

Joint Report of the Transportation and Management Committees

For the Metropolitan Council meeting of March 21, 2018

Subject: Southwest LRT (Green Line Extension) Freight Rail Agreements, Surface Transportation Board Filings, and Any Settlement or Other Agreement with TC&W Railroad

Proposed Action

That the Metropolitan Council (Council) authorize the Regional Administrator to:

- Negotiate and execute a Real Estate Purchase Agreement between the Council and Canadian Pacific (CP) related to the 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 Hennepin County Regional Railroad Authority (HCRRA) related to the transfer of ownership of the Kenilworth Corridor as a permanent, in-kind property transfer for the SWLRT Project;
- Negotiate and execute ancillary documents necessary for closing on the Bass Lake Spur and Kenilworth Corridor
- Petition the Surface Transportation Board (STB) to acquire the rights-of-way and physical freight rail assets of the Bass Lake Spur and Kenilworth Corridor (collectively referred to herein as "Corridors") subject to the freight rail easements and existing trackage rights agreements; and
- Negotiate any settlement or other agreement with TC&W related to the acquisition of these properties or utilization for the construction of the SWLRT Project.

Summary of Committee Discussion/Questions Transportation Committee

Metro Transit SWLRT Project Director Jim Alexander presented this item.

Rodriguez read a statement on behalf of Councilmember Munt who was unable to attend. Munt's statement read, "I strongly encourage all of you to approve the Southwest Light Rail freight agreements on today's agenda. Under these agreements, the Council will become the owner of the Bass Lake Spur and the Kenilworth Corridor. HCRRA will become the common carrier for both corridors. It keeps the Kenilworth Corridor in public ownership, an issue important to Minneapolis leaders and residents. It also provides continuity and reliability for existing rail operators, an issue important to a healthy economy. Most importantly, a vote in favor will move SWLRT closer to construction by providing the right-of-way needed to begin civil construction later this year. Without fierce perseverance, no light rail would exist. Our region has been planning for SWLRT for more than a decade. Every time we're confronted by a challenge, we find a solution. It's proof that SWLRT will succeed. Now is the time to move forward, break ground this year, and deliver another rail line on time and on budget with ridership that surpasses all expectations. That's how we roll!"

Dorfman said she is pleased that we have found this solution of putting the Council in ownership and the Hennepin County Regional Railroad Authority as the Common Carrier without impeding Twin Cities and Western Railroad Company's operations. Rodriguez agreed that the proposed approach is clean and keeps the SWLRT on schedule and allows TC&W all of the same rights. Rodriguez thanked Metropolitan Council staff and Hennepin County staff for their work on these agreements. Dorfman echoed appreciation for Chair Tchourumoff's work on this item.

Motion by Barber, seconded by Elkins. Motion carried.

Management Committee

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 Barber. 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) Freight Rail Agreements, Surface Transportation Board Filings, and Any Settlement or Other Agreement with TC&W Railroad

District(s), Member(s): All

Policy/Legal Reference: Minn. Stat. § 473.3999

Staff Prepared/Presented: Brian Lamb, General Manager, 612-349-7510
Mark Fuhrmann, Deputy General Manager, 612-373-3810
Jim Alexander, Project Director, 612-373-3880
Joan Hollick, Deputy Project Director, 612-373-3820

Division/Department: Metro Transit/Green Line Extension Project Office

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- Negotiate any settlement or other agreement with TC&W related to the acquisition of these properties or utilization for the construction of the SWLRT Project.

Background

CP owns a 6.8-mile corridor known as the Bass Lake Spur 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 will replace CP as a party to the existing Trackage Rights Agreement (TRA).

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 and remain a party to the existing TRA. TC&W will continue to operate in the Corridors under the existing TRAs.

As part of these transactions, the Council will petition the STB to allow the Council to acquire the rights-of-way and physical freight rail assets subject to the freight rail easements and trackage rights agreements.

On November 9, 2016, the Council approved an action to authorize the Regional Administrator to negotiate a Real Estate Purchase Agreement with CP and Property Transfer Agreement with HCRRA and petition the Surface

Transportation Board (Business Item 2016-200) to allow the Council to acquire the Corridors without the common carrier obligation.

These actions were taken under the premise that the existing TRAs would be replaced with an Operations and Maintenance Agreement between TC&W and the Council. Business Item 2016-200 authorized the Regional Administrator to negotiate and execute the Operations and Maintenance Agreement with TC&W. Further, on August 16, 2017, the Council approved an action to authorize the Regional Administrator to negotiate and execute a Construction Agreement with TC&W in an amount not-to-exceed \$16.1 million (Business Item No. 2017-150 SW). However, shortly after the Council approved the agreed-upon terms, TC&W laid out new additional conditions that would have required the Council to take on broad corporate liability. In light of these new conditions set forth by TC&W, the Council could not execute the Agreement approved by the Council.

To avoid further delay, which would jeopardize the Project schedule, the Council will acquire the Corridors subject to the freight rail easements and TRAs. TC&W will continue to operate in the Corridors under the existing TRAs.

An agreement with TC&W resolving potential claims against the Council, Hennepin County, HCRRA, and CP, and setting terms for cooperation and coordination during construction, would avoid potential SWLRT Project delays and the expense of potential litigation.

The Council intends to honor many of the provisions it originally agreed to with TC&W including constructing the planned improvements to the freight rail infrastructure and implementing the construction protocols that accomplish construction in a safe manner and limit disruption to TC&W's operation.

The Council and HCRRA will enter into a Joint and Cooperative Exercise of Powers Agreement to assign responsibilities related to the common carrier obligation and the existing TRAs in the corridors.

Rationale

These property agreements, and petitioning the STB, are necessary for the acquisition of the Corridors and construction of the SWLRT Project. The rationale for negotiating a potential agreement with TC&W is set forth in the discussion above.

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 Real Estate Purchase Agreement between the Council and CP for the acquisition of the Bass Lake Spur is a Project cost.

The Property Transfer Agreement between the Council and HCRRA for the transfer of the Kenilworth Corridor is an in-kind property transfer from HCRRA to the Council for the SWLRT Project.

Any settlement agreement or other agreement between the Council and TC&W that assists in the acquisition or utilization of the properties for the construction of SWLRT Project is a Project cost.

Known Support / Opposition

This proposed action is supported by CP and 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) Freight Rail Agreements, Surface Transportation Board Filings, and Any Settlement or Other Agreement with TC&W Railroad

District(s), Member(s): All

Policy/Legal Reference: Minn. Stat. § 473.3999

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Division/Department: Metro Transit/Green Line Extension Project Office

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- Petition the Surface Transportation Board (STB) to acquire the rights-of-way and physical freight rail assets of the Bass Lake Spur and Kenilworth Corridor (collectively referred to herein as "Corridors") subject to the freight rail easements and existing trackage rights agreements; and
- Negotiate any settlement or other agreement with TC&W related to the acquisition of these properties or utilization for the construction of the SWLRT Project (summary attached).

Background

CP owns a 6.8-mile corridor known as the Bass Lake Spur 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 will replace CP as a party to the existing Trackage Rights Agreement (TRA).

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 and remain a party to the existing TRA. TC&W will continue to operate in the Corridors under the existing TRAs.

As part of these transactions, the Council will petition the STB to allow the Council to acquire the rights-of-way and physical freight rail assets subject to the freight rail easements and trackage rights agreements.

On November 9, 2016, the Council approved an action to authorize the Regional Administrator to negotiate a Real Estate Purchase Agreement with CP and Property Transfer Agreement with HCRRA and petition the Surface

Transportation Board (Business Item 2016-200) to allow the Council to acquire the Corridors without the common carrier obligation.

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To avoid further delay, which would jeopardize the Project schedule, the Council will acquire the Corridors subject to the freight rail easements and TRAs. TC&W will continue to operate in the Corridors under the existing TRAs.

An agreement with TC&W resolving potential claims against the Council, Hennepin County, HCRRA, and CP, and setting terms for cooperation and coordination during construction, would avoid potential SWLRT Project delays and the expense of potential litigation.

The Council intends to honor many of the provisions it originally agreed to with TC&W including constructing the planned improvements to the freight rail infrastructure and implementing the construction protocols that accomplish construction in a safe manner and limit disruption to TC&W's operation.

The Council and HCRRA will enter into a Joint and Cooperative Exercise of Powers Agreement to assign responsibilities related to the common carrier obligation and the existing TRAs in the corridors.

Rationale

These property agreements, and petitioning the STB, are necessary for the acquisition of the Corridors and construction of the SWLRT Project. The rationale for negotiating a potential agreement with TC&W is set forth in the discussion above.

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

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The Property Transfer Agreement between the Council and HCRRA for the transfer of the Kenilworth Corridor is an in-kind property transfer from HCRRA to the Council for the SWLRT Project.

Any settlement agreement or other agreement between the Council and TC&W that assists in the acquisition or utilization of the properties for the construction of SWLRT Project is a Project cost.

Known Support / Opposition

This proposed action is supported by CP and HCRRA.

SOUTHWEST

Green Line LRT Extension



Management Committee

March 14, 2018



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

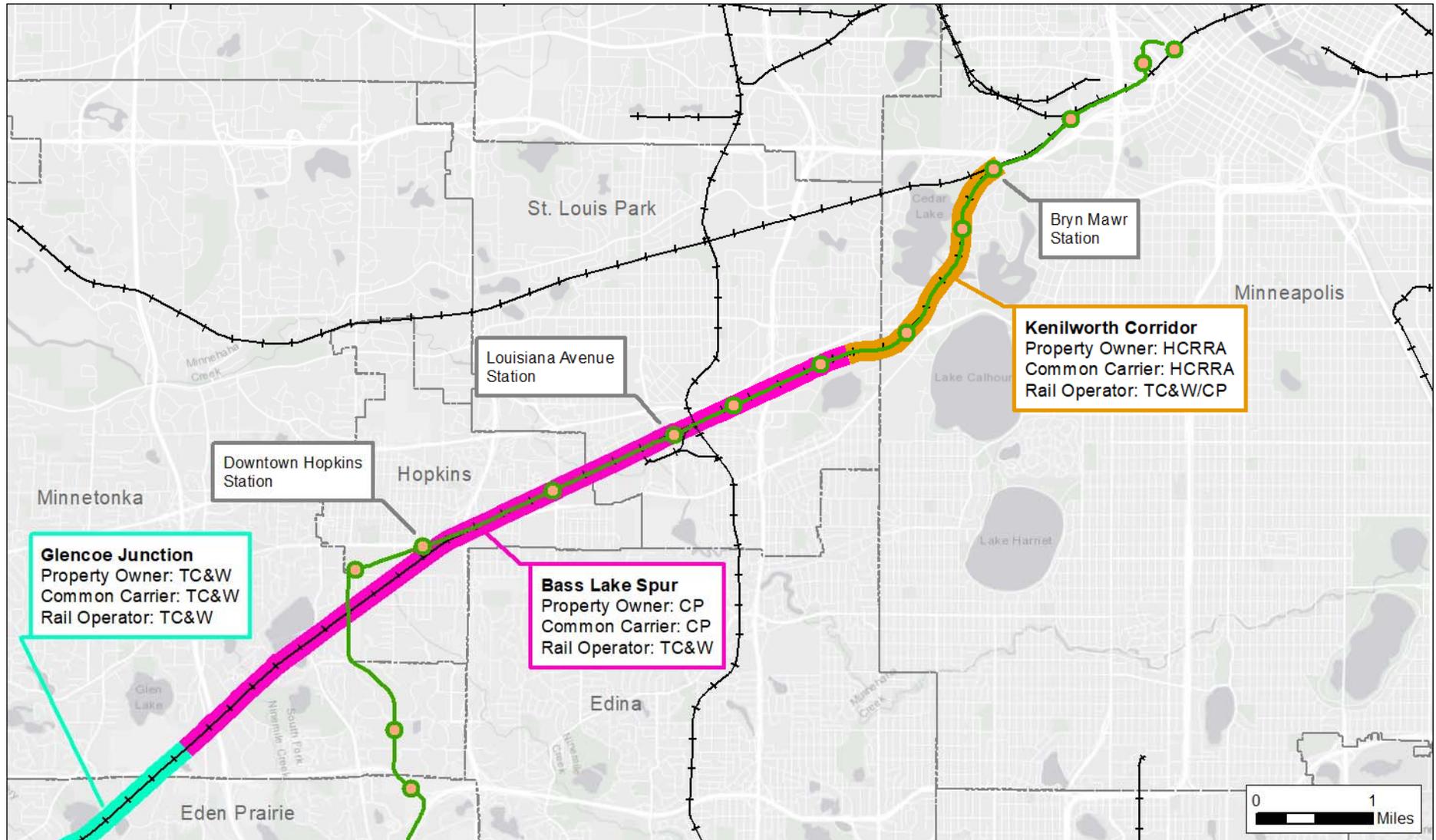
Overview of Agreements:

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

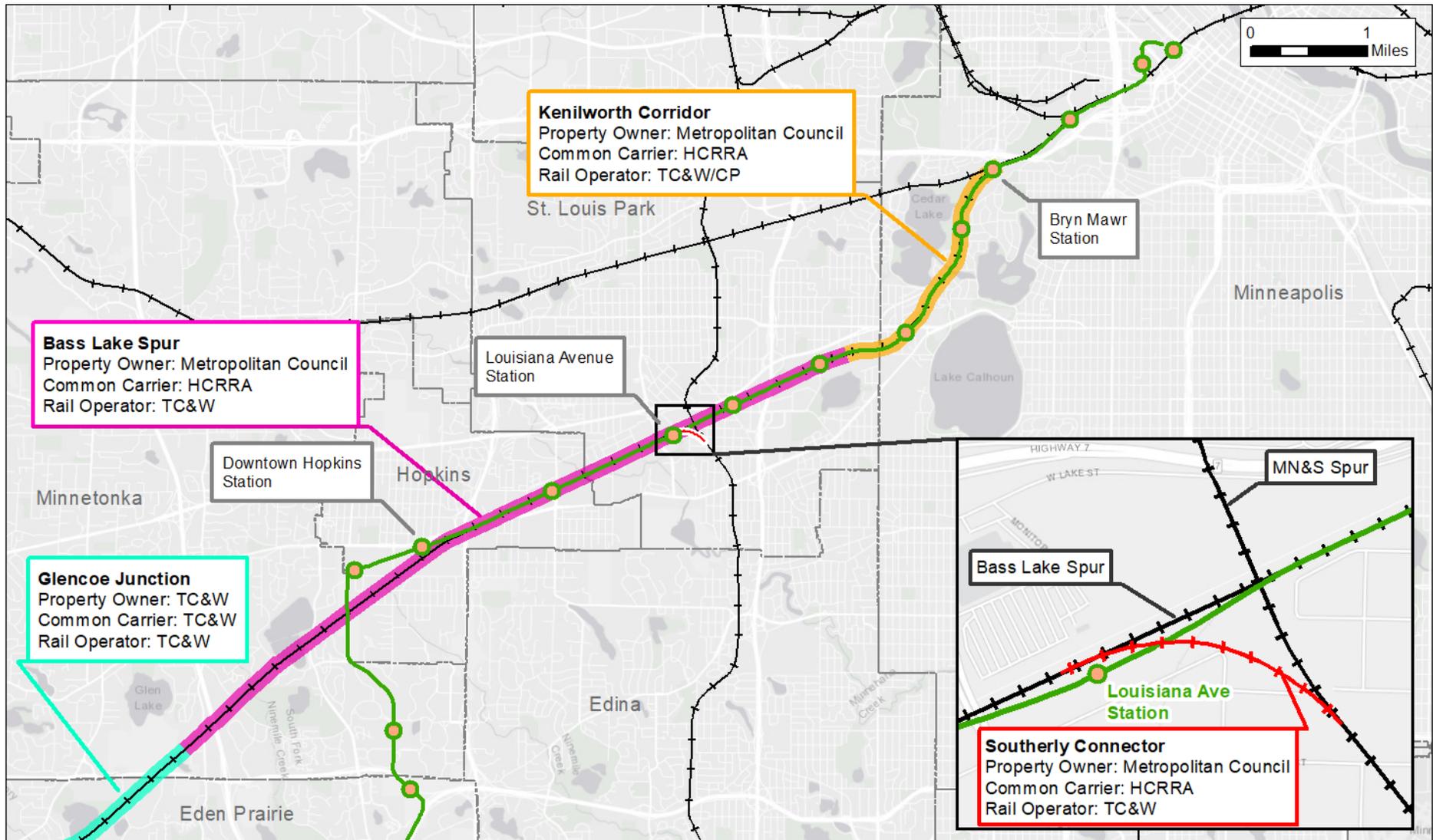
Real Estate Purchase Agreement, Property Transfer Agreement and Petition with STB (2018-60)

- 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

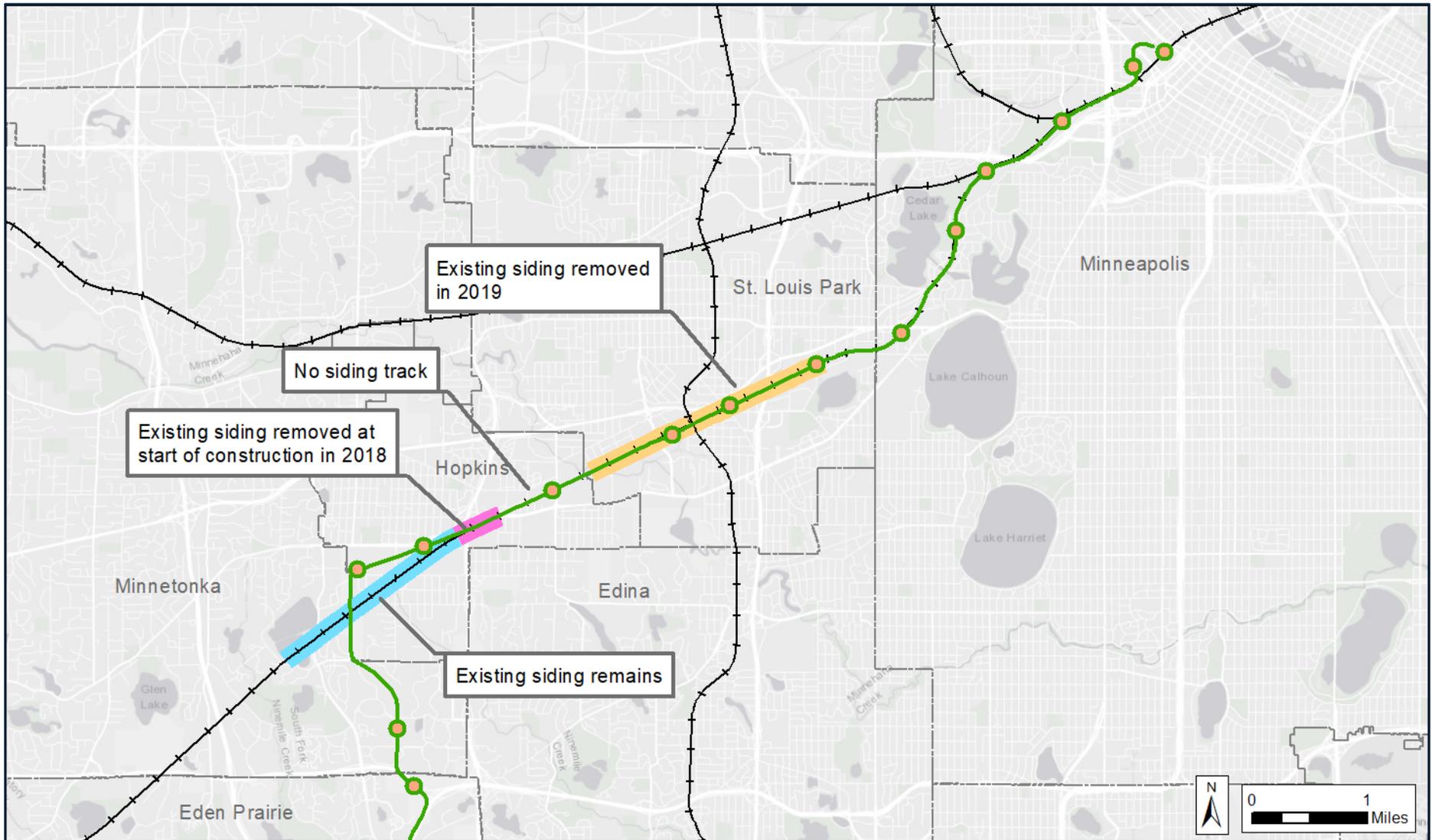


Existing Trackage
Rights Agreements

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:
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 - 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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