Beard, Shannon W. Fleming, and Janice Doyle. Each Intervenor-Plaintiff is a taxpaying resident and citizen of Hopedale, Massachusetts.

2. Plaintiff Town of Hopedale is a body corporate and politic established under the laws of the Commonwealth of Massachusetts.

3. Defendant Grafton & Upton Railroad Company is a domestic profit corporation organized and existing under the laws of Massachusetts with its principal place of business located in North Grafton, Massachusetts (the "Railroad").

4. One Hundred Forty Realty Trust is a nominee trust established under a declaration of trust dated September 16, 1981 and recorded in the Worcester Registry of Deeds in Book 7322, Page 177 (the "Trust").

5. Defendant Jon Delli Priscoli (“Delli Priscoli”) is the principal owner of Grafton & Upton Railroad Company and resides in North Grafton, Massachusetts. Delli Priscoli is also a Trustee of the Trust. This action is brought against Delli Priscoli in his capacity as owner of the Railroad and as a Trustee.

6. Defendant Michael R. Milanoski (“Milanoski”) is the president of the Railroad and resides in Cohasset, Massachusetts. Milanoski is also a Trustee of Trust. This action is brought against Milanoski in his capacity as president of the Railroad and as a Trustee.

### **JURISDICTION AND VENUE**

7. This Court has concurrent jurisdiction with the Superior Court over the parties and the subject matter of this action pursuant to M.G.L. c. 231A.

8. This Court has personal jurisdiction over Defendants pursuant to M.G.L. c. 223A because each Defendant has transacted business in Massachusetts, and/or resides in Massachusetts.

9. Venue is proper in this Court because it affects land in Worcester County, Massachusetts and all Defendants conduct business in Worcester County, Massachusetts.

### **FACTS**

10. Charles E. Morneau was the prior Trustee (“Prior Trustee”) of the Trust, which owns 155.24 acres of undeveloped land at 364 West Street in the northern tip of Hopedale, Massachusetts (the “Property”).

11. Of the 155.24 acres, 130.18 acres are, and have been since 1992, classified as forestland subject to M.G.L. c. 61 (the “Forestland”).

12. The Forestland surrounds and has running through it 25.06 acres of wetlands that are excluded from the Forestland c. 61 classification (the “Wetlands”).

13. The Property is depicted on the map attached hereto as Exhibit 1. The Property is indicated on Exhibit 1 as the orange area in the center of the map. The dark shaded area in the southeast portion of the Property is the Wetlands, and the non-shaded portion is the Forestland.

14. The Property abuts and is contiguous with the Town-owned 279-acre public forested park, the Hopedale Parklands, depicted by the yellow area on Ex. 1.

15. The Property is also one of the few remaining sites available to the Town to potentially locate a much-needed Town water supply. See Environmental Partners Group, Inc. Report on the Property as new water supply, attached hereto as Exhibit 2. The report notes that the Property is within the watershed for all of Hopedale's public water supply wells and that the Property provides an important buffer to protect the Town's water supply.

16. The Grafton & Upton Railroad crosses the Forestland running, roughly, north to south. See Ex. 1.

17. The Railroad has also long coveted the Property to expand its rail system in Hopedale and construct a transloading facility.

18. The Railroad had, since March 15, 2019, tried to obtain the Property by eminent domain by filing a petition with the Massachusetts Department of Public Utilities. The Railroad's attempt to take the Property through the eminent domain process was stymied after opposition by the Town, Conservation Commission, and Water & Sewer Commission, among others.

19. The Railroad also failed to secure a public-private partnership with the Town to obtain some portion of the Property.

20. On or about June 27, 2020, the Prior Trustee of the Property entered into a Purchase and Sale Agreement with Delli Priscoli, owner of the Railroad and trustee of New

Hopping Book Realty Trust, for the Railroad to purchase the Property from the Trust for \$1,175,000.

21. The 130.18 acres of Forestland on the Property are subject to the protections of M.G.L. c. 61, including § 8, which prohibits sale of c. 61 forestland for or conversion to industrial or commercial use unless the Town has been properly notified of the intent to sell for or to convert to that other use and given 120 days to exercise a right of first refusal to purchase the land pursuant to the same terms set forth in the purchase and sale agreement.

22. On or about July 9, 2020, Milanoski, President of the Railroad, on behalf of the Prior Trustee, provided the Town with a Notice of Intent to Sell Forest Land Subject to Chapter 61 (“Notice”) to be used for railroad transloading uses, triggering the Town’s right of first refusal and ripening into an irrevocable option (the “Option”). The Notice is attached hereto as **Exhibit 3**.

23. The Notice included the entire 155.24 acres of the Property in the \$1,175,000 purchase price, including the 130.18 acres of Forestland and the 25.06 acres of Wetlands, without providing the purchase price of the 130.18 acres Forestland separately.

24. The Town informed the Prior Trustee and the Railroad that the Town was considering exercise of its statutory Option to purchase the Property from the Prior Trustee. The Town also informed the Trust and the Railroad that the Notice was insufficient because it included non-Forestland in the total purchase price. See August 19, 2020 letter, attached hereto as **Exhibit 4**.

25. On or about August 26, 2020, the Hopedale Foundation informed the Town by letter that “[i]f the Town of Hopedale decides to exercise its option to purchase property at 364 West Street, Hopedale, MA . . . [t]he Hopedale Foundation would be willing to assist the Town

of Hopedale in reducing its financial burden as a result of the purchase.” See August 26, 2020 letter attached hereto as Exhibit 5.

26. By letter on or about October 7, 2020, a month before the Town’s 120-day option period would expire on the Notice, the Prior Trustee claimed the Notice was not defective due to its inclusion of the Wetlands in the purchase price. See October 7, 2020 letter attached hereto as Exhibit 6.

27. The Prior Trustee by the same letter purported to also withdraw its Notice, claiming it “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.” Ex. 6.

28. The Town responded by letter dated October 8, 2020 that the first refusal option had ripened and, therefore, is irrevocable. See October 8, 2020 letter attached hereto as Exhibit 7. The Town continued its process towards exercising its first refusal option to purchase the Forestland.

29. On September 10, 2020, the Hopedale Finance Committee voted to approve its Due Diligence Report on the financial impact of the Town’s exercise of its Option to purchase the Forestland. See September 10, 2020 report attached hereto as Exhibit 8. The Finance Committee strongly recommended that the Town purchase the Forestland. In its report, the Finance Committee noted that the Hopedale Foundation had indicated interest in assisting acquiring the Property under the Town’s Option. The Finance Committee did not have any further details of the gift offer from the Hopedale Foundation but did include a hypothetical net debt service estimate based on an assumed donation from the Hopedale Foundation of \$750,000,

or approximately half of the cost of the purchase of the Property, including debt service. Id., Exhibit C.

30. Just two days after the Finance Committee Due Diligence Report and four days after the Town informed the Railroad it was moving forward to exercise its Option, the Railroad orchestrated a series of conveyances designed to illegally seize control of the Property before the Town could finalize the exercise its first refusal option and attempted to squelch the Town's Option.

31. On October 12, 2020, the owner of the beneficial interest of the Trust assigned the entire beneficial interest in the Forestland of the Property, protected under c. 61, to the Railroad for \$1,175,000.

32. On the same day, the Prior Trustees resigned and named Delli Priscoli and Milanoski as the new trustees.

33. On the same day, the Prior Trustees sold to the Railroad the Property's 25.06 acres of Wetlands that are surrounded by the Forestland plus an additional 20-acre parcel on the opposite side of West Street, at 363 West Street, for \$1.00.

34. On or about October 15, 2020, the Railroad informed the Town of its bait and switch land deal but did not provide a further formal notice pursuant to c. 61 or recognize the Town's Option. See October 15, 2020 letter attached hereto as Exhibit 9.

35. The Prior Trustee and the Railroad never provided the Town with a formal notice of Prior Trustee's intent to sell the Forestland to the Railroad for Railroad use through sale of 100% beneficial interest and appointment of the Delli Priscoli and Milanoski as Trustees, in violation of the requirements of c. 61.

36. The Trust's assignment of 100% of its beneficial interest to the Railroad was equivalent to a transfer of title to the c. 61 Forestland and therefore constituted a sale of land taxed under c. 61 for non-forest purposes giving rise to a separate and independent Option in the Town.

37. On or about October 17, 2020, the Hopedale Foundation reaffirmed its gift offer, "to assist the Town of Hopedale in reducing its financial burden as a result of the Town of Hopedale exercising its option to purchase the [Property], as represented in the Notice of Intent to Sell . . . [t]he Trustees voted that after the purchase of the land The Hopedale Foundation would grant to the Town of Hopedale the amount of seven hundred and fifty thousand dollars (\$750,000) to be paid in increments of fifty thousand dollars (\$50,000) per year for a period of fifteen years." See October 17, 2020 letter attached hereto as Exhibit 10.

38. On October 21, 2020, the Town informed the Trust and the Railroad that the Town holds an irrevocable Option to purchase the Forestland based on the Notice, which could not be withdrawn, and that the Town has a separate and independent opportunity to exercise its statutory Option to the purchase the Forestland based on the sale of 100% of the beneficial interest in the Trust to the Railroad. See October 21, 2020 letter attached hereto as Exhibit 11.

39. On October 22, 2020, the Environmental Partners Group, Inc. provided its Report to the Town, reporting that conservation of the Property is critical to protection of the Town's water supply and that the Town would need control of the Property in order for the Town to develop a new water supply. Ex. 2.

40. On October 24, 2020, the Town held a Special Town Meeting, attended in person (despite Covid-19) by over 400 citizens of Hopedale.

41. Article 3 of the Town Meeting Warrant was:



To see if the Town will vote to acquire, by purchase or eminent domain, certain property, **containing 130.18 acres**, more or less, located at 364 West Street . . . and in order to fund said acquisition, raise and appropriate, transfer from available funds, or borrow pursuant to G.L. c. 44, §7, or any other enabling authority, a sum of money **in the amount of One Million One Hundred and Seventy-Five Thousand Dollars (\$1,175,000.00)**, and to apply any discretionary grants, gifts, awards, or donations of money given to the Town for the purpose of land conservation, said property **being acquired pursuant to a right of first refusal in G.L. c. 61, §8**, which right is subject to exercise by a vote of the Board of Selectmen, **such acquisition to be made to maintain and preserve said property 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, and further authorize the Board of Selectmen to take any and all actions and execute any and all documents to carry out the purposes of this article; or take any action related thereto.

See Special Town Meeting Minutes, attached hereto as **Exhibit 12** (emphasis added).

42. The members of the Town spoke overwhelmingly in favor of acquiring the 130.18 acres of Forestland for the use of the public for conservation and recreation purposes. The Finance Committee recommended approval of Article 3 and informed the Town Meeting of the Hopedale Foundation's gift offer. Chairs of the Conservation Commission and Water and Sewer Commissions all spoke in favor of the Article.

43. Board Chairman Brian Keyes moved to appropriate \$1,175,000, less amounts received by gift, to acquire the 130.18-acre Forestland and the motion passed unanimously.

44. Article 5 asked the Town to consider whether "to take by eminent domain pursuant to Chapter 79 of the General Laws, for the purpose of public park land" the 25.06 Wetlands and to appropriate funds for the taking.

45. The Town approved the motion to purchase or take by eminent domain the Wetlands and to appropriate \$25,000 to fund the acquisition.

46. The Board, on October 30, 2020, voted to exercise its Option to acquire the Forestland and to take by eminent domain the Wetlands, each vote consistent with the Town

Meeting warrant votes. The October 30, 2020 Board Meeting Minutes reflect that when the Board voted, it thanked the Hopedale Foundation for its donation, and confirmed “that this warrant article is for the acquisition of the land [ ] for public conservation and is consistent with Article 97 [ . . . ] [and] that once this land is moved into Article 97, the town would need a 2/3rds vote from Massachusetts Legislature to change this.” October 30, 2020 Board Minutes attached hereto as **Exhibit 13**.

47. Despite the Town’s ongoing process of exercising its first refusal option through Town Meeting votes and the Board’s votes, the Railroad began clearing the Forestland, prompting the Town, on October 28, 2020, to sue the Railroad in Land Court, in a civil action styled **Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust, et al.**, 20 MISC 000467, to seek a judicial order that the Notice was effective. The Town also moved to enjoin the Railroad’s Forestland clearing.

48. On November 2, 2020, the Town recorded notice of the decision to exercise the Option in the Worcester South District Registry of Deeds, attached hereto as **Exhibit 14**. The Notice of Exercise references the dubious steps taken by the Railroad in its attempt to squelch the Town’s c. 61 rights.

49. The Town sent the Notice of Exercise with the purchase and sale agreement to the Trust, perfecting its exercise of the Option as required under c. 61, § 8.

50. The Board validly exercised the Option to purchase the c. 61 Forestland on behalf of the Town.

51. The Railroad refused to agree to sell the c. 61 Forestland to the Town despite the Town’s valid exercise of its Option.

52. Also on November 2, 2020, the Town formally recorded its taking by eminent domain of the 25.06 acres of Wetlands. See November 2, 2020 recordation attached hereto as **Exhibit 15**.

53. The Railroad, just before a hearing on the Town's motion for preliminary injunction, filed a Petition for a Declaratory Order with the Surface Transportation Board that the Town's rights under c. 61 were preempted by federal railroad law.

54. Following a hearing on November 23, 2020, the Land Court denied the Town's request for a preliminary injunction in a brief and narrow decision finding expressly that the Town is entitled to a right of first refusal but that it was unclear whether or when that right had been triggered or had ripened.

55. In January 2021, the Town and the Railroad engaged in two sessions of mediation, culminating in a Term Sheet that was revealed to the Town at a January 25, 2021 Board meeting. Despite ongoing community opposition, the Board voted 2-1 to approve the Term Sheet. The Term Sheet called for a Settlement Agreement to be prepared and executed no later than February 9, 2021.

56. On February 5, 2021, the Hopedale Board of Water and Sewer Commissioners requested that the Board cease and desist from any further negotiations or agreement with the Railroad with respect to water rights for the Town. See February 5, 2021 letter attached hereto as **Exhibit 17**. The Water and Sewer Commissioners informed the Board that the Term Sheet abrogates and impairs the authority and sole jurisdiction of the Commission and that the Board lacks the authority to speak on behalf of the Commission or limit its powers.

57. By a letter dated February 7, 2021, the Citizen Plaintiffs expressed their strong objections to the Term Sheet, including that it was illegal because, *inter alia*, the Railroad is not

the rightful property owner, it violated the Town's Option pursuant to M.G.L. c. 61, the Board had not been authorized to enter into it and it would violate Article 97. See Demand Letter attached hereto as Exhibit 18.

58. Despite the Demand Letter and other objections voiced by Town residents, the Board voted 2-1 in executive session to approve a Settlement Agreement with the Railroad.

59. The Settlement Agreement was executed between the Board and the Railroad on February 9, 2021 and is attached hereto as Exhibit 19.

60. The Settlement Agreement is in direct conflict with what the Town voted to appropriate at Town Meeting and is in excess of the Board's authority.

61. In the Settlement Agreement, the Board agreed that the Town would pay \$587,500 to the Railroad in exchange for only approximately 40 acres of the 130.18 acres of Forestland.

62. The Town Meeting vote, however, approved purchase of the entire 130.18 acres of Forestland for \$1,175,000, not 40 +/- acres for \$587,500.

63. The Settlement Agreement provides for purchase of less than a third of the land at a higher cost per acre. The approximate cost per acre of Forestland that was authorized was \$9,026; the Settlement Agreement required that the Town pay \$14,687.50 per acre of Forestland.

64. The Board is not authorized to pay \$587,500 for 40 acres of Forestland.

65. The purpose of the Town Meeting vote on Article 3 was to acquire all 130.18 acres of Forestland, preserve it as parkland and prevent industrial development by the Railroad on that land.

66. The Settlement Agreement was starkly inconsistent with this expressed purpose as it allows the Railroad to acquire and develop 90 of the 130 acres of Forestland to use it for industrial purposes.

67. The Town Meeting vote authorized the appropriation only in the event that the Option was exercised. The gift from the Hopedale Foundation, accepted by the Town through the Town Meeting vote, was also conditioned on the exercise of the first refusal right for the entire c. 61 Forestland.

68. In the Settlement Agreement, the Board agreed to waive the Town's c. 61 Option.

69. The Board was not authorized to and cannot, as a matter of law, waive the Town's Option.

70. Moreover, the Town Meeting voted to exercise its first refusal option, the Board ratified that vote and executed the recordation of the exercise of its first refusal option.

71. In the Settlement Agreement, the Board agrees to waive the Town's right to acquire any of the Property by eminent domain under Chapter 79.

72. The Board was not authorized to and cannot, as a matter of law, waive the Town's Chapter 79 eminent domain authority.

73. Moreover, the Town Meeting had voted to take the Wetlands by eminent domain under Chapter 79.

74. In the Settlement Agreement, the Board also agrees to cover the rollback taxes owed by the Property owner in the event of a conversion of use from Forestland along with half of the costs of surveying the Property. There was no Town Meeting authorization for that expenditure.

75. In the Agreement, the Board agrees to additional encumbrances on the c. 61 Forestland that the Town would acquire, including several easements, not authorized by Town Meeting vote.

76. The Town Meeting vote authorized taking the 25.06 acres of the Wetlands by eminent domain for \$25,000.

77. In the Settlement Agreement, however, the Board agreed to include the Wetlands, for which the Railroad paid less than \$1.00, as part of the \$587,500 purchase price.

78. The Town Meeting vote expressly noted that the acquisition of the Property was for conservation and recreation purposes.

79. Plaintiffs were not aware of the Board's illegal actions until it released a Term Sheet on or about January 25, 2021. The Term Sheet called for the execution of a Settlement Agreement by February 9, 2021.

80. On February 7, 2021, the Plaintiffs sent the Board a Notice of Intent to Sue pursuant to c. 214, § 7A if it moved forward with executing the Settlement Agreement. The Attorney General was copied on the letter but has not responded.

81. On or about February 9, 2021, the Board executed the Settlement Agreement.

82. On March 2, 2021, the Hopedale Citizens brought suit in Worcester Superior Court against the Town of Hopedale, the Board of Selectmen and the Railroad Defendants to enjoin the execution of the Settlement Agreement and require the Town to enforce its full c. 61 Option because the key provision of the Settlement Agreement lacked authorization – namely, the Board of Selectmen only had authority from Town Meeting to exercise the Option to purchase the entire 130 acres of Forestland and did not have the authority to acquire any lesser

portion of the Forestland. The action is styled Reilly et al v. Town of Hopedale et al., No. 2185-cv-00238.

83. After appeal of the denial of the motion for preliminary injunction, on March 25, 2021, the Single Justice of the Appeals Court (Meade, J.) enjoined the Town from paying any funds or transferring any property interests under the Settlement Agreement.

84. While the Appeals Court order remained in force, the Railroad Defendants again began clearing the Forestland.

85. On September 9, 2021, the Superior Court (Goodwin, J.) entered a Temporary Restraining Order against the Railroad Defendants and on September 24, 2021 entered a Preliminary Injunction against the Railroad Defendants from any further land -clearing.

86. On November 4, 2021, the Superior Court (Goodwin, J.) issued its decision on the parties' cross-motions for judgment on the pleadings, entering judgment for the Citizen Plaintiffs on Count I, permanently enjoining the execution of the Settlement Agreement without Town Meeting authorization.

87. Judge Goodwin also extended the injunction against the Railroad Defendants' land-clearing activities for sixty (60) days to give the Town time to decide whether to seek Town Meeting authorization of the Settlement Agreement or seek to enforce the Town's full c. 61 rights.

88. Judge Goodwin made findings of fact and law that are now law of the case including, that "it is undisputed that the Town attempted to carry out the steps necessary to exercise its Option" (November 4, 2021 Order, Dkt. No. 45 at 5); that the "Railroad Defendants' attempt[ed] to circumvent Chapter 61, s. 8, process by purporting to acquire only the 'beneficial interest' in the forest land while undertaking commercial operations . . . [and] court cannot

ignore Railroad Defendants' initiation of land clearing operations after the Town issued a notice of intent" (*id.* at 11); and that the Town could either "seek the Town Meeting authorization necessary to validate the Settlement Agreement or [] take the necessary steps to proceed with its initial decision to exercise the Option to the entire Property" (*id.* at 12). The Town was uncertain about the ruling and whether Judge Goodwin had ruled that the Town did, in fact, retain its c. 61 rights.

89. The Court granted the Town's assented to request to extend the injunction to January 31, 2022 while the Town filed a Motion for Clarification.

90. On December 14, 2021, the Superior Court (Goodwin. J.) issued an order of clarification for the Town, holding that the Settlement Agreement "provided that in exchange for the Railroad voluntarily selling a portion of the forest lands to the Town, the Town would cease efforts to enforce G.L. c. 61, s. 8 Option" and that, accordingly, "the Settlement Agreement would fail to take effect" if the Board does not obtain authorization at Town Meeting and the Town would retain "the right to continue attempting to enforce the Option". Order dated December 16, 2021, Dkt. No. 50).

91. The Court's order held that "the Settlement Agreement is not effective". Dkt No. 50 at 2.

92. The Court further wrote that the Railroad cannot get all of the benefits of the agreement and give nothing up in exchange, a result that "would be unjust, to say the least." Dkt No. 50 at n. 3.

93. The Court ruled that if the Town did not or could not obtain Town Meeting authorization for the Settlement Agreement, then "the Town could seek rescission of the Settlement Agreement". Dkt. No. 50 at 2.



94. The Town, thereafter, on December 30, 2021, filed its Motion to Vacate the Stipulation of Dismissal in this Court. The Town also sought an extension of the injunction in its Motion to Vacate.

95. The Railroad Defendants have argued that the Settlement Agreement remains effective and that the Superior Court has no jurisdiction over it.

96. The Railroad Defendants have refused to agree to maintain the status quo and indicated that they are free to restart land-clearing activities as of January 31, 2022.

97. The Railroad Defendants have already illegally cleared significant portions of the Forestland.

**COUNT I**  
**VACATE STIPULATION OF DISMISSAL**

98. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

99. Intervenor-Plaintiffs succeeded in enjoining the execution of the Settlement Agreement because the material term lacked Town Meeting authorization.

100. The Superior Court has ruled that the Settlement Agreement is not effective.

101. The sole reason that the Town filed the Stipulation of Dismissal was because it was a provision of the ineffective Settlement Agreement.

102. The Railroad Defendants disregard the authority of the Superior Court Order and maintain that the Settlement Agreement is still in full force and effect.

103. To effectuate the Superior Court's Order, secured by the Intervenor-Plaintiffs, the Settlement Agreement must be rescinded.

104. To effectuate the Superior Court's Order, secured by the Intervenor-Plaintiffs, the previously entered Stipulation of Dismissal must be vacated and this action must resume.

**COUNT II**  
**PRELIMINARY INJUNCTION AGAINST RAILROAD DEFENDANTS FROM ANY**  
**LAND-CLEARING ACTIVITIES IN THE FORESTLAND UNTIL DISPOSITION OF**  
**THIS ACTION**

105. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

106. Twice the Railroad Defendants have illegally caused damage to the c. 61 Forestland, each time in violation of c. 61.

107. The Railroad Defendants have illegally caused damage to the c. 61 Forestland in violation of injunctive orders from the Massachusetts Appeals Court.

108. The Railroad Defendants maintain now that the Superior Court has no jurisdiction over them and that the Superior Court's injunctive order apparently is not applicable to them.

109. The Railroad Defendants have refused to agree to maintain the status quo pending resolution of the Town's Motion to Vacate.

110. The Railroad Defendants have refused to agree to not further clear the Forestland beyond February 14, 2022.

111. Only an explicit Court Order preliminarily enjoining the Railroad Defendants can protect against their stated intention to resume land-destruction activities until full resolution of this dispute.

112. The Railroad Defendants must be restrained from causing further destruction to the Forestland in violation of c. 61.

**COUNT III**  
**DECLARATORY JUDGMENT**

**A. Declaratory judgment that the Town's exercised c. 61 Option cannot be waived, transferred or released without Town Meeting authorization.**

113. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

114. There exists an actual controversy concerning whether the Town and the Railroad Defendants can enter into a settlement agreement in this action that includes the Town's waiver, transfer or release of any part of its c. 61 rights without Town Meeting approval because the Town has effectively exercised its Option and cannot alienate that property interest without Town Meeting approval.

115. The Railroad Defendants claim that the Town has waived its c. 61 rights and cannot now enforce the Option.

116. Intervenor-Plaintiffs seek a judicial determination that the Town has effectively exercised its Option and that the Town and the Railroad Defendants cannot enter into a settlement agreement in this action that includes the Town's waiver, transfer or release of any part of its c. 61 rights without Town Meeting approval because the Town has effectively exercised its Option and cannot alienate that property interest without Town Meeting approval.

117. A declaratory judgment would terminate these uncertainties which give rise to this action.

**B. Declaratory judgment that the Town's purchase price of the c. 61 Forestland must be reduced due to the damage caused by the Railroad Defendants' clearing of the Forestland.**

118. Intervenor-Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

119. There exists an actual controversy concerning whether the Town is authorized to pay the full purchase price under the Option because the Railroad Defendants have cleared significant portions of the Forestland, thus reducing its value.

120. Intervenor-Plaintiffs seek a judicial determination that the Town's ultimate purchase price must be reduced to account for the Railroad Defendants' past damage to the Forestland through land-clearing operations.

121. A declaratory judgment would terminate these uncertainties which give rise to this action.

### **PRAYER FOR RELIEF**

WHEREFORE, Intervenor-Plaintiffs respectfully request that the Court award the following relief:

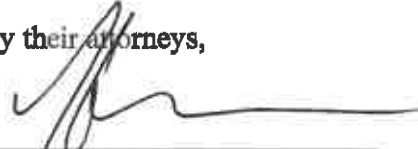
- a. Vacate the Stipulation of Dismissal in this case and allow the action to proceed;
- b. Preliminarily and permanently enjoin the Railroad Defendants from altering, clearing, or in any way damaging, or taking any action, or conducting any activities on or concerning the c. 61 Forestland which would result in any alienation of the c. 61 Forestland or any conversion of its current use as forest land;
- c. Enter a declaratory order that the Town effectively and validly exercised its Option;
- d. Enter a declaratory order that any settlement agreement between the Town and the Railroad Defendants cannot, in any way, waive, release or transfer the Town's c. 61 property interests that were effectively exercised;
- e. Enter a declaratory order that the final purchase price of the c. 61 Forestland by the Town from the Railroad Defendants must be reduced to account for the Railroad Defendants' land clearing damage already caused;
- f. Enter a judgment on each Count for the Plaintiffs, the Town;
- g. Enter a judgment on each Count for the Intervenor-Plaintiffs;

- h. Award Intervenor-Plaintiffs their attorneys' fees and costs incurred in this action;  
and
- i. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

ELIZABETH REILLY, CAROL J. HALL,  
HILARY SMITH, DAVID SMITH,  
DONALD HALL, MEGAN FLEMING,  
STEPHANIE A. MCCALLUM, JASON A.  
BEARD, AMY BEARD, SHANNON W.  
FLEMING, and JANICE DOYLE

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Dated: January 20, 2022

**VERIFICATION**

I, Elizabeth Reilly, have read the above Verified Complaint and now state, under the 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.

A handwritten signature in cursive script that reads "Elizabeth Reilly". The signature is written in black ink and is positioned above a horizontal line.

Elizabeth Reilly

Dated: 1/20/22