

## Metropolitan Council

Meeting date: July 9, 2014

**Subject:** Southwest Light Rail Transit (Green Line Extension): Kenilworth Corridor Public Ownership Memorandum of Understanding

**District(s), Member(s):** All

**Policy/Legal Reference:** Minn. Stat. 473.3999

**Staff Prepared/Presented:** Pat Born, Regional Administrator, 651-602-1723  
Brian Lamb, General Manager, 612-349-7510  
Mark Fuhrmann, Deputy General Manager, 651-602-1942

**Division/Department:** Metro Transit/Southwest LRT Project Office

### Proposed Action

That the Metropolitan Council:

- (1) approve the attached resolution regarding long-term public ownership and control of Kenilworth Corridor in the city of Minneapolis, and
- (2) approve the Memorandum of Understanding with city of Minneapolis pertaining to the preservation of Kenilworth Corridor in public ownership and control and authorize the Regional Administrator to execute it.

### Background

The Hennepin County Regional Railroad Authority (HCRRA) purchased the Kenilworth Corridor from private freight rail interests in 1984 for the purpose to preserve the corridor for rail transportation in the future.

In 1998, the HCRRA executed a Trackage Rights Agreement with Soo Line Railroad and Twin Cities & Western Railroad Company. This agreement as amended over time has governed the use of the HCRRA owned right-of-way for the purposes of freight rail movements.

In April 2014, Metropolitan Council approved the Southwest Light Rail Transit (SWLRT) project scope and budget which included co-location of light rail and freight rail in the Kenilworth Corridor in Minneapolis. This action will create a different operating environment for freight rail than what has existed since 1998.

Discussions with city of Minneapolis and Hennepin County indicate a strong long-term objective to keep the Kenilworth Corridor in public ownership including the property upon which freight rail operates.

### Rationale

Minneapolis, Hennepin County and Metropolitan Council all have a shared interest to retain public ownership of the Kenilworth Corridor. This Memorandum of Understanding with Minneapolis articulates this shared objective and states the Council will take all reasonable actions to keep Kenilworth Corridor in public ownership while it is being used for rail transportation of any kind.

Public ownership will provide maximum influence working with freight rail interests to create a good neighbor operating environment with freight rail co-

existing with light rail, pedestrian and bike trails and the adjacent residential neighborhoods.

The Council staff has begun a due diligence review of the potential scenario where the Council becomes the owner of the Kenilworth Corridor right-of-way. This review will include but not be limited to the Council's statutory authority to own property upon which freight rail operates and enter into a Trackage Rights Agreement in the same manner as a Regional Railroad Authority, regulatory responsibilities, financial considerations as well as operational and environmental liability exposure. The results of the due diligence review will be reported to the Council.

The city, county and the Council will work together to achieve the shared objective to maintain public ownership of Kenilworth Corridor in the long-term. Any follow-on agreements necessary to transfer ownership to the Council, transfer the Trackage Rights Agreement to the Council and/or the Council to transfer any excess right-of-way after SWLRT project completion to the Minneapolis Park and Recreational Board will require Council action.

### **Funding**

There is no direct funding impact at this time. If the HCRRA owned right-of-way is transferred to the Council, it is assumed this is a transfer of property rather than sale of the property.

If the Council in the future enters into a Trackage Rights Agreement with freight rail interests, there will be operating cost and tenant revenue considerations to be negotiated.

### **Known Support / Opposition**

City of Minneapolis and Hennepin County support the objective to retain public ownership of Kenilworth Corridor right-of-way.

## MEMORANDUM OF UNDERSTANDING

### Preservation of Kenilworth Corridor in Public Ownership and Control

This Memorandum of Understanding is between the City of Minneapolis (City) and the Metropolitan Council (Council).

1. It is the intent of the parties that all of that part of the Kenilworth Corridor between M.P. 13.7 and M.P. 16.2 (as shown on Exhibit 1 attached) that is being used for rail transportation of any kind, that may foreseeably in the future be used for rail transportation of any kind or that legally has a present use for rail transportation of any kind, shall remain in public ownership. The Council will take all reasonable actions to keep the Kenilworth Corridor in public ownership while it is being used for rail transportation of any kind, including but not limited to the following:

(a) The Metropolitan Council will exert whatever influence it has to have the current owner of the rail line in the Kenilworth Corridor, the Hennepin County Regional Railroad Authority, enter into an agreement with the City, committing on behalf of itself and any successors in interest (i) to not admit additional railroad tenants or users to use of the line; and (ii) to limit use, to the maximum extent possible, pursuant to its rights under Section 2.3 of that certain Trackage Rights Agreement between Soo Line Railroad Company, Twin Cities & Western Railroad Company and Hennepin County Regional Railroad Authority dated August 10, 1998, as amended to date; (the "Trackage Agreement"); and (iii) to prohibit modification of the Trackage Agreement without City consent; (iv) that transfer of the property, if any, will be an intergovernmental transfer intended to keep the corridor in public ownership; and (v) it will not sell or offer the property for sale so as to create an obligation to offer a right of first refusal under Minnesota Statutes, Section 222.632.

(b) If the Council acquires any property in the Kenilworth Corridor to be used for freight rail, including but not limited to property from BNSF or others located to the west of the HCCRA property and just north of the channel in the Kenilworth Corridor, then the Council agrees on behalf of itself and any successors in interest as to any such property: (i) to take all reasonable actions to keep the property that is being used for freight rail in public ownership while it is being used for rail transportation of any kind; and (ii) to admit only Twin Cities & Western Railroad Company and not admit additional railroad tenants or users to use of this property; and (iii) to impose limitations in any new or amended trackage rights agreement that limit use of this property, to the maximum extent possible, consistent with the limitations in Section 2.3 of the above-referenced Trackage Agreement; and (iv) to not sell or offer this property for sale so as to create an obligation to offer a right of first refusal under Minnesota Statutes, Section 222.632.

(c) The Council agrees that any transfer of the property used for freight rail in the Kenilworth Corridor to the Council, shall be made strictly as an intergovernmental transfer of property.

(d) Any transfer of any property used for freight rail in the Kenilworth Corridor shall be contingent upon assumption by the transferee of the above-referenced agreements, including the Trackage Agreement(s),-the HCCRA-City agreement and the applicable Council commitments in this MOU. A memorandum of these agreements shall be filed in the county real estate records.

2. The Council intends that any property located in the Kenilworth Corridor that is now owned or subsequently acquired from BSNF Railroad by the Council that will not actively be used either for the Project or freight rail (as shown on attached Exhibit 2) shall be conveyed to the Minneapolis Park and Recreation Board for use as parkland upon terms and conditions that are agreeable to both the Council and the Board. The Council intends that any property located in the Kenilworth Corridor that it may acquire from HCCRA that it will not actively use for either the Project or freight rail shall be conveyed to the Minneapolis Park and Recreation Board for use as parkland upon terms and conditions that are agreeable to both the Council and the Park Board. This refers to the "excess" or "remnant" pieces of land and does not include any land that will actively be used for the Project, freight rail or the bicycle and pedestrian trail.
3. To the extent necessary to perpetuate and maintain the connection to local and regional trails in the area, if the Council obtains land in the Kenilworth Corridor, the Council will grant a permanent easement to the Minneapolis Park and Recreation Board for a pedestrian and bicycle trail in the Kenilworth Corridor that is laid out so as to connect to regional and local trails in the area. This permanent easement will include, as applicable, an easement for the trail to be placed over any Council owned tunnel, together with any necessary restrictions thereon.

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Metropolitan Council  
Regional Administrator

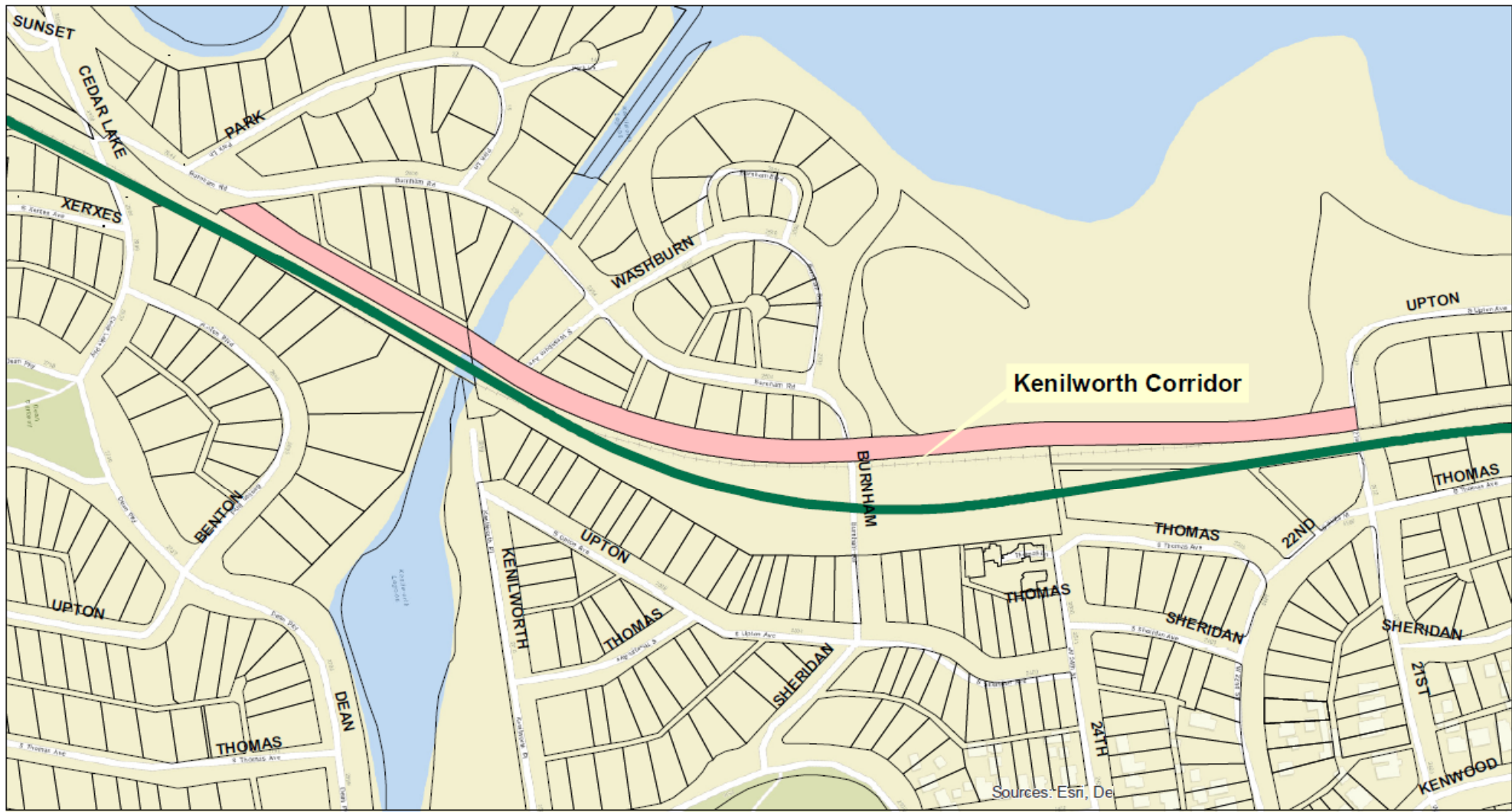
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City of Minneapolis

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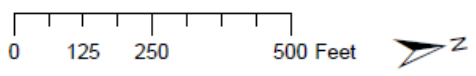


Exhibit 1






## BNSF Parcels

Date: 7/7/2014



## Legend

-  BNSF parcels
-  All other properties
-  SWLRT Alignment

July 9, 2014

**Metropolitan Council Resolution To Approve Kenilworth Corridor Property Public Owner Memorandum Of Understanding For The Southwest Light Rail Transit (Green Line Extension) Project**

WHEREAS:

1. The Governor designated the Metropolitan Council (Council) as the responsible authority for the Southwest Light Rail Transit (SWLRT) Project;
2. The Council established the Corridor Management Committee (CMC) to advise the Council in the design and construction of the SWLRT Project;
3. The Council established the Southwest LRT Project Office (SPO) to advance the design and manage construction and overall delivery of the SWLRT Project;
4. The Council engaged with the city of Minneapolis in a series of sessions regarding property ownership within the Kenilworth Corridor portion of the SWLRT Project in Minneapolis;
5. Hennepin County and the city of Minneapolis indicate a strong long-term objective is to keep the Kenilworth Corridor in public ownership and control including the property upon which freight rail operates; and
6. The CMC adopted a resolution on July 9, 2014, that recommends the Council enters into a Memorandum of Understanding with the city of Minneapolis pertaining to the preservation of public ownership and control of the Kenilworth Corridor.

NOW, THEREFORE:

BE IT RESOLVED, that the Council authorizes the Regional Administrator to negotiate and execute a Memorandum of Understanding with the city of Minneapolis pertaining to the preservation of public ownership and control of the Kenilworth Corridor.

BE IT FURTHER RESOLVED, that the Council authorizes the Regional Administrator to conclude a due diligence review of the potential scenario where the Council becomes the owner of the Kenilworth Corridor right-of-way.

BE IT FURTHER RESOLVED, that the Council will hear the findings of this report and any follow-on agreements regarding the transfer of ownership, trackage rights or excess right-of-way post SWLRT project completion will require Council action.