

Joint Report of the Transportation and Management Committees

For the Metropolitan Council meeting of March 21, 2018

Subject: Southwest LRT (Green Line Extension) Joint and Cooperative Exercise of Powers Agreement with Hennepin County Regional Railroad Authority

Proposed Action

That the Metropolitan Council (Council): (1) authorize its Regional Administrator to negotiate and execute a Joint and Cooperative Exercise of Powers Agreement with the Hennepin County Regional Railroad Authority (HCRRA) related to common carrier freight rail obligations in the Kenilworth Corridor and Bass Lake Spur and performance of duties and responsibilities under the existing Trackage Rights Agreements (TRAs); and (2) authorize its Regional Administrator or the Regional Administrator's designee(s) to negotiate and execute ancillary agreements necessary to implement the Joint and Cooperative Exercise of Powers Agreement.

Summary of Committee Discussion/Questions

Transportation Committee

Metropolitan Council Deputy General Counsel Dave Theisen and Metro Transit SWLRT Project Director Jim Alexander presented this item.

Barber asked for clarification on how the Common Carrier role will be transferred. Alexander answered that the Common Carrier on the Bass Lake Spur would be transferred from CP to HCRRA with a successful filing with the STB.

Motion by Dorfman, seconded by Letofsky. Motion carried.

Management Committee

Metropolitan Council Deputy General Counsel Dave Theisen and Metro Transit SWLRT Project Director Jim Alexander presented this item.

Cunningham asked if the Minneapolis Memorandum of Understanding will be affected by this action. Alexander responded that it will not be affected.

Motion by Rodriguez, seconded by Cunningham. Motion carried.

Management Committee

Meeting date: March 14, 2018

For the Metropolitan Council meeting of March 21, 2018

Subject: Southwest Light Rail Transit (Green Line Extension) Joint and Cooperative Exercise of Powers Agreement with Hennepin County Regional Railroad Authority

District(s), Member(s): All

Policy/Legal Reference: Minn. Stat. §§ 471.59, 398A.04

Staff Prepared/Presented: Ann Bloodhart, General Counsel, 651-602-1105
Dave Theisen, Deputy General Counsel, 651-602-1706
Brian Lamb, General Manager, 612-349-7510
Mark Fuhrmann, Deputy General Manager, 612-373-3810

Division/Department: Office of General Counsel
Metro Transit/Green Line Extension Project Office

Proposed Action

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Background

Canadian Pacific Railway (CP) owns a 6.8-mile corridor known as the Bass Lake Spur corridor in the cities of St. Louis Park, Hopkins, and Minnetonka that is required for the SWLRT Project. CP is willing to sell the right-of-way and physical assets of the Bass Lake Spur to the Council and grant a freight rail easement to HCRRA.

HCRRA owns a 2.5-mile corridor known as the Kenilworth Corridor in the city of Minneapolis that is required for the SWLRT Project. HCRRA is willing to transfer the right-of-way and physical assets of the Kenilworth Corridor to the Council.

Twin Cities & Western Railroad (TC&W) has overhead trackage rights in both Corridors under TRAs with CP and HCRRA.

In conjunction with these actions as identified in Business Item 2018-60, HCRRA will replace CP as a party to the existing TRA on the Bass Lake Spur, remain a party to the existing TRA on the Kenilworth Corridor and be responsible for common carrier obligations within the Corridors. The Joint and Cooperative Exercise of Powers Agreement will allow the parties to perform the duties and responsibilities under the existing TRAs and fulfill common carrier obligations.

Freight rail within the Corridors is subject to the jurisdiction of the Surface Transportation Board (STB). The Council will petition the STB to allow the Council to acquire the right-of-way and physical freight rail assets subject to the freight rail easements and existing overhead trackage rights.

Rationale

The proposed Joint and Cooperative Exercise of Powers Agreement is required for the STB filing. Negotiating and subsequently executing this agreement is necessary for the acquisition of the Corridors, construction of the SWLRT Project, and to demonstrate to the FTA that the Council will have continuing control of the Corridors.

Thrive Lens Analysis

Construction of the Green Line Extension will increase the region's prosperity as it will provide access to 80,900 forecasted jobs and a new transportation option for 55,000 forecasted residents within ½ mile of the planned new stations in addition to the 145,300 forecasted jobs and 35,600 forecasted residents in downtown Minneapolis.

Funding

The Joint and Cooperative Exercise of Powers Agreement between the Council and HCRRA related to administration of the TRAs and performance of common carrier obligations will be paid through fees collected from TC&W pursuant to the terms of the existing TRAs.

Known Support / Opposition

This proposed action is supported by HCRRA.

Transportation Committee

Meeting date: March 12, 2018

For the Metropolitan Council meeting of March 21, 2018

Subject: Southwest Light Rail Transit (Green Line Extension) Joint and Cooperative Exercise of Powers Agreement with Hennepin County Regional Railroad Authority

District(s), Member(s): All

Policy/Legal Reference: Minn. Stat. §§ 471.59, 398A.04

Staff Prepared/Presented: Ann Bloodhart, General Counsel, 651-602-1105
Dave Theisen, Deputy General Counsel, 651-602-1706
Brian Lamb, General Manager, 612-349-7510
Mark Fuhrmann, Deputy General Manager, 612-373-3810

Division/Department: Office of General Counsel
Metro Transit/Green Line Extension Project Office

Proposed Action

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Background

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Freight rail within the Corridors is subject to the jurisdiction of the Surface Transportation Board (STB). The Council will petition the STB to allow the Council to acquire the right-of-way and physical freight rail assets subject to the freight rail easements and existing overhead trackage rights.

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Funding

The Joint and Cooperative Exercise of Powers Agreement between the Council and HCRRA related to administration of the TRAs and performance of common carrier obligations will be paid through fees collected from TC&W pursuant to the terms of the existing TRAs.

Known Support / Opposition

This proposed action is supported by HCRRA.

SOUTHWEST

Green Line LRT Extension



Management Committee

March 14, 2018



EDEN PRAIRIE | MINNETONKA | EDINA | HOPKINS | ST. LOUIS PARK | MINNEAPOLIS

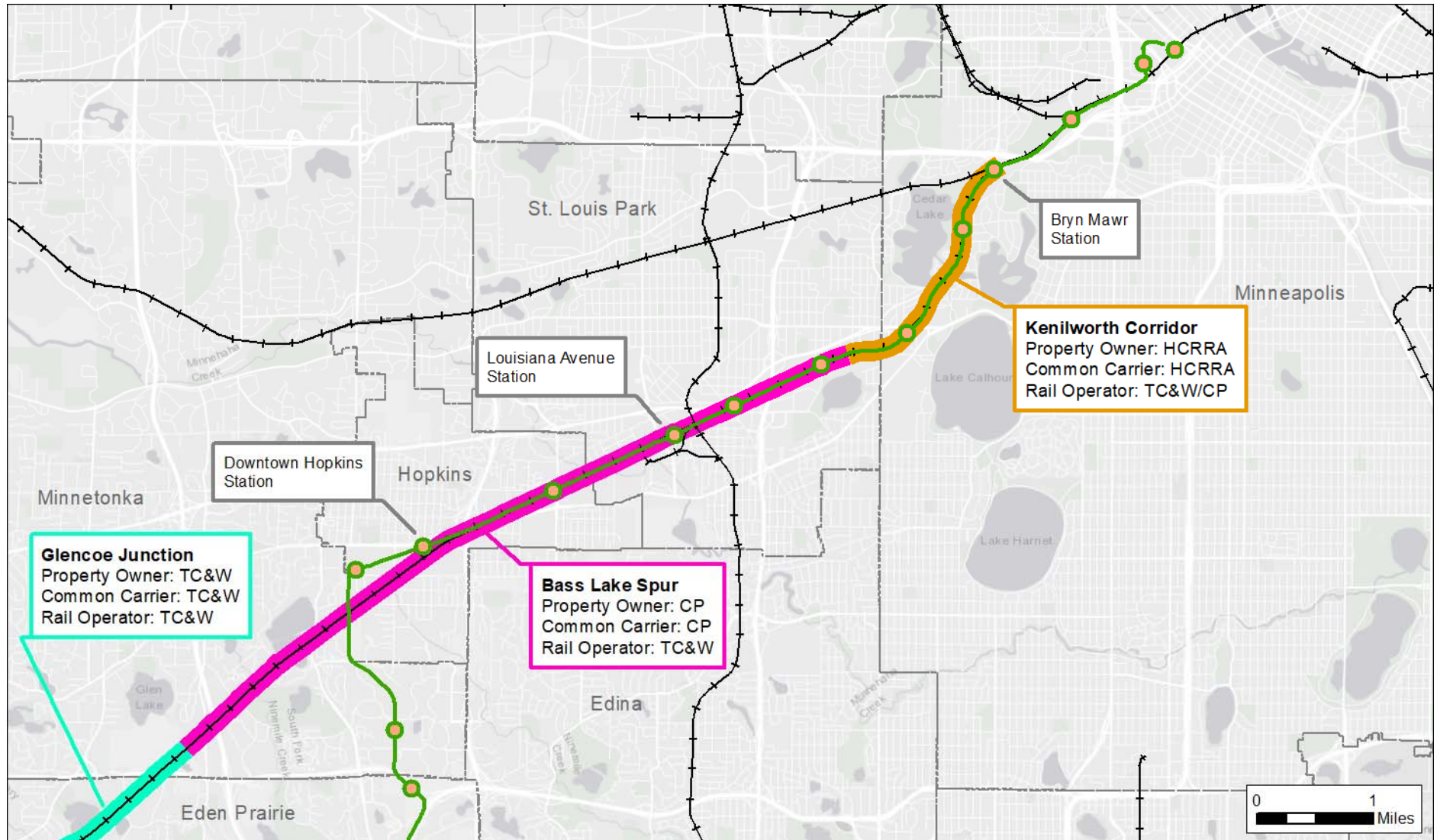
Overview of Agreements:

Joint and Cooperative Exercise of Powers Agreement

Real Estate Purchase Agreement

**Property Transfer Agreement and
Surface Transportation Board Petition and
Potential Settlement Agreement with TC&W**

Current Freight Rail Owners, Carriers & Operators



Freight Operations: Current

| Segment | Property Owner | Common Carrier | Rail Operator |
|---------------------|----------------|----------------|---------------|
| Bass Lake Spur | CP | CP | TC&W |
| Kenilworth Corridor | HCRRA | HCRRA | TC&W CP |

Background:

- Nov 9, 2016: Council authorized Regional Administrator to:
 - Negotiate Operations and Maintenance Agreement with Twin Cities and Western Railroad (TC&W)
 - File petitions with Surface Transportation Board to acquire right-of-way and physical freight rail assets of Bass Lake Spur & Kenilworth Corridor and transfer freight rail common carrier obligation to TC&W

Background:

- July 12, 2017:
 - Council authorized Regional Administrator to execute an Operations and Maintenance Agreement with TC&W related to operations on the Bass Lake Spur and Kenilworth Corridors
- Aug 16, 2017:
 - Council authorized Regional Administrator to negotiate and execute a Construction Agreement with TC&W in an amount not-to-exceed \$16.1 million

Background

- TC&W presented conditions after Council action on August 16, 2017, that exceeded financial obligations that were authorized
- Despite best efforts, the Council was unable to finalize the agreement reached with TC&W in August 2017
- In cooperation with Canadian Pacific (CP) and Hennepin County Regional Railroad Authority (HCRRA), the Council will acquire the Kenilworth and Bass Lake Spur Corridors subject to the freight rail easements and existing Trackage Rights Agreements (TRAs)
 - This will allow TC&W to continue to operate overhead service pursuant to its existing TRAs

Joint and Cooperative Exercise of Powers Agreement (2018-59)

- This agreement allows HCRRA and the Council to:
 - Perform their unique statutory authorities and fulfill the common carrier obligation
 - Common carrier is the responsibility to provide carrier freight rail service within the corridor if a reasonable request for service is made
 - Perform duties and responsibilities under the existing TRAs
 - Acting as HCRRA's agent, the Council will assume maintenance and liability responsibilities as the owner of the Corridors
 - Performance of maintenance obligations will be paid through fees collected from TC&W pursuant to the terms of the TRAs
 - Consistent with state law passed during the 2017 special session, the Council, through its insurance program, will provide coverage for claims arising from LRT-related incidents

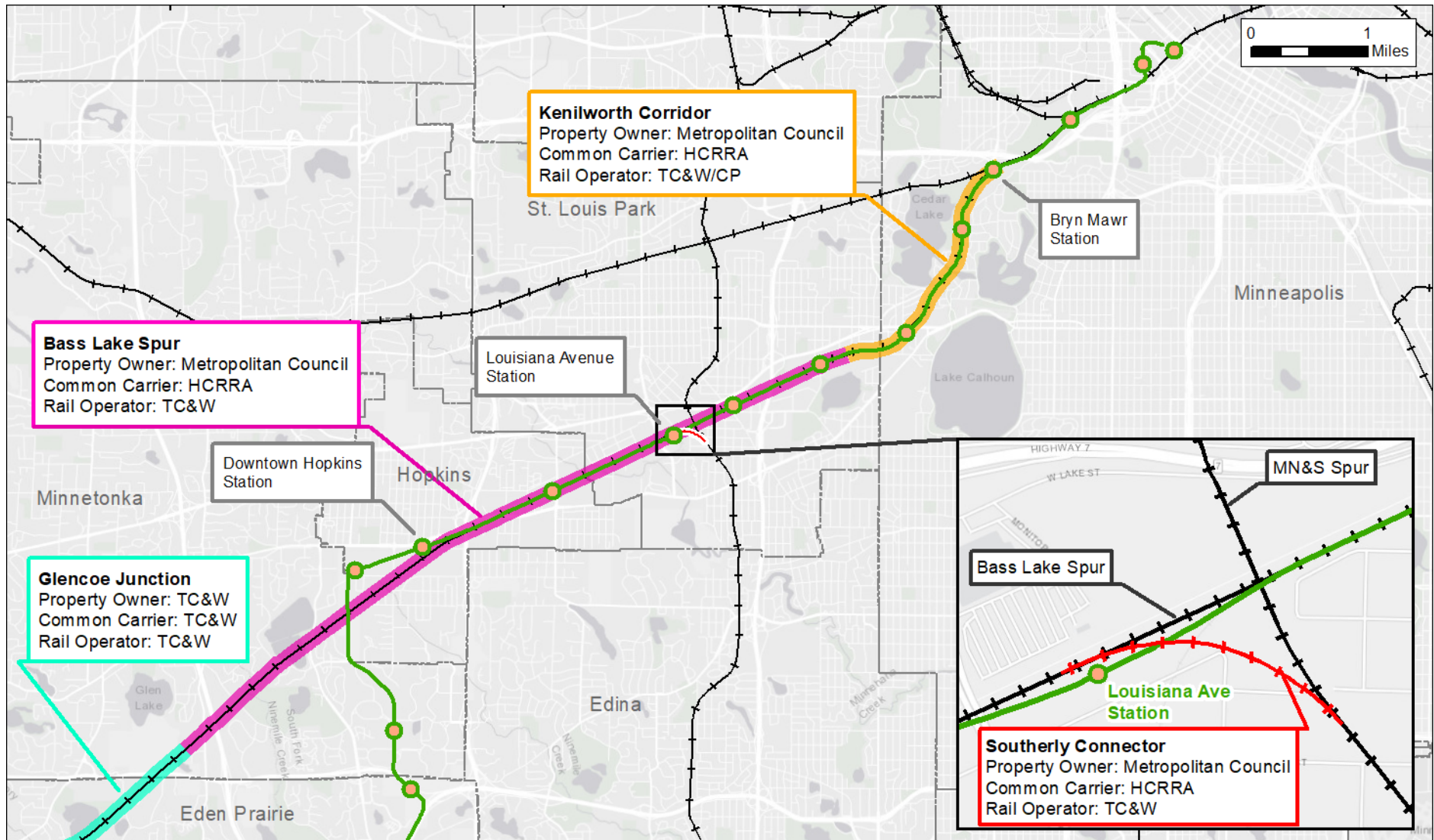
Real Estate Purchase Agreement, Property Transfer Agreement and Petition with STB (2018-60)

- The Real Estate Purchase Agreement allows the Council to purchase the Bass Lake Spur from CP
- The Property Transfer Agreement allows the Council to accept HCRRA's property
- The STB petition is required to allow the Council to acquire the rights-of-way and physical assets of the Bass Lake Spur and Kenilworth Corridors subject to the freight rail easements and existing TRAs

Surface Transportation Board (STB) Petition

- The STB is a federal regulatory agency whose responsibilities include reviewing certain railroad property transfers
- After the Council petitions the STB, it is anticipated the STB will rule within 30-60 days

Proposed Freight Rail Owners, Common Carrier & Operators

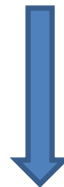


Proposed Freight Rail Owners, Common Carrier & Operators

| Segment | Property Owner | Common Carrier | Rail Operator |
|---------------------|----------------|----------------|---------------|
| Bass Lake Spur | Council | HCRRA | TC&W |
| Kenilworth Corridor | Council | HCRRA | TC&W CP |

Proposed Freight Rail Owners, Carrier & Operators: Agreements

| Segment | Property Owner | Common Carrier | Rail Operator |
|---------------------|----------------|----------------|---------------|
| Bass Lake Spur | Council | HCRRA | TC&W |
| Kenilworth Corridor | Council | HCRRA | TC&W CP |



Joint and
Cooperative Exercise
of Powers
Agreement

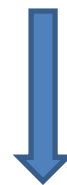
Proposed Freight Rail Owners, Common Carrier & Operators: Agreements

| Segment | Property Owner | Common Carrier | Rail Operator |
|---------------------|----------------|----------------|---------------|
| Bass Lake Spur | Council | HCRRA | TC&W |
| Kenilworth Corridor | Council | HCRRA | TC&W CP |

Existing Trackage Rights Agreements

Proposed Freight Rail Owners, Common Carrier & Operators: Agreements

| Segment | Property Owner | Common Carrier | Rail Operator |
|---------------------|----------------|----------------|---------------|
| Bass Lake Spur | Council | HCRRA | TC&W |
| Kenilworth Corridor | Council | HCRRA | TC&W CP |



Joint and Cooperative
Exercise of Powers
Agreement

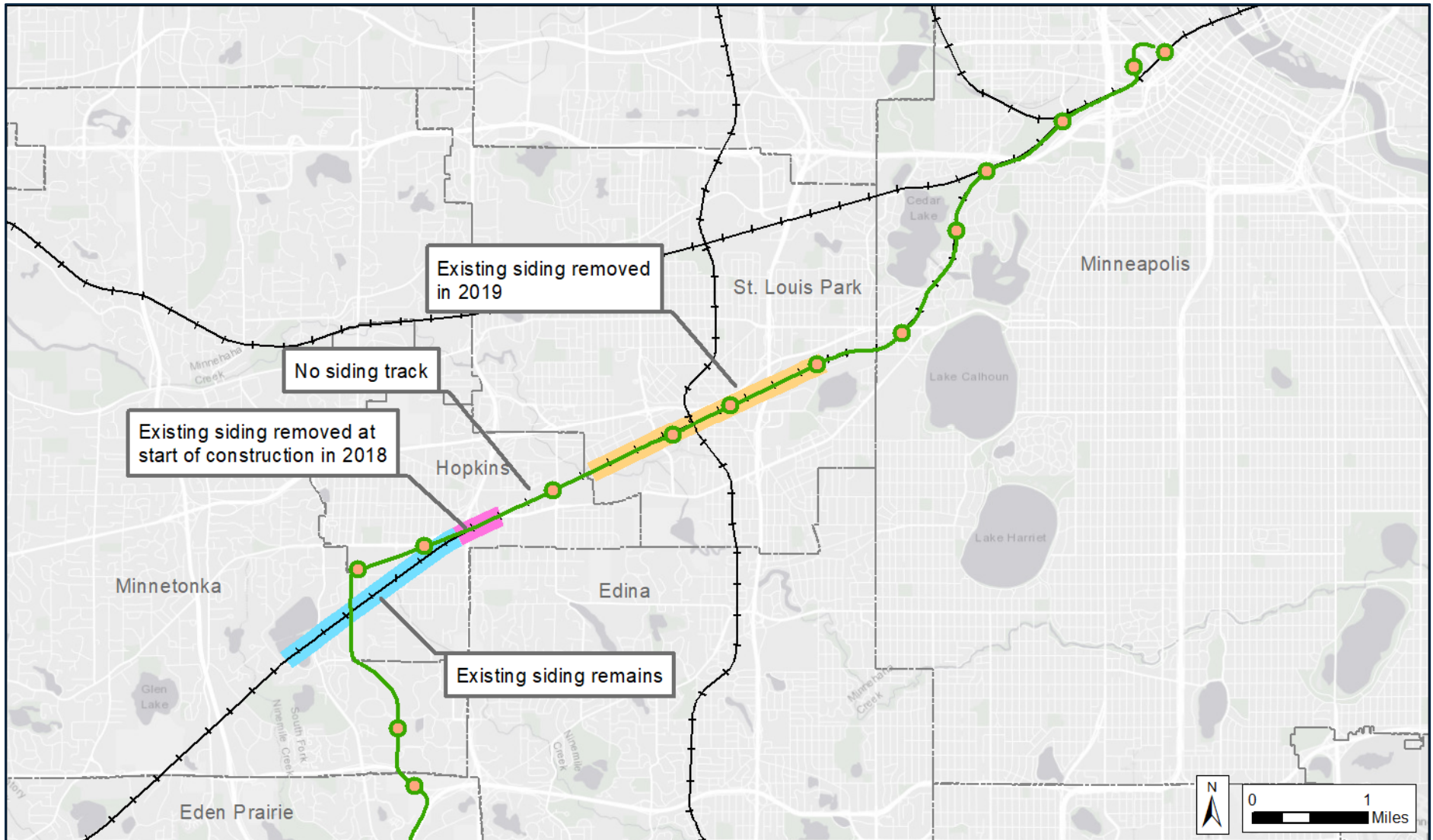


Existing Trackage
Rights Agreements

Freight Infrastructure Improvements

- The Council will construct rail improvements as part of the SWLRT Project including:
 - New rail, ballast, and ties
 - New signals and gates at roadway crossings
 - New bridge structures and retaining walls, freight equipment defect detection
 - A more efficient connection to CP's MN&S line in St. Louis Park
 - Construction specifications and protocols for phasing and work windows

Bass Lake Spur Siding Track



Proposed TC&W Settlement Agreement

- Purpose of the settlement:
 - Settle all potential claims of TC&W, set terms for cooperation and coordination during construction, and avoid potential delays to the SWLRT Project and expense and uncertainty of litigation
- Under the proposal the Council would:
 - Pay TC&W up to \$11.9M
 - Pay TC&W \$230K for expenses
 - Require the Council's construction contractor to add TC&W as an additional insured on its Commercial General Liability Policy
 - Name TC&W as an insured on the Council's Railroad Protective Liability Policy during construction
 - Name TC&W as an additional insured on the Council's Railroad Liability Insurance Policy during revenue service, with limits consistent with state law passed during the 2017 special session

Proposed TC&W Settlement Agreement

- Under the proposal, TC&W would:
 - Cooperate with the Council and its contractors during construction
 - Release all potential claims
 - Vacate existing siding tracks to be removed
- Proposed settlement offer is good through April 18, 2018

Recommendation (2018-59)

- That the Council authorize the Regional Administrator to:
 - Negotiate and execute a Joint and Cooperative Exercise of Powers Agreement between the Council and Hennepin County Regional Railroad Authority related to common carrier obligations in the Kenilworth and Bass Lake Spur Corridors and performance of duties and responsibilities under the existing TRAs; and
 - Negotiate and execute ancillary agreements necessary to implement the Joint and Cooperative Exercise of Powers Agreement

Recommendation (2018-60)

- That the Council authorize the Regional Administrator to:
 - Negotiate and execute a Real Estate Purchase Agreement between the Council and CP related to acquisition of the Bass Lake Spur for an amount not-to-exceed \$27.45M;
 - Negotiate and execute a Property Transfer Agreement between the Council and HCRRA related to transfer of ownership of Kenilworth Corridor as a permanent, in-kind property transfer for the SWLRT Project;
 - Negotiate and execute ancillary documents necessary for closing on the Kenilworth and Bass Lake Spur Corridors;

Recommendation (2018-60) cont

- Petition the STB to acquire rights-of-way and physical freight rail assets of the Kenilworth and Bass Lake Spur Corridors subject to the freight rail easements and existing TRAs; and
- Negotiate any settlement or other agreement with TC&W related to the acquisition of these properties or utilization for construction of the SWLRT Project.

CTIB Capital Grant Agreement Amendment and HCRRA Cooperative Funding Agreement Amendment

2017 CTIB Capital Grant Agreement Third Amendment

- This amendment provides funding to allow the Council to continue Engineering phase activities
- **Recommendation (2018-65)**
 - That the Council authorize the Regional Administrator to negotiate and execute an amendment to:
 - Extend the grant activity period from March 31, 2018 to May 31, 2018;
 - Increase the amount of matching funds provided by Hennepin County by \$2,740,465 to \$46,740,465; and
 - Clarify roles and responsibilities regarding liability and insurance in the Corridor and financing federal grant reimbursements and costs associated with the unlikely event of a project shutdown prior to revenue service.

HCRRA Cooperative Funding Agreement Second Amendment

- This amendment provides funding to allow the Council to continue Engineering phase activities
- **Recommendation (2018-61)**
 - That the Council authorize the Regional Administrator to negotiate and execute an amendment to:
 - Extend the Cooperative Funding Agreement grant period from March 31, 2018 to May 31, 2018;
 - Increase the amount of matching funds provided by HCRRA by \$3,969,282 to an amount of \$63,869,282; and
 - Clarify roles and responsibilities regarding liability and insurance in the Corridor and financing federal grant reimbursements and costs associated with the unlikely event of a project shutdown prior to revenue service.

More Information

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