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July 17, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 East Street SW
Washington, DC 20423

Exhibits Contain Color

Re: **STB Finance Docket No. 35850, Soo Line Railroad Company — Petition for Declaratory Order and Request for Expedited Decision**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are the following:

- original and ten copies of the Petition for Declaratory Order and Request for Expedited Decision of Soo Line Railroad Company;
- three discs containing the enclosed filing; and
- a check in the amount of \$1,400, representing the filing fee.

If you have any questions, please contact me. Thank you.

Sincerely,

STINSON LEONARD STREET LLP

A handwritten signature in dark ink, appearing to read "David F. Rifkind", written over the typed name below it.

David F. Rifkind

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35850

SOO LINE RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**PETITION FOR DECLARATORY ORDER
AND REQUEST FOR EXPEDITED DECISION
OF SOO LINE RAILROAD COMPANY**

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Attorneys for Soo Line Railroad Company

Dated: July 17, 2014

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SURFACE TRANSPORTATION BOARD

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INTRODUCTION

Soo Line Railroad Company, doing business as Canadian Pacific (“CP”), pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, requests a declaratory order from the Board that state and local preclearance and permitting requirements for CP’s St. Paul, Minnesota Yard track extension project (the “Project”) are categorically preempted by 49 U.S.C. § 10501. In particular, CP seeks confirmation that it is not required to complete a state law environmental review process prior to starting the Project as ordered by the City of St. Paul, Minnesota (“City”). In addition, CP seeks confirmation that City Zoning Code requirements for site plan approval, a conditional use permit, a variance, and rezoning or expansion of a non-conforming use, are all preempted by federal law. Finally, CP seeks confirmation that it is not required to obtain approval from the City under state wetland laws.

The Project is an important element of CP's strategy for easing rail congestion in the busy St. Paul interstate rail corridor. CP seeks to commence work on the Project as soon as federal wetland permits are issued by the U.S. Army Corps of Engineers ("Army Corps"). Accordingly, CP requests that the Board issue its decision on the preemption of state and local requirements on an expedited basis.

FACTS

CP is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. CP is an interstate rail carrier, as defined in 49 U.S.C. § 10102, and is regulated by the Board pursuant to the ICC Termination Act of 1995 ("ICCTA"), 49 U.S.C. §§ 10101-11908.

The freight rail lines through St. Paul, Minnesota form a major link in the nation's system of rail transportation for interstate commerce. CP, BNSF Railway Company ("BNSF"), Union Pacific Railroad Company ("UP"), as well as other carriers, currently operate a total of more than 100 trains per day through the St. Paul area. That volume is expected to continue to grow. A 2012 study of rail capacity in the St. Paul area projected a 36 percent increase in freight traffic over the next decade. *See Ramsey County Regional Railroad Authority, East Metro Rail Capacity Study at 52-53 (October 2012).*¹

The rail traffic moving through St. Paul exceeds current capacity, resulting in congestion. Congestion on rail lines through St. Paul contributes to delays in interstate rail shipments, including grain traffic, throughout the rail network.

A variety of factors contribute to rail congestion in the St. Paul area. Likewise, a variety of measures will be necessary to help alleviate the situation. As part of a broader strategy to

¹ Available online at <http://www.co.ramsey.mn.us/rail/projects.htm>

address the congestion problem, CP plans to upgrade its St. Paul Yard facilities in order to handle longer trains and make more efficient use of the existing main line capacity.

CP's St. Paul Yard is located east of downtown St. Paul near the Mississippi River. *See Exhibit A* (Project Location Map). This major facility includes receiving tracks, a hump, numerous classification tracks, departure tracks, shops, and offices. Within the yard, CP performs a large volume of car classification and switching operations. Of the approximately 34 trains per day that CP operates through the St. Paul area, about half utilize the CP St. Paul Yard. Prior to the commencement of the Project, there were five 7,000-foot receiving tracks in the Project area bounded by Pig's Eye Lake and wetlands to the west and U.S. Highway 61 and tracks owned by BNSF to the east. *See Exhibit B* at 2.² The CP main line in the Project area runs adjacent to the BNSF main line. CP and BNSF jointly operate the main line tracks, with BNSF controlling the dispatching of trains for both carriers.

When the St. Paul Yard was constructed in the 1950s, it was a state-of-the-art facility. Over time, however, train lengths have grown, making the yard less efficient. Currently, the maximum train length that the St. Paul Yard can receive efficiently is 7,000 feet. When longer trains enter the yard, the portion of the train that is longer than 7,000 feet blocks the CP/BNSF main line while CP splits the train into shorter sections that can be accommodated on the existing yard receiving tracks. This adds to congestion and delays on the main line and inefficient yard switching operations. *Id.* at 5. In order to accommodate longer trains efficiently and without negatively affecting yard and main line operations, CP needs to extend the receiving tracks within the St. Paul Yard from 7,000 feet to 10,000 feet.

² At the present time, there are six 7,000-foot tracks in this area. As discussed below, an additional 7,000-foot track adjacent to the five existing 7,000-foot receiving tracks has already been constructed as part of Phase 1a of the Project.

The planned track extension is entirely within CP-owned property and will be completed in two phases. The first phase, Phase 1a, includes the placement of a new 7,000-foot track on an existing access road and the construction of a new access road adjacent to the track. Construction of the access road for Phase 1a will require the construction of a steel retaining wall adjacent to Pig's Eye Lake to avoid impacts below the ordinary high water level of the lake. *Id.* at 2. The new 7,000-foot track for Phase 1a was completed in October 2013. The Phase 1a access road and steel retaining wall have not yet been completed.

In February 2014, when CP was working on the steel retaining wall, the City directed CP to discontinue immediately any work on the Project pending the issuance of permits and the completion of an environmental review. *See Exhibit C* (City of St. Paul Letter to CP (Feb. 20, 2014)). At this point, CP, which has sought to work cooperatively with local authorities, voluntarily ceased work.

None of the work completed on Phase 1a thus far has been in wetland areas. Work in the wetland areas requires a permit from the U.S. Army Corps of Engineers ("Army Corps"). As discussed below, CP has applied for Army Corps permits.

The second phase of the Project, Phase 1b, will include extension of the five existing tracks in the yard approximately 3,000 feet to the east, extension of the new sixth track (from Phase 1a) for the same distance, and construction of an access road to serve the area of the second phase track extension. *Exhibit B* at 2.

When the Project is completed, CP will be able to receive up to 10,000-foot trains in the St. Paul Yard without the need to first split the train into shorter sections while blocking the main line, thereby reducing congestion on the main line and increasing the efficiency of yard operations. Eliminating these switching operations will yield additional benefits that include

reducing locomotive use and related locomotive fuel consumption, air emissions, and noise. CP's original plan was to complete the majority of the construction for the Project in 2014 so that it could begin utilizing the extended tracks in the second quarter of 2015. *Id.* at 4.

Recently, the Board stated concerns about service on portions of the nation's rail transportation system, particularly on the CP and BNSF systems. *See* Notice, *United States Rail Service Issues*, at 2, Docket No. EP 724 (STB Apr. 1, 2014). At a hearing before the Board on this issue on April 10, 2014, farmers and agricultural producers reported delays in fertilizer and grain rail service. Based on this hearing testimony, the Board ordered CP and BNSF to file plans with the Board to ensure fertilizer deliveries for the spring 2014 planting season and to resolve the current backlog of grain car orders. *See* Notice, *United States Rail Service Issues*, Docket No. EP 724 (Sub-No. 1) (STB Apr. 15, 2014) (fertilizer deliveries); Notice, *United States Rail Service Issues*, Docket No. EP 724 (Sub-No. 2) (STB April 15, 2014) (grain car orders). In its June 27, 2014 response to the Board, CP explained that it was experiencing "congestion/bottlenecks at St. Paul" and that "this congestion has affected all commodities, not just grain." CP Letter to STB at 1, *United States Rail Service Issues*, Docket No. EP 724 (Sub-No. 2) (June 27, 2014). CP also noted that, in its efforts to move grain and other commodities, CP was investing in improvements in the St. Paul corridor. *Id.* at 2. Although extension of the tracks in the St. Paul Yard will not be completed in time to alleviate the immediate grain service concerns, CP expects that, once completed, the extension will yield immediate and long term benefits for grain, as well as other commodities.

Due to unavoidable wetland impacts, the St. Paul Yard track extension Project requires federal wetland permits from the Army Corps under Section 404 of the Clean Water Act, 33 U.S.C. § 1251, *et seq.* The total amount of wetland impact for both phases will be 6.37 acres.

CP will provide compensatory mitigation by replacing impacted wetlands at the ratio of two acres of replacement for each acre of impact by purchasing mitigation credits from a wetland mitigation bank approved by the Army Corps. CP's applications for the federal wetlands permits for both Phase 1a and Phase 1b of the Project have been submitted to, and are pending with, the Army Corps. CP initially submitted the Phase 1a application on November 18, 2013, a revised Phase 1a application on December 16, 2013, and the Phase 1b application on April 3, 2014. *See Exhibit D* (Minnesota Local/State/Federal Application Form for Water/Wetland Projects (submitted to Army Corps Nov. 18, 2013, Dec. 16, 2013)); *Exhibit E* (Joint Application for Activities Affecting Water Resources in Minnesota (submitted to Army Corps April 3, 2014)).³ CP's plan is to proceed with the Project as soon as the Army Corps issues its permits.⁴

Notwithstanding the preemption provisions of ICCTA, and ample STB and judicial precedent holding that such preclearance requirements are federally preempted, the City maintains that the Project is subject to the City's Zoning Code and will require a variety of City approvals, including site plan approval,⁵ a conditional use permit,⁶ a variance,⁷ and approval for

³ CP included extensive materials in the appendices to its applications to the Army Corps. Portions of the appendices are included in Exhibits E and F.

⁴The Army Corps has identified 120 days as a goal for the processing time for individual permits. However, the Army Corps' St. Paul District recently acknowledged that, due to the government sequestration and other factors, the processing time for individual permits in Minnesota and Wisconsin, including letters of permission, currently ranges from four months to more than a year, with an average of around eight months. *See* U.S. Army Corps of Engineers St. Paul District, Press Release ("Corps of Engineers urges early planning for Permits") (May 9, 2015, *available online at*: <http://www.mvp.usace.army.mil/Media/NewsReleases/tabid/9473/Article/23557/corps-of-engineers-urges-early-planning-for-permits.aspx>). Even allowing for the current range of processing times in the St. Paul District, CP is hopeful that the Army Corps will issue both permits, or at least the Phase 1a permit which has been pending for eight months, imminently, allowing construction to begin this year.

⁵ *See* St. Paul, Minn., Zoning Code §§ 61.401-.402.

rezoning of a portion of the Project area or expansion of a non-conforming use.⁸ See Exhibit B at 6-7. Additionally, the City maintains that CP must obtain pre-approval from the City under the Minnesota Wetland Conservation Act of 1991 (“Wetland Conservation Act”).⁹

In the spirit of cooperation, CP submitted several applications for City approval.¹⁰ CP also participated in an environmental review process conducted by the City under the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.04. CP provided extensive information on the Project and its environmental impacts to the City. The City used this

⁶ The City maintains that CP needs a conditional use permit for filling wetlands and work in the City’s Mississippi River Corridor Overlay District. See St. Paul, Minn., Zoning Code §§ 63.606, 68.103. See generally St. Paul, Minn., Zoning Code, §§ 61.501-.505 (conditional use permits).

⁷ The City has advised CP that it must obtain a variance to the standards for the City’s Mississippi River Corridor Overlay District, including standards for wetlands and steep slopes. See St. Paul, Minn., Zoning Code § 68.402. See generally St. Paul, Minn., Zoning Code, § 61.606 (variances).

⁸ The Project Area is zoned General Industrial and One-Family Residential. The One-Family Residential designation applies to a portion of the area where the tracks will be extended. The City maintains that either a permit for expansion of a non-conforming use or a rezoning is necessary because the Zoning Code provides that “there shall be no terminal freight facilities, transfer or storage tracks” in residential zoning districts. See St. Paul, Minn., Zoning Code § 65.762.

⁹ 1991 Minn. Laws ch. 354, as amended; see also Minn. R. ch. 8420 (rules implementing Wetland Conservation Act). The City administers the Wetland Conservation Act under its Zoning Code. See St. Paul, Minn., Zoning Code § 63.601. The Wetland Conservation Act imposes state requirements for the protection of wetlands and is distinguished from the federal program administered by the Army Corps.

¹⁰ The applications that CP submitted to the City under its Zoning Code include: Exhibit F (Application for Site Plan Review (Phase 1a) (submitted to City Nov. 18, 2013)); Exhibit G (Application for Site Plan Review (Phase 1b) (submitted to City March 13, 2014)); Exhibit H (Conditional Use Permit Application (submitted to City May 5, 2014, June 12, 2014)); and Exhibit I (Application for Zoning Variance (submitted to City May 5, 2014, June 12, 2014)). CP also submitted applications to the City under the Wetland Conservation Act. These wetland applications were the same as the wetland applications that CP submitted to the Army Corps. See Exhibit D (submitted to City Nov. 12, 2013, Dec. 16, 2013); Exhibit E (submitted to City Apr. 7, 2014). All of the applications also included complete construction plans. CP has not included the construction plans, which are voluminous, with the copies of the applications that appear in Exhibits D-I.

information to prepare a state environmental assessment worksheet (“EAW”) under MEPA. The City released the draft EAW for public comments on March 31, 2014 and held a public meeting on April 23, 2014. Following the close of the public comment period, CP assisted the City in responding to the numerous oral and written comments on the EAW received from government agencies and the public. The City released the final EAW on June 12, 2014. *See Exhibit B.*

The issuance of the EAW was not, however, the end of the City’s environmental review process under MEPA. Based upon its review of the EAW and comments, the City on June 12, 2014, found that the Project has “the potential for significant environmental effects” and that there is a need for additional study of the Project through the preparation of a state environmental impact statement (“EIS”).¹¹ *See Exhibit J* (Findings of Fact and Record of Decision for CP Track Extension Project (June 12, 2014)) at 16. A state EIS under MEPA includes a detailed description of the Project, an analysis of its significant environmental impacts, and a discussion of alternatives to the Project. *See* Minn. Stat. § 116D.04, subd. 2a. Under state law, the costs of preparing the EIS, which are expected to be substantial in this case, would be passed on to CP. *See* Minn. R. 4410.6100. The City has already sought payment from CP to begin the first phase of the EIS. *See Exhibit K* (e-mail from City to CP (June 19, 2014)).

¹¹ The EIS ordered by the City under MEPA is distinguished from a federal environmental impact statement conducted by federal agencies under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.* The Army Corps has not ordered a federal environmental impact statement for the project. While the Army Corps has not yet completed the federal environmental review process for the Project under NEPA, based on the Army Corps’ regulations and past practice, CP does not expect that the Army Corps will order a federal environmental impact statement. *See* 33 C.F.R. § 230.7(a) (“Most permits will normally require only an [Environmental Assessment]”).

In ordering the EIS, the City found, among other things, that there was a need for the City to study the impact of increased train traffic through the St. Paul Yard and through the St. Paul area:

An increase in the amount of rail traffic handled through the CP yard, and the potential for rerouting through Saint Paul of traffic that previously was handled through other yards, result in a potential for increased risk from incidents involving hazardous materials, including potential impacts to public safety and potential impacts on water quality, and wildlife and wildlife habitat. The EAW does not provide adequate information to make a reasoned decision regarding either the potential significance of these impacts.

Exhibit J at 5. The City noted the projections for an increase in train traffic through St. Paul and found that the EIS should evaluate the impacts of the Project in light of “the cumulative potential impacts” of infrastructure improvements by both CP and BNSF. *Id.* at 15-16. While at the same time seeming to acknowledge in its findings that the City lacks clear authority to regulate noise from rail operations based on preemption by federal law, the City also found that there was a need to study “the potential ... for increased noise impacts associated with the project.” *Id.* at 14. Similarly, the City found that “increased train traffic through the yard may result in increased diesel engine emissions” and that there was a need for more study of the potential for air quality impacts associated with the Project. *Id.* at 12.

By Minnesota statute, the City is allowed up to 280 days to complete the EIS and determine its adequacy, but this time limit is subject to extension. *See* Minn. Stat. § 116D.04, subd. 2a(h). Most significantly, MEPA prohibits the City and any other Minnesota state and local government agencies from granting any permits for the Project until the EIS is completed and the City determines that it is adequate. *See* Minn. Stat. § 116D.04, subd. 2b(3). Thus, if it continues to participate in the City’s environmental review and permitting process, CP faces a

long delay—perhaps a year or more—before the City will even act upon CP’s permit applications.¹²

ARGUMENT

I. ICCTA EXPRESSLY PREEMPTS THE CITY’S ENVIRONMENTAL REVIEW AND PERMITTING PROCESSES AND ALL OTHER LOCAL PRECLEARANCE REQUIREMENTS

A. ICCTA’s Express Preemption Clause

ICCTA contains an express preemption clause that preempts precisely the type of state and local permitting and preclearance requirements that are at issue in this proceeding.

The preemption doctrine is based on the Supremacy Clause of the United States Constitution and provides that state laws that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). Under ICCTA, state and local authority over rail carriers was effectively eliminated through a broad grant of exclusive jurisdiction to the STB over all rail “transportation.” ICCTA’s “general jurisdiction” provision provides in pertinent part:

The jurisdiction of the Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

¹² In addition to the applications that CP submitted for City approval, CP also submitted applications for a variety of other state and local approvals, some of which have already been granted. See Exhibit B at 6-7. CP anticipates that, upon issuance of a Board declaration that the City-ordered EIS is preempted, the remaining approvals will be quickly granted or CP will reach accords with the approval agencies. CP reserves the right to proceed without any additional state and local approvals that are themselves preempted.

is exclusive. Except as otherwise provided in this part, *the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.*

49 U.S.C. § 10501(b) (emphasis added).

ICCTA broadly defines “transportation” to include:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, *yard, property, facility*, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property[.]

49 U.S.C. § 10102(9) (emphasis added). ICCTA’s definition of “transportation” is thus “far broader than the term’s ordinary meaning.” *Union Pacific R.R. v. Chicago Transit Auth.*, No. 07-cv-229, 2009 WL 448897, at *4 (N.D. Ill. Feb. 23, 2009). Under ICCTA, “‘rail carrier’ means a person providing common carrier *railroad* transportation for compensation.” 49 U.S.C. § 10102(5) (emphasis added). Just as ICCTA defines “transportation” in broad terms, ICCTA provides an expansive definition of “railroad,” which includes:

(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, *track*, terminal, terminal facility, and a freight depot, *yard, and ground*, used or necessary for transportation.

49 U.S.C. § 10102(6) (emphasis added).

The Board and the federal courts have consistently read ICCTA’s jurisdictional language in Section 10501(b) as an express preemption clause that expressly preempts state regulation of transportation. Indeed, “[t]he Interstate Commerce Act is ‘among the most pervasive and

comprehensive of federal regulatory schemes,’ . . . [and] is thus intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce.” *Grafton & Upton R.R. Co. – Pet. for Declaratory Order*, STB Docket No. FD 35779 at 4, 2014 WL 292443, at *4 (served Jan. 27, 2014) (quoting *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 31, 318 (1981)). In *CSX Transp., Inc. – Pet. for Declaratory Order*, STB Docket No. FD 34662, at 6; 2005 WL 1024490, at *2 (served May 3, 2005), the Board found that “*any form of state or local permitting or preclearance*” is categorically, or *per se*, preempted, “regardless of the context or rationale for the action.” *Id.* (emphasis added). Applying this *per se* preemption framework, federal courts and the Board have consistently held that state and local environmental and land use permitting requirements, building permits, and zoning ordinances are preempted as a matter of law, regardless of the effect of the state action on rail transportation or the factual circumstances involved in the case.

In *Green Mountain R.R. v. State of Vermont*, 404 F.3d 638 (2d Cir. 2005), for example, the State of Vermont placed various conditions on a rail carrier’s construction permit pursuant to an environmental land use statute (“Act 250”) that required an assessment of the environmental impacts of the carrier’s proposed construction of a salt storage shed and unloading facilities on its property.¹³ *Id.* at 640-41. The carrier later sought a permit amendment, and when no amendment issued, the carrier commenced construction. *Id.* The state subsequently issued notices of violation to the carrier and threatened further enforcement of Act 250. The carrier filed a declaratory judgment action in federal court seeking a declaration that Act 250 was

¹³ Similar to the environmental permitting requirements at issue in this proceeding, under Act 250, permit applications are to be “filed with one of nine District Commissioners that evaluate environmental impact using ten criteria, including ‘undue water or air pollution.’” Vt. Stat. Ann. Tit. 10, § 6086(a)(8). *Id.* at 640.

preempted by ICCTA. The Second Circuit affirmed the district court's holding that Act 250 was *per se* preempted by ICCTA, stating that "state and local permitting or preclearance requirements (including environmental requirements) are preempted because *by their nature they unduly interfere* with interstate commerce." *Id.* at 642 (emphasis added) (internal citations omitted).

The court stated:

in this case preemption is clear: the railroad is restrained from development until a permit is issued; the requirements for the permit are not set forth in any schedule or regulation that the railroad can consult in order to assure compliance; and the issuance of the permit awaits and depends upon the discretionary rulings of a state or local agency.

Id. at 643.

Similarly, in *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998), the Ninth Circuit addressed whether state and local environmental permitting requirements, including county environmental review, could be required for a railroad's proposed repairs and improvements to its right-of-way on the eastern segment of the Stampede Pass. The appellate court affirmed the Board's determination that such permitting and environmental review requirements were expressly preempted by ICCTA. *Id.* at 1031.

In Minnesota, CP has prevailed in litigation with both the City of St. Paul and the City of Minneapolis over ICCTA preemption issues. In *Soo Line R.R. Co. v. City of St. Paul*, 827 F. Supp.2d 1017, 1022 (D. Minn. 2010), the United States District Court for the District of Minnesota held that the City of St. Paul's proposed condemnation of a permanent easement for a bicycle/pedestrian train within CP's rail right-of-way was *per se* preempted by ICCTA. And, in *Soo Line R.R. Co. v. City of Minneapolis*, 38 F. Supp.2d 1096, 1101, 1102 (D. Minn. 1998), the same court held that the City of Minneapolis's attempt to prevent the demolition of buildings in CP's Shoreham Yard based on local historic preservation requirements was preempted by

ICCTA. The court found that “[t]he City’s attempt to block [CP’s] redevelopment of Shoreham yard through its permitting process stands as an obstacle to the accomplishment of congressional purposes and objectives.” *Id.* at 1101. Here, the City’s permitting requirements and review process pose a similar obstacle.

B. The City’s Attempt to Require Environmental Review and Permitting for CP’s St. Paul Yard Project Is Categorically Preempted by ICCTA.

CP’s St. Paul Yard track extension Project falls squarely within the category of “transportation by rail carriers” and therefore is within the “exclusive” jurisdiction of the Board. *See* 49 U.S.C. § 10501(b). As noted, ICCTA’s definition of “transportation” includes “a ... *yard, property, facility*, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail.” 49 U.S.C. § 10102(9) (emphasis added). CP’s St. Paul Yard is clearly such a “*yard, property, or facility.*” *See, e.g., Soo Line R.R. Co. v. City of Minneapolis*, 38 F. Supp.2d at 1099. The exclusive jurisdiction of the Board also extends to “the construction ... [or] operation ... of ... *switching ... tracks, or facilities.*” 49 U.S.C. § 10501(b)(2) (emphasis added). The track extension Project is an example of a project for the construction of “*switching ... tracks, or facilities.*” Likewise, the St. Paul Yard and the track extension Project are plainly encompassed by ICCTA’s definition of “railroad,” which includes “a ... *track, ..., yard, and ground*, used or necessary for transportation.” 49 U.S.C. § 10102(6)(C) (emphasis added). Because the City’s environmental review and permitting processes stand as preclearance requirements, they are categorically preempted by ICCTA. *See, e.g., Green Mountain*, 404 F.3d at 642-43; *City of Auburn*, 154 F.3d at 1031.

In a recent decision with facts remarkably similar to the facts here, the Board addressed whether a rail carrier’s proposed construction of an additional rail yard and storage tracks could be subject to state and local preclearance requirements. In *Grafton & Upton R.R. Co., supra*,

decided in January 2014, the carrier sought to construct additional rail yard and trackage because it was no longer able to keep up with increasing rail traffic, and its existing rail yard had become a “choke point.” *Id.* at 2. The town informed the carrier that permits were required to expand its rail yard because the property in question was within the town’s “Water Supply Protection Overlay District,” which was intended to protect the town’s aquifer, and it threatened to enter a cease and desist order if the rail carrier proceeded with work. *Id.* The rail carrier petitioned the Board for a declaration that the town’s permitting requirements were preempted under ICCTA. The Board agreed. Citing *Green Mountain*, the Board found that the town’s permitting requirements were *per se* preempted by ICCTA: “the express statutory preemption of § 10501(b) applies here to prevent [the town of] Grafton from imposing environmental and land use regulations and permitting requirements that could be used to deny or unreasonably delay the rail carrier’s ability to use its property for railroad operations.” The Board’s holding was based on “well-established preemption principles” that established that “Grafton’s preclearance regulations and permitting requirements are categorically preempted by § 10501(b) in connection with G & U’s construction and operation of an additional rail yard and storage tracks on the Parcel.” *Id.* at 6. *See also Boston & Maine Corp. – Pet. for Declaratory Order*, STB Docket No. FD 35749 at 2, 2013 WL 3788140, at *3 (served July 19, 2013) (local zoning decisions preempted by federal law). The same well-established ICCTA preemption principles compel a similar finding here.

As emphasized by the Board in *Grafton*, the intent of Congress in enacting Section 10501(b) was “to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce.” *Grafton*, STB Docket No. FD 35779 at 4, 2014 WL 292443, at *3, citing *Boston & Maine Corp. – Pet. for Declaratory Order*, *supra*. This policy is directly implicated in

this proceeding. If the City is able to delay or prevent the Project, it would unreasonably interfere with interstate rail transportation and undermine the Board's exclusive jurisdiction.

II. AN EXPEDITED DECISION BY THE BOARD IS JUSTIFIED

CP respectfully requests that the Board issue its decision in this case on an expedited basis. The need for improvements in the efficiency of main line service through the St. Paul corridor is well-established. The St. Paul Yard track extension Project will make an important contribution to main line efficiency. CP's intent is to start construction as soon the Army Corps issues the federal permits for the Project. An expedited decision by the Board will remove any doubt about CP's right to proceed with the Project when the Army Corps permits are received. It will also lay to rest any question of whether CP must engage in the expensive and time consuming City-ordered EIS process.

This matter is particularly appropriate for an expedited decision. There is ample legal precedent, including the recent and authoritative statement of the law by the Board in *Grafton*. Furthermore, because state and local environmental review and permitting processes at issue here are categorically preempted preclearance requirements, there is no occasion for an "as-applied" factual analysis of the state and local regulations. *See Soo Line R.R. Co. v. City of St. Paul*, 827 F. Supp.2d at 1022. This proceeding can and should be decided on the facts now before the Board.

CONCLUSION

For the reasons stated above, environmental review and permitting requirements that the City seeks to impose on CP's St. Paul Yard track extension Project are categorically preempted. The Board should issue an expedited order:

(a) declaring that state and local environmental review requirements for CP's St. Paul Yard track extension Project, including but not limited to the City-ordered EIS, are preempted by federal law;

(b) declaring that City preclearance and permitting requirements for CP's St. Paul Yard track extension Project, including but not limited to requirements for site plan approval, a conditional use permit, a variance, and rezoning or expansion of a non-conforming use, are preempted by federal law; and

(c) declaring that any requirements for City approval under state and local wetland conservation laws are preempted by federal law.

Dated : July 17, 2014



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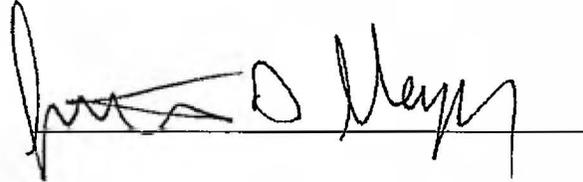
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Minneapolis, MN 55402
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E-mail: matthew.seltzer@stinsonleonard.com

Attorneys for Soo Line Railroad Company

VERIFICATION

I, Justin Meyer, Region Chief Engineer of Canadian Pacific, verify under penalty of perjury that the facts set forth in the foregoing Petition for Declaratory Order and Request for Expedited Decision of Soo Line Railroad Company are true and correct.

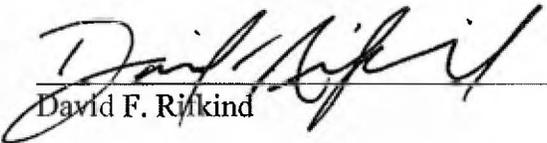
Executed on July 14, 2014.

A handwritten signature in black ink, appearing to read "Justin Meyer", is written over a horizontal line. The signature is cursive and somewhat stylized.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Petition for Declaratory Order and Request for Expedited Decision to be served by sending a copy by Federal Express on July 17, 2014 to the following:

Sara Grewing
St. Paul City Attorney
400 City Hall and Courthouse
15 Kellogg Boulevard West
Saint Paul, MN 55102


David F. Rinkind

Index of Exhibits

Exhibit A – Project Location Map

Exhibit B – Environmental Assessment Worksheet

Exhibit C – City of St. Paul Letter to CP (Feb. 20, 2014)

Exhibit D – Minnesota Local/State/Federal Application Form for Water/Wetland Projects (submitted to Army Corps Nov. 18, 2013, Dec. 16, 2013)

Exhibit E – Joint Application for Activities Affecting Water Resources in Minnesota (submitted to Army Corps April 3, 2014)

Exhibit F – Application for Site Plan Review (Phase 1a) (submitted to City Nov. 18, 2013)

Exhibit G – Application for Site Plan Review (Phase 1b) (submitted to City March 13, 2014)

Exhibit H – Conditional Use Permit Application (submitted to City May 5, 2014, June 12, 2014)

Exhibit I – Application for Zoning Variance (submitted to City May 5, 2014, June 12, 2014)

Exhibit J – Findings of Fact and Record of Decision for CP Track Extension Project (June 12, 2014)

Exhibit K – E-mail from City to CP (June 19, 2014)

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT A

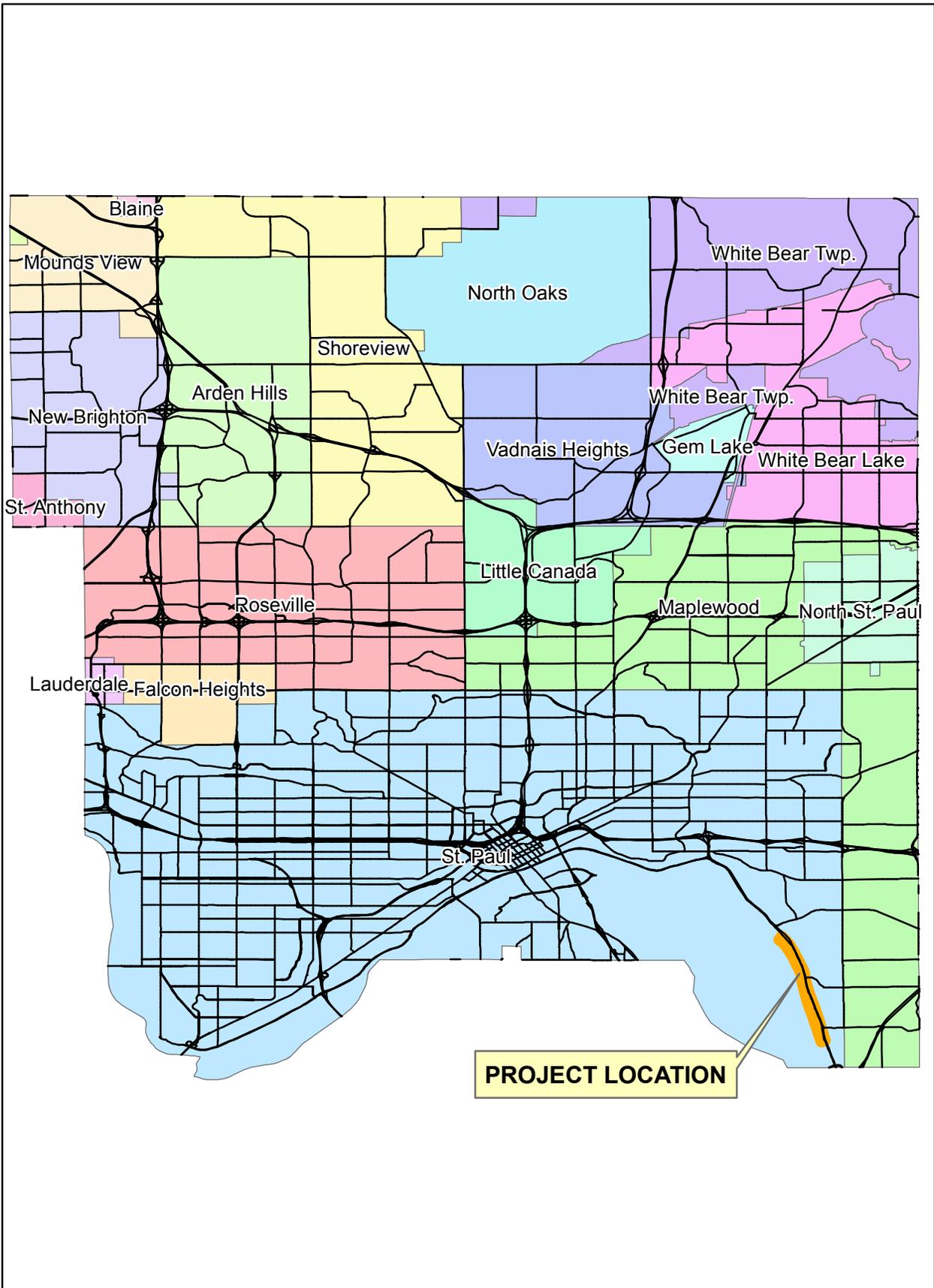


Figure 1. Project Location
St. Paul
Ramsey County, MN
 CP Rail Yard EAW

January 2014
15321.003



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0 2 4



Miles



TKDA

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT B

ENVIRONMENTAL ASSESSMENT WORKSHEET

This Environmental Assessment Worksheet (EAW) form and EAW Guidelines are available at the Environmental Quality Board's website at:

<http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm>. The EAW form provides information about a project that may have the potential for significant environmental effects. The EAW Guidelines provide additional detail and resources for completing the EAW form.

Cumulative potential effects can either be addressed under each applicable EAW Item, or can be addresses collectively under EAW Item 19.

Note to reviewers: Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

1. **Project title:** Canadian Pacific Railway (CP) Track Extension Project, Saint Paul, Minnesota

2. **Proposer:** Canadian Pacific Railway
Contact person: Tim Havlicek
Title: Project Engineer
Address: 120 South 6th Street, Suite 900
City, State, ZIP: Minneapolis, MN 55402
Phone: (612) 904-5931
Email: tim_havlicek@cpr.ca

3. **RGU:** City of Saint Paul
Contact person: Josh Williams
Title: City Planner
Address: Saint Paul PED
25 West 4th Street, Suite 1300
City, State, ZIP: Saint Paul, MN 55102
Phone: (651) 266-6659
Email: josh.williams@ci.stpaul.mn.us

4. **Reason for EAW Preparation:** (check one)

Required:

- EIS Scoping
 Mandatory EAW

Discretionary:

- Citizen petition
 RGU discretion
 Proposer initiated

If EAW or EIS is mandatory give EQB rule category subpart number(s) and name(s): 4410.4300, subpart 27

5. **Project Location:**

County: Ramsey
City/Township: Saint Paul
PLS Location ($\frac{1}{4}$, $\frac{1}{4}$, Section, Township, Range): Township 28N, Range 22W, Sections 11 and 14
Watershed (81 major watershed scale): Mississippi River – Twin Cities
GPS Coordinates: N 44° 55' 26" W 93° 01' 13"
Tax Parcel Number: 112822320004 and 142822210007

At a minimum attach each of the following to the EAW:

- County map showing the general location of the project;
The general location of the project is shown in the attached Figure 1.
- U.S. Geological Survey 7.5 minute, 1:24,000 scale map indicating project boundaries (photocopy acceptable); and
The project boundaries are shown in the attached Figure 2.
- Site plans showing all significant project and natural features. Pre-construction site plan and post-construction site plan.
The preconstruction site plan is shown in the attached Figures 3A-D. The post-construction site plan is shown in the attached Figures 4A-D.

6. Project Description:

- a. Provide the brief project summary to be published in the *EQB Monitor*, (approximately 50 words).

Project Summary: The Canadian Pacific Railway (CP) is proposing to lengthen the tracks in its Saint Paul railroad receiving yard. CP is proposing to extend five existing tracks to the east, add a new track 6, and build a new access road. The proposed track extension area is entirely within CP property.

- b. Give a complete description of the proposed project and related new construction, including infrastructure needs. If the project is an expansion include a description of the existing facility. Emphasize: 1) construction, operation methods and features that will cause physical manipulation of the environment or will produce wastes, 2) modifications to existing equipment or industrial processes, 3) significant demolition, removal or remodeling of existing structures, and 4) timing and duration of construction activities.

Response: CP is proposing to expand the facilities in its Saint Paul railroad yard (called the Dunn Yard), located east of downtown Saint Paul, by lengthening the tracks in the yard. The expansion area is entirely within CP property. The existing railroad yard in the project area includes a main and five yard tracks that are bounded by Pig's Eye Lake to the west and Highway 61 and tracks owned by BNSF Railway to the east. (The preconstruction site plan is shown in Figures 3A-D.)

The project will be completed in two phases (the post-construction site plan is shown in Figures 4A-D). The first phase, Phase 1a, will include placing a new track on an existing access road and constructing a new access road adjacent to the track. The second phase, Phase 1b, will include extension of the five existing tracks in the yard to the east, extension of the new sixth track (from Phase 1a), and construction of an access road to serve the area of the second phase track extension. Construction of the access road will require the addition of sheet piling adjacent to Pig's Eye Lake and associated wetlands to minimize wetland impacts and avoid impacts below the Ordinary High Water Level of Pig's Eye Lake, which is a DNR-protected public water body.

The track extension is proposed to allow CP to handle longer trains more efficiently and maintain the capacity of the mainline tracks through the corridor for all traffic. The average train length has grown from 7,000 feet to 10,000 feet in recent years. Trains have become longer as a result of a variety of technical improvements to locomotives and yard operations. The existing tracks in the yard cannot handle 10,000-foot-long trains. The maximum train length that can be handled without splitting at the existing CP yard is 7,000 feet. When longer trains enter the yard, the portion of the train that is longer than 7,000 feet currently blocks the mainline track. Longer trains must be split into sections and prepared to go over a topographic “hump.” After the “hump,” the trains are channeled onto a variety of tracks where they are recombined into new trains built for departure. Because the existing tracks are shorter than the trains and the trains must be divided, the splitting and recombination of trains results in congestion and delays on the mainline, noise in the “hump” area as the cars are reconfigured, and more use of locomotives and fossil fuels.

The project will expand the length of the tracks so that they can handle 10,000-foot trains. This will mean that less switching will be required--reducing congestion on the mainline and reducing the use of locomotives for splitting trains, and related locomotive fuel consumption, exhaust, and noise related to switching operations at the yard.

1. Construction, operation methods and features that will cause physical manipulation of the environment or will produce waste

The project work will include completion of a geotechnical analysis; grading to remove the organic soil material within the proposed project construction limits; placing and compacting new soil material for the new track bed; embankments and access road; construction of the sheet pile wall; and placement of the new, longer tracks. The material excavated on the project site will not be reused within the project limits, except as topsoil. The project will import suitable common fill material. When the fill is placed and compacted, it will be covered with gravel and the track structure will be built on top of the gravel. The infrastructure modifications will include changes to the CP tracks and access road, but will not require modifications to municipal infrastructure.

The proposed sheet pile wall will be approximately 880 feet long. The height of the wall above ground level will vary from 5.4 feet to 10.7 feet. The height of the wall below ground level will vary from 23 feet 43 feet. Construction plans for the sheet pile wall are attached.

2. Modifications to existing equipment or industrial processes

CP is proposing to extend five existing tracks approximately 3,000 feet to the east, add a sixth track, and build an access road to serve the yard area. The existing site conditions and proposed site plan are shown in Figures 3A and 3B.

3. Significant demolition, removal or remodeling of existing structures

No structures will be demolished or removed. Some tracks will be reconfigured as part of the project.

4. Timing and duration of construction activities

Construction of Phases 1a and 1b will begin in the spring of 2014 after the environmental review is complete. Phase 1a will include the construction of the retaining wall along Pig’s Eye Lake (approximately 20 weeks of construction) and the access road along the existing Track 6 (approximately 3 months from start to completion). The Phase 1b construction activities will begin simultaneously with Phase 1a and will begin with grading for the track extension (estimated 4 months); the track work will begin after the grading is complete. CP anticipates that construction will be complete and train traffic will begin to use the extended tracks in the second quarter of 2015.

c. Project magnitude:

	Phase 1a	Phase 1b
Total Project Acreage	5.05 acres	9.37 acres
Linear project length	6,600 feet	4,000 feet
Number and type of residential units	N/A	N/A
Commercial building area (in square feet)	N/A	N/A
Industrial building area (in square feet)	N/A	N/A
Institutional building area (in square feet)	N/A	N/A
Other uses – specify (in square feet)	N/A	N/A
Structure height(s)	N/A	N/A

d. Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.

Response: CP, a private corporation, will carry out this project. The project purpose is as follows:

- CP projections indicate that meeting the demand for longer trains efficiently will require modification and extension of the facilities at the Saint Paul railroad yard. The yard was constructed in the 1950s and was a state-of-the-art facility at that time. Changes in the rail industry have made the yard’s current design inefficient for train operations. Current technology, with features such as hot box detectors, distributed power, and new locomotives, allows trains to be longer than was the case in the era in which the current yard was constructed. CP’s Saint Paul yard needs to be updated to handle the longer trains more efficiently.
 - The yard is a part of the busiest rail corridor in the state. Approximately 100 trains per day currently pass through the Saint Paul rail corridor that includes CP’s yard.
 - Of the 100 trains operating in the corridor daily, CP operates about 15 trains that utilize the Saint Paul yard and 17 trains that do not enter the yard. BNSF Railway operates the majority of through traffic, with as many as 40 to 60 trains daily. The mainline tracks through the corridor are managed by a joint operating agreement between CP and BNSF. The two mainline tracks are individually owned and maintained by CP and BNSF, and BNSF controls the train dispatching for both railroads.
 - *The East Metro Rail Capacity Study* (Ramsey County Regional Rail Authority, October 2012) estimates that traffic may grow by 36 percent over the next 10 years. This would mean approximately 11 additional CP through trains per day and approximately 36 additional trains overall in the corridor. Without the proposed track extension, congestion on the mainline track will increase, and more trains will need to be split and handled through the hump area.

- The track extension is proposed to allow CP to address inefficiencies in operations at the Saint Paul yard due to the length of existing trains and the expected increase in the demand for track time due to the anticipated growth in train traffic in this corridor. The track extension will reduce congestion on the mainline track and enable trains to enter and exit the yard with fewer delays, reducing the time that the mainlines are occupied. The project will improve the efficiency of train traffic operating through the corridor, reduce delays, and improve safety.

The Saint Paul yard can currently handle trains that are a maximum of 7,000 feet in length. Many trains are now up to 10,000 feet in length. Trains that arrive at the Saint Paul yard that are over 7,000 feet in length must be separated and placed on two different tracks. While the train is in the process of separating, it is often occupying the mainline, blocking through trains. Separating the trains results in inefficient use of the mainline and increased operating costs.

- The track extension will allow for potential future passenger rail in the corridor. The Saint Paul corridor has a high potential demand for future passenger rail service. Amtrak has identified the potential for an additional roundtrip train each day. The Red Rock Commuter corridor may operate on this corridor in the future. If high-speed rail between the Twin Cities and Chicago is developed, it would most likely use this corridor. *The East Metro Rail Capacity Study* discusses recommended track additions in the corridor for service expansion.
- The project is also proposed to improve safety. There is currently only one access to the rail yard from the west. The project's Phase 1a will include construction of a new access road, which will provide a second access to the yard for first responders in the event of an emergency.

Proposed Track Extension and Options Considered

CP is proposing to extend the tracks in its Saint Paul yard (the yard area where trains arrive at Saint Paul) to allow it to function efficiently to handle trains that are up to 10,000 feet long. The arrival tracks are currently 7,000 feet in length and would be extended to 10,000 feet.

CP looked at several options for the track extension, including the following:

1. No-build option—This option does not meet CP's needs to handle longer trains at the Saint Paul yard, reduce congestion on the mainline, and improve the safety at the yard. The short length of the existing tracks in the receiver yard greatly reduces the efficiency of the yard given the current length of trains and increases the cost of yard operations. While longer trains are in the process of separating, they often occupying the mainline, blocking through trains.
2. Expand the yard to the north—The option is not feasible due to physical constraints. It would require bridge reconstruction on Warner Road and filling within the Mississippi River floodway.
3. Extension to the south and west (preferred option)—Based on the physical constraints to the north and east, this is the only feasible option for the track extension. There is room for the extension on the existing CP property. This option would impact a wetland area and require mitigation for the impacts.

- e. Are future stages of this development including development on any other property planned or likely to happen? Yes No
 If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.

Response: No future projects are planned for the Saint Paul yard.

- f. Is this project a subsequent stage of an earlier project? Yes No
 If yes, briefly describe the past development, timeline and any past environmental review.

7. **Cover types:** Estimate the acreage of the site with each of the following cover types before and after development:

	Before	After		Before	After
Wetlands	6.37	0.00	Lawn/landscaping	0.00	0.00
Deep water/streams	0.00	0.00	Impervious surface	2.54	4.62
Wooded/forest	2.52	0.00	Stormwater Pond	0.00	0.00
Brush/Grassland	2.07	3.64	Other (describe): Tracks (ballasted areas)	0.92	6.16
Cropland	0.00	0.00			
			TOTAL	14.42	14.42

Response: Approximately 2.52 acres of mature wooded/forest trees will be removed with this project. The wooded area that will be removed is a narrow band of “edge” habitat adjacent to the rail yard. CP will avoid impacts to woodland areas outside the construction limits and will mitigate for the loss of the mature wooded/forest trees by planting hardwood forest trees along the toe of the in-slope of the new embankment in areas where there no longer is a wooded/forest tree buffer. The planting plan is included in the construction plans, which are attached.

8. **Permits and approvals required:** List all known local, state and federal permits, approvals, certifications and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules, Chapter 4410.3100.*

Phase 1a

Unit of Government	Type of Application	Status
US Army Corps of Engineers	Section 404 Permit – General Permit – Letter of Permission	Submitted
MPCA	National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Permit	Obtained
City of Saint Paul	Site Plan, Conditional Use Permit, WCA, and Variance	Submitted
City of Saint Paul	Rezoning or Expansion of Non-Conforming Use	Submitted
Ramsey Washington Metro Watershed District	Grading Permit Application	Approved with conditions

Phase 1b

Unit of Government	Type of Application	Status
US Army Corps of Engineers	Section 404 Permit – Standard Individual	Submitted
MPCA	National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Permit	Obtained
MPCA	Section 401 Certification	Waived
City of Saint Paul	Site Plan, Conditional Use Permit and Variance	Submitted
City of Saint Paul	Rezoning or Expansion of Nonconforming Use	Submitted
Ramsey Washington Metro Watershed District	Grading Permit Application	Submitted

Cumulative potential effects may be considered and addressed in response to individual EAW Item Nos. 9-18, or the RGU can address all cumulative potential effects in response to EAW Item No. 19. If addressing cumulative effect under individual items, make sure to include information requested in EAW Item No. 19

9. Land use:

a. Describe:

- i. Existing land use of the site as well as areas adjacent to and near the site, including parks, trails, prime or unique farmlands.

Response: The site has been part of the CP yard for many decades. The site land use is classified as Transportation by the City of Saint Paul (see Figure 5, Existing Land Use, adapted from the Saint Paul Comprehensive Plan, Figure LU-A, Existing Land Uses). The project site is connected with a transportation corridor that continues to the south, north, and west. Adjacent to the existing CP yard site to the east (in order moving away from the river) are the CP and BNSF mainline rail tracks, Highway 61, and bluffs. The bluffs are designated as Park, Recreation and Preserve Use areas on the current and future land use maps. Areas above the bluffs to the east and below the bluffs and adjacent to the area of the proposed rail yard extension to the south along Highway 61 and Point Douglas Road are occupied by both existing residential neighborhoods (zoned Single-Family Residential) and by Park, Recreational or Preserve Use areas. The neighborhoods near the project area in Dayton’s Bluff, Highwood, and along Point Douglas Road are designated as Established Neighborhoods on the future land use map. The land to the west of the project area is included in Pig’s Eye Regional Park and is classified as a Park, Recreational or Preserve Use. The site is physically isolated from other uses by the Mississippi River to the west and the BNSF tracks and Highway 61 to the east and north.

The track extension to the south will bring the Saint Paul yard closer to the homes below the bluff along Highway 61 and Point Douglas Road. It will maintain the physical relationship of the yard to the residential uses above the bluff.

Battle Creek Regional Park is located approximately 1 mile to the north and east of the project area. Pig's Eye Regional Park is located to the west of the site. The Highwood Preserve and Henry Park are located above the bluffs to the east of the project area. The City of Saint Paul Bike Map indicates that there is an on-street bike trail on Highway 61 east of the project site. There are no prime or unique farmlands on or near the site.

- ii. Plans. Describe planned land use as identified in comprehensive plan (if available) and any other applicable plan for land use, water, or resources management by a local, regional, state, or federal agency.

Response: The following local plans identify and discuss the existing and planned land use in the project area:

City of Saint Paul Comprehensive Plan (2010): The Land Use Chapter of the City's Comprehensive Plan identifies the existing and future land uses in the project area as Transportation and Parks and Open Space. It should be noted that the City's future land use map (Comprehensive Plan Figure LU-B, Generalized 2030 Future Land Use) is intended to guide future land use, zoning, and development decisions, but is not parcel specific. It is intended to allow for interpretation of the boundary between future land use categories based on Comprehensive Plan policies, district and small area plans, and other planning documents.

Strategy 2 of the Land Use Chapter is to "Provide Land for Jobs," including jobs for industrial uses. The Land Use Chapter also states that the City should maintain the character of Established Neighborhoods (policy LU 1.5), and that the City should use site plan review and standards to ensure that land in industrial districts is used efficiently and is compatible with nearby commercial and residential areas.

The Water Resources Management Chapter of the Comprehensive Plan encourages the preservation and restoration of native vegetation along shorelines to improve surface water quality (policy WRM 2.20).

City of Saint Paul Mississippi River Corridor Plan (Mississippi River Critical Area Plan), 2002: Policies included in the plan support the continuation of industrial uses in the corridor, and the plan notes that additions to industrial uses should have no significant adverse impacts on water quality or air quality.

City of Saint Paul Great River Passage Master Plan, 2013: The City of Saint Paul recently adopted this plan, a long-range vision for the management and development of the Mississippi River corridor in Saint Paul. The plan identifies the project area as part of a River-Oriented Industrial area and envisions no change to the rail use. The CP project area is adjacent to Pig's Eye Regional Park. The plan includes goals for the City to partner with the railroads, Port Authority, DNR, and industrial property owners to improve access to the open space areas at Pig's Eye Regional Park. It proposes the development of a system of rustic trails and boardwalks around Pig's Eye Lake that could connect with regional trails. It also includes development of a wildlife viewing area/fishing access at the south end of Pig's Eye Lake, looking to the north; a canoe/kayak put-in point near the north end of Pig's Eye Lake; and a boardwalk/trail parallel to Highway 61 and the rail corridor, outside the CP property.

District 1 Plan (2004): Saint Paul's District Council 1 area (including the Battle Creek and Highwood neighborhoods) includes the project site. The District's most recent plan notes that the district includes industrial areas along the river and includes a goal that the industrial areas near the river adhere to environmental quality standards, including noise, water quality, and air quality.

Mississippi National River and Recreation Area Comprehensive Management Plan (MNRRA), 1995: The MNRRA plan notes that the MNRRA is a historic transportation corridor that includes well-established rail lines that are an important contributor to the Twin Cities economy. The plan identifies the role of the Mississippi as a "working" river and a natural resource. The plan recognizes existing uses, such as the rail lines, and notes that the local units of government will continue to have primary land use planning and control responsibilities within the MNRRA. While recognizing the role of transportation and commerce along the river, the plan identifies successful enterprises as those that help to preserve, protect and enhance the full range of values, including natural and scenic, of the corridor. The plan identifies the use of vegetative screening as a beneficial tool for balancing development and resource protection goals.

- iii. Zoning, including special districts or overlays such as shoreland, floodplain, wild and scenic rivers, critical area, agricultural preserves, etc.

Response: The underlying zoning of the project area is General Industrial and One-Family Residential. It is also located within the Mississippi River Corridor Critical Area. Executive Order 79-19 designated the boundaries of the Critical Area. In Saint Paul, Chapter 68 of the City's Zoning Code (River Corridor Overlay Districts) governs development standards and permitting in the Critical Area. The project area is also located within the City of Saint Paul's Floodplain Management Overlay District (Floodplain). Chapter 72 of the City's Legislative Code of ordinances governs uses, development standards, and permitting within the floodplain. Figure 6 indicates the location of the project area in relation to the overlay areas.

- b. Discuss the project's compatibility with nearby land uses, zoning, and plans listed in Item 9.a above, concentrating on implications for environmental effects.

Response: A portion of the land where the existing yard is proposed to be expanded is zoned R-1 One-Family Residential. Development standards for railroad right-of-way listed under Section 65-762 of the Saint Paul Zoning Code state that "there shall be no terminal freight facilities, transfer or storage tracks" in residential zoning districts. As noted under Item 8, the applicant will need either a permit for expansion of nonconforming use or rezoning (to an industrial designation) of the property where the yard will be expanded. The project will also require a conditional use permit and variance for impacts to wetlands in the Mississippi River Corridor Critical Area.

The Great River Passage Master Plan notes the current and future use of the project site as railroad or industrial use. The proposed extension of the yard would take place within the railroad property. However, the great River Passage Master Plan calls for a number of facilities in the vicinity of the proposed yard expansion. Due to clearing of screening vegetation, including mature trees, the proposed project is likely to result in visual impacts to proposed parks facilities in the general vicinity of the yard. The impacts may affect current recreationists using Pig's Eye Lake for canoeing and kayaking, as well as users of facilities proposed for the future. Item 15 discusses proposed plantings that will screen the parks facilities from the potential impacts.

Some of the plans identified above note concerns that expansion of industrial uses in the area should address the environmental impacts of expansion and protect the natural resources in the corridor. This EAW identifies the impacts of the proposed CP track extension and includes measures as needed to avoid, minimize, or mitigate for the impacts identified for the CP project.

- c. Identify measures incorporated into the proposed project to mitigate any potential incompatibility as discussed in Item 9.b above.

Response: As noted in Item 9b above, the project is located within the Critical Area and Floodplain Overlay Districts (see attached Figure 6). The project will need to obtain a conditional use permit from the City of Saint Paul for permanent impacts to wetlands and, because the project is located in the Critical Area, a variance for permanent wetland impacts. As part of those processes, the project will also need to be evaluated against the development standards and permitting requirements for the Critical Area and Floodplain as outlined in Chapters 68 and 72, respectively, of the City's Legislative Code. The project proposer will also need to obtain a permit for expansion of nonconforming use or rezone the property in the project area from One-Family Residential to General Industrial.

The 100-year floodplain elevation of the Mississippi River at the project site is 706.0. The construction of the new access road and tracks will result in fill being placed below the 100-year floodplain elevation. The fill will be placed along the outer edge of the floodplain within the flood fringe zone of the Mississippi River and not within the regulatory floodway. Placement of fill within the flood fringe zone is allowable by FEMA and the DNR without any floodplain mitigation. The Ramsey-Washington Metro Watershed District requires that compensatory storage be provided unless modeling shows no impact to the 100-year water surface elevation. Providing compensatory storage adjacent to the area of fill impact would result in permanent wetland impacts.

HEC-RAS modeling was performed and submitted to the District as part of the permit applications for Phases 1a and 1b. The existing HEC-RAS models were obtained from Barr Engineering. HEC-RAS cross sections within the project limits were plotted on an aerial of the project along with the 100-year floodplain boundary and floodway boundary. These figures are included in the permit applications, attached. As shown on the figures, the fill will be placed within an ineffective area of the floodplain. The fill impacts resulted in no impact to the 100-year flood elevation. .

In addition to the modeling results showing no impact to the 100-year flood elevation, the RWMWD also requested that calculations be made of impacts from the proposed fill in the floodplain as if the river experienced lacustrine flooding across the width of the entire floodplain along the reach length where fill will be placed. Those calculations are shown below.

Phase 1a will result in 23,206 cubic yards of fill placed below the 100-year water surface elevation of 706.0 along the 6,450 lineal feet of river. The average width of the floodplain within the fill area is 8,200 feet. The impact calculation is as follows:

$$23,206 \text{ CY} \times (27 \text{ CF/CY}) / (6,450 \text{ FT} \times 8,200 \text{ FT}) = 0.0118 \text{ FT}$$

Phase 1b will result in 51,109 cubic yards of fill placed below the 100-year water surface elevation of 706.0 along 3,800 lineal feet of river. The average width of the floodplain within the fill area is 5,600 feet. The impact calculation is shown below:

$$51,109 \text{ CY} \times (27 \text{ CF/CY}) / (3800 \text{ FT} \times 5600 \text{ FT}) = 0.0648 \text{ FT}$$

Permanent wetland impacts due to the proposed project are estimated at 6.37 acres. The permanent wetland impacts will be the result of embankment fill being placed to construct the new access road and tracks. Mitigation of wetland impacts is required by the Minnesota Wetland Conservation Act (WCA) and will be accomplished by purchasing wetland credits from a State Wetland Bank. Detailed discussion of wetland impacts and mitigation is included in Item 11.b.iv.a., and the Joint Application Forms for Activities Affecting Water Resources in Minnesota are attached. The City is the Local Governmental Unit (LGU) for administration of WCA and handles this through the conditional use permit process described earlier in the response to this item.

Potential impacts to planned and existing park facilities in the vicinity of the proposed project can best be mitigated by replacing cleared screening vegetation to the maximum amount possible. Item 15 (Visual) includes a mitigation strategy to plant appropriate vegetation in shoreland areas along newly created slope toes, particularly where the new sheet pile retaining wall is proposed for installation along the north end of Pig's Eye Lake. Details of the planting design can be addressed as part of the required site plan review process.

10. Geology, soils and topography/land forms:

- a. Geology - Describe the geology underlying the project area and identify and map any susceptible geologic features such as sinkholes, shallow limestone formations, unconfined/shallow aquifers, or karst conditions. Discuss any limitations of these features for the project and any effects the project could have on these features. Identify any project designs or mitigation measures to address effects to geologic features.

Response: The *Ramsey County Groundwater Protection Plan (2009)* notes that the upper geologic layers in the County are composed of glacial drift materials. St. Peter Sandstone lies beneath the glacial drift, and the Prairie du Chien-Jordan aquifer lies below the St. Peter Sandstone layer. The Water Resource Management Chapter of the Saint Paul Comprehensive Plan identifies the general area of the proposed project as one with high groundwater sensitivity to contamination (Figure W-1, Sensitive Groundwater Area in Saint Paul). The water table is high in the wetland areas to the west of the project area, but not within the project site. Existing and proposed impervious surfaces will inhibit infiltration from the project area to shallow ground water layers. There are no known geologic hazards to groundwater such as sinkholes, shallow limestone formations, or karst conditions on or near the project site. The project will have no impacts on the underlying geologic features. Wetland impacts and mitigation are discussed under Item 11.

Groundwater in the project area is moving from the bluffs to the east of Highway 61 toward the Mississippi River. The sheet pile wall that will be constructed will not be impermeable. Groundwater will be able to migrate through the joints. In addition, there will be weep holes in the subsurface portion of the sheet pile wall that will allow ground water to flow through the wall. Therefore, permanent loss of wetland hydrology and loss of wetland vegetation, functions, and values in the outermost wetland area are not anticipated.

- b. Soils and topography - Describe the soils on the site, giving NRCS (SCS) classifications and descriptions, including limitations of soils. Describe topography, any special site conditions relating to erosion potential, soil stability or other soils limitations, such as steep slopes, highly permeable soils. Provide estimated volume and acreage of soil excavation and/or grading. Discuss impacts from project activities (distinguish between construction and operational activities) related to soils and topography. Identify measures during and after project construction to address soil limitations including stabilization, soil corrections or other measures. Erosion/sedimentation control related to stormwater runoff should be addressed in response to Item 11.b.ii.

Response: The *Soil Survey of Washington and Ramsey County, Minnesota*, published by the Soil Conservation Service, identifies the following soils in the project area:

- Soils within CP's Saint Paul yard area are classified as Udorthents, Wet Substratum. These soils are earthy fill materials that have been placed on poorly drained and very poorly drained mineral or organic soils. The fill is typically more than 2 feet thick and the Soil Survey indicates that the soils are suitable for buildings, roads, recreation areas, and other uses, but that organic material may need to be removed and replaced to accommodate buildings and roadways.
- Soils immediately to the east of the yard as classified as Kerston Muck and Chaska Silt Loam. These are level, poorly drained soils that occur in the bottoms and floodplain of the Mississippi River. Organic soil materials must typically be removed from both soil types in order to accommodate buildings or other construction.

There are existing steep slopes with grades up to 2H:1V along the riverside in-slope of the existing railroad embankment. The proposed riverside in-slope will also be constructed at a 2H:1V grade to minimize wetland impacts. The areas of steep slopes have been identified on the site plans, Figures 3A-D and 4A-D. The elevation change from top of slope to the toe of slope within the project area will range from 5 to 10 feet. This lack of significant topographic relief, less than 10 feet, minimizes the possibility of soil erosion.

As noted above, the soils in the area are generally poorly drained and the removal of organic soils is recommended for construction on these soil types. The soils have low permeability.

Construction will include the addition of sheet piling along the Ordinary High Water Level to stabilize the area for construction of the new access road. Construction for the roadway will include removal of the existing organic soil material within the area proposed for the new access road and placing, compacting, and grading new material for the roadway bed. Compaction of fill soils, silt fence, and other best management practices, as suggested by the MPCA's Best Management Practices and as required by the NPDES permit, will be used during and after construction to stabilize the soils disturbed during project construction.

Temporary and permanent erosion control measures will consist of establishing temporary and permanent vegetation on all exposed soil outside the track and roadway areas, engineering the construction of slopes in a manner that will minimize erosion potential and maintain stability, stabilizing waterways and outlets within 24 hours so that storm water will be conveyed and discharged without erosion, and installing hydraulic soil stabilizers and erosion control blankets with natural netting.

Temporary sediment control measures will consist of constructing temporary rock construction entrances, placing silt fence down gradient of all construction areas, and protecting storm sewers and culverts from the entrance of sediment by installation of appropriate sediment trapping devices.

The volumes of soil that will be excavated and added for the project by phase are estimated as follows:

Phase 1a: 1,251 cubic yards cut
 18,966 cubic yards fill

Phase 1b: 1,538 cubic yards cut
 71,844 cubic yards fill

The project area includes 5.05 acres in Phase 1a and 9.37 acres in Phase 1b.

NOTE: For silica sand projects, the EAW must include a hydrogeologic investigation assessing the potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water. Descriptions of water resources and potential effects from the project in EAW Item 11 must be consistent with the geology, soils and topography/land forms and potential effects described in EAW Item 10.

Response: Not applicable.

11. Water resources:

- a. Describe surface water and groundwater features on or near the site in a.i. and a.ii. below.
 - i. Surface water – lakes, streams, wetlands, intermittent channels, and county/judicial ditches. Include any special designations such as public waters, trout stream/lake, wildlife lakes, migratory waterfowl feeding/resting lake, and outstanding resource value water. Include water quality impairments or special designations listed on the current MPCA 303d Impaired Waters List that are within 1 mile of the project. Include DNR Public Waters Inventory number(s), if any.

Response: The project area is adjacent to three DNR Public Waters: Pig’s Eye Lake, PWI 62000400; Fish Creek; and an unnamed wetland, PWI62023700 (see Figures 3A-D). Additional DNR Public Waters within approximately 1 mile of the site include Public Waters PWI 236P and 233W and Battle Creek. Fish Creek, PWI 236P and 233W, and Battle Creek do not receive storm water runoff from the project area.

The Mississippi River is the ultimate receiving water for storm water generated within the project area. The river is designated as an Impaired Water on the MPCA’s 303d list. The river is impaired in the reach below the Metro Waste Water Treatment Plant for Aquatic Consumption (PCBs and PFOS in fish tissue) and Turbidity.

The Mississippi River is an important migratory route for many bird species, including migratory waterfowl. The Minnesota DNR has identified the marsh and floodplain forest area southeast of Pig's Eye Lake as a Site of Biodiversity Significance, and the DNR recommends minimizing disturbance to this site. The actions that will be taken to avoid or minimize disturbance to the area around Pig's Eye Lake are described in items ii and iv, below.

- ii. Groundwater – aquifers, springs, seeps. Include: 1) depth to groundwater; 2) if project is within a MDH wellhead protection area; 3) identification of any onsite and/or nearby wells, including unique numbers and well logs if available. If there are no wells known on site or nearby, explain the methodology used to determine this.

Response: The depth to the nearest confined groundwater aquifer (Prairie du Chien-Jordan Aquifer) is more than 100 feet on the project site. The shallow groundwater level is at or near the surface in the wetlands to the west of the site. The project is not within an MDH Wellhead Protection Area. The maps included in the *Ramsey County Groundwater Protection Plan* (2009) and field surveys by CP indicate that no existing or abandoned wells are located within the project area. The project site was not previously occupied by farmsteads, homes, or other industrial uses.

- b. Describe effects from project activities on water resources and measures to minimize or mitigate the effects in Item b.i. through Item b.iv. below.

- i. Wastewater - For each of the following, describe the sources, quantities and composition of all sanitary, municipal/domestic and industrial wastewater produced or treated at the site.

Response: This project will not affect any existing wastewater facilities and will not create any wastewater discharge or new wastewater facilities.

- 1) If the wastewater discharge is to a publicly owned treatment facility, identify any pretreatment measures and the ability of the facility to handle the added water and waste loadings, including any effects on, or required expansion of, municipal wastewater infrastructure. **Not applicable.**
 - 2) If the wastewater discharge is to a subsurface sewage treatment systems (SSTS), describe the system used, the design flow, and suitability of site conditions for such a system. **Not applicable.**
 - 3) If the wastewater discharge is to surface water, identify the wastewater treatment methods and identify discharge points and proposed effluent limitations to mitigate impacts. Discuss any effects to surface or groundwater from wastewater discharges. **Not applicable.**
- ii. Stormwater - Describe the quantity and quality of stormwater runoff at the site prior to and post construction. Include the routes and receiving water bodies for runoff from the site (major downstream water bodies as well as the immediate receiving waters). Discuss any environmental effects from stormwater discharges. Describe stormwater pollution prevention plans including temporary and permanent runoff controls and potential BMP site locations to manage or treat stormwater runoff. Identify specific erosion control, sedimentation control or stabilization measures to address soil limitations during and after project construction.

Response: Stormwater runoff from the project area under existing conditions discharges to three receiving waters: Pig's Eye Lake, an unnamed wetland, and the Mississippi River. The proposed project will maintain existing drainage patterns but will increase the area of impervious surface draining to the receiving waters. The increase in impervious surface will be the result of converting natural areas (including wetlands and woods) to a gravel access road. Phase 1a will increase the impervious surface by 3.12 acres. Phase 1b will reduce the impervious surface by 1.04 acres. The increase in impervious areas will generate increased volumes of runoff and increased peak discharges that will be managed through ponding water in ballasted areas between the tracks and releasing the water at a controlled rate and through constructing filtration trenches along the gravel access road designed to filtrate the runoff from a 1.3-inch rainfall prior to discharging to the receiving waters.

A Storm Water Pollution Prevention Plan (SWPPP) has been developed in accordance with the requirements of the NPDES Construction Stormwater Permit and the Ramsey-Washington Metro Watershed District permit. The City of Saint Paul will review the SWPPP as part of the site plan review, conditional use permit, and variance processes. Specific erosion and sediment control measures consist of rock construction entrances to minimize tracking of sediments off site, silt fence installed down gradient of all construction areas prior to any soil disturbance, and hydraulic soil stabilizers and erosion control blankets applied over all temporary and permanently-seeded areas. Copies of the final construction plans for Phases 1a and 1b are attached. Copies of the NPDES permit coverage cards for Phases 1a and 1b are attached. A 401 certification waiver from the MPCA is also attached.

- iii. Water appropriation - Describe if the project proposes to appropriate surface or groundwater (including dewatering). Describe the source, quantity, duration, use and purpose of the water use and if a DNR water appropriation permit is required. Describe any well abandonment. If connecting to an existing municipal water supply, identify the wells to be used as a water source and any effects on, or required expansion of, municipal water infrastructure. Discuss environmental effects from water appropriation, including an assessment of the water resources available for appropriation. Identify any measures to avoid, minimize, or mitigate environmental effects from the water appropriation.

Response: The project will not include appropriation of surface or ground waters. It will not impact municipal water infrastructure.

iv. Surface Waters

- a) Wetlands - Describe any anticipated physical effects or alterations to wetland features such as draining, filling, permanent inundation, dredging and vegetative removal. Discuss direct and indirect environmental effects from physical modification of wetlands, including the anticipated effects that any proposed wetland alterations may have to the host watershed. Identify measures to avoid (e.g., available alternatives that were considered), minimize, or mitigate environmental effects to wetlands. Discuss whether any required compensatory wetland mitigation for unavoidable wetland impacts will occur in the same minor or major watershed, and identify those probable locations.

Response: Total wetland impacts as a result of the project are anticipated to be 6.37 acres. Wetland impacts for Phase 1a are anticipated to be 2.24 acres, of which 2.16 acres are Type 1L floodplain forest (PF01A) and 0.08 acres are Type 3 Shallow Marsh (PEMF). Wetland impacts for Phase 1b are anticipated to be 4.13 acres, of which 1.84 acres are

Type 1L floodplain forest (PF01A) and 2.29 acres are Type 3 Shallow Marsh (PEMF). The impacts are shown in the attached Figures 7A-F.

The Wetland Delineation Report for the proposed project is attached.

Mitigation measures for impacting wetlands will be accomplished through the sequencing requirements of the Minnesota Wetlands Conservation Act:

Avoidance: Wetlands are located in the project area west of the existing railroad embankment for the entire project length. These wetlands are all located in close proximity to the toe of slope of the existing embankment, meaning that any construction outside the existing toe of slope in this area will result in wetland impacts.

While developing plans for the proposed project, design alternatives were considered to determine if permanent wetland impacts could be avoided. The access road construction and track extension is planned along an existing transportation corridor. Due to the density and distribution of wetlands within the corridor, no practicable alternative would completely avoid wetland impacts.

Bridging the wetlands was an alternative that was considered that would avoid permanent fill being placed into the wetland (except at pier locations); however, the wetland type would still be affected. The wetlands under the bridge would no longer be considered Type 1L floodplain forest wetlands.

CP considered expansion to the north. Expansion to the north is not feasible due to potential impacts to Warner Road and the need for filling within the Mississippi River floodway.

The extensive existing infrastructure in and serving the St. Paul Yard makes it the perfect location to handle 10,000 foot trains. The yard is centrally located on the CP system, and it also provides an interchange point with five other railroads: Union Pacific Railway, Minnesota Commercial Railway, Twin Cities and Western Railway, BNSF Railway, and Canadian National Railway.

The *East Metro Rail Capacity Study* (Ramsey County Regional Rail Authority) examines the need for infrastructure changes to accommodate existing freight, as well as forecasted freight growth in the East Metro area, and examined a variety of alternatives to improve capacity. The study identified the need to lengthen CP's departure tracks in the St. Paul Yard. The study notes that, without more efficient use of existing infrastructure, the likely alternative is that more freight will travel by truck.

The length of Phases 1a and 1b combined is approximately 10,300 lineal feet. There is an existing 5- to 20-foot grassed/riprap buffer located on the in-slope of the existing embankment between the existing gravel road/surface areas and the wetlands along the entire 10,300-foot length. The TEP-approved wetland boundary is located on the in-slope of the existing embankment. The existing 5- to 20-foot in-slope buffer that will be removed as a part of the project will be restored. The proposed grassed in-slope will provide a 5- to 20' buffer between the tracks/gravel roads and wetlands that will be similar to the existing conditions. A written request for a variance to the buffer requirement of the wetland rule has been submitted to the RWMWD.

Minimization: Measures will be taken during project development to minimize wetland impacts to the greatest extent practical. Wetland impact minimization measures include utilizing the narrowest access road top width acceptable for the type of vehicles that will be using the access road. A sheet pile wall will be constructed adjacent to Pig's Eye Lake to avoid impacts to wetlands below the Ordinary High Water Level of the lake. The design also incorporates 2H: 1V side slopes, the steepest embankment side slopes that design standards allow.

Mitigation: Mitigation measures will be in accordance with the requirements of the Minnesota Wetlands Conservation Act, the US Army Corps of Engineers, and the Ramsey-Washington Metro Watershed District. Mitigation will be provided at a 2:1 replacement ratio.

Six sites that were considered for wetland mitigation. All six sites are located within the Mississippi River bottomlands subwatershed, which is the same watershed as the potential impacts. Information on these sites was included in the Phase 1a and Phase 1b Joint Application Forms for Activities Affecting Water Resources in Minnesota that were submitted to the LGU and further distributed to the US Army Corps of Engineers, BWSR, and other members of the TEP. The applications are attached.

Two sites were considered for wetland creation/restoration to mitigate for Phase 1a impacts. The first is an area north of Dayton's Bluff on Saint Paul Parks and Recreation Department property that the City requested that be considered, and the second is an area directly southwest of the proposed access road. Unfortunately, these two areas, which are near the project site, are not conducive to wetland mitigation. After further investigation, it was determined that the Dayton's Bluff area is a State Superfund Site and the area southwest of the proposed access road is Pig's Eye Landfill.

In coordination with the City of Saint Paul and TEP members, four sites were considered for wetland creation/restoration to mitigate for Phase 1b impacts. These four sites are located on MnDNR and City of Saint Paul Parks and Recreation Department property and were identified in the City of Saint Paul's Great River Passage Master Plan as potential wetland restoration/creation areas. A field visit to these four sites occurred on May 22, 2014. The City of Saint Paul and other members of the TEP were present. It was determined that all four sites are not conducive to wetland restoration or creation due to a variety of factors including dense woods, limited hydrology, Super Fund Site, utility easement, and the presence of hydric soils.

Mitigation will be accomplished through purchasing credits from a State Wetland Bank, since the creation or restoration of wetlands has been determined to be infeasible. A purchase agreement is in place with Mark Vargo, the account manager with Meadowlake Preserve, Account 1137, to purchase 4.48 credits to replace the 2.24 acres of wetland impacted with Phase 1a. Account 1137 contains all Corps-certified credits. Non-refundable earnest money in the amount of \$39,000 has been paid to the seller to secure these credits. The seller has also agreed to set aside 8.26 additional credits to be used for replacement of the 4.13 acres of Phase 1b wetland impacts. See the attached Phase 1b Joint Application Form for Activities Affecting Water Resources in Minnesota for a copy of the purchase agreement.

Copies of the permit applications submitted to the City (LGU), USACE, and RWMWD are attached.

- b) Other surface waters- Describe any anticipated physical effects or alterations to surface water features (lakes, streams, ponds, intermittent channels, county/judicial ditches) such as draining, filling, permanent inundation, dredging, diking, stream diversion, impoundment, aquatic plant removal and riparian alteration. Discuss direct and indirect environmental effects from physical modification of water features. Identify measures to avoid, minimize, or mitigate environmental effects to surface water features, including in-water Best Management Practices that are proposed to avoid or minimize turbidity/sedimentation while physically altering the water features. Discuss how the project will change the number or type of watercraft on any water body, including current and projected watercraft usage.

Response: There will be no physical effects or alterations to Pig's Eye Lake, the Mississippi River, or any other stream, pond, channel, or county/judicial ditch.

12. Contamination/Hazardous Materials/Wastes:

- a. Pre-project site conditions - Describe existing contamination or potential environmental hazards on or in close proximity to the project site such as soil or ground water contamination, abandoned dumps, closed landfills, existing or abandoned storage tanks, and hazardous liquid or gas pipelines. Discuss any potential environmental effects from pre-project site conditions that would be caused or exacerbated by project construction and operation. Identify measures to avoid, minimize or mitigate adverse effects from existing contamination or potential environmental hazards. Include development of a Contingency Plan or Response Action Plan.

Response: The analysis completed for this EAW included a search of state (MPCA) and federal databases that list existing contamination sites and environmental hazards. The databases identified two sites near the project area where leaks of diesel fuel have occurred in the past:

- Canadian Pacific Track 4 (MPCA Leak Site #16530) – The leak was identified in 2006, and closed in 2010. The leak included contamination of site soils and groundwater.
- Canadian Pacific Caboose Track (MPCA Leak Site #16529) – The leak was identified in 2006, and the site was closed in 2010. The leak contaminated soils at the site.

The two sites are not within the project area and will not be disturbed during the construction of the project. The proposed project will occur around Track 6 in the CP yard. Track 4 is separated from the Track 6 project area by Track 5 and an access road. The Caboose Track is located 500 feet from the project site. CP is aware of the contamination sites and will avoid disturbance of the sites during construction activities.

The databases also noted the location of the BNSF CERCLIS site near Dayton's Bluff and the Pig's Eye Landfill CERCLIS site. Each of these sites is approximately 1 mile from the project site and will not be disturbed by site activities.

The database review indicated that the project site does not include and is not in proximity to other sites of soil or ground water contamination, abandoned dumps, landfills, existing or abandoned storage tanks, or hazardous liquid or gas pipelines.

If any environmental hazards are encountered during construction, they will be addressed in conformance with State requirements.

- b. Project related generation/storage of solid wastes - Describe solid wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from solid waste handling, storage and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of solid waste including source reduction and recycling.

Response: No hazardous wastes will be generated by the construction of the project. Construction debris will be recycled or disposed of properly.

- c. Project related use/storage of hazardous materials - Describe chemicals/hazardous materials used/stored during construction and/or operation of the project including method of storage. Indicate the number, location and size of any above or below ground tanks to store petroleum or other materials. Discuss potential environmental effects from accidental spill or release of hazardous materials. Identify measures to avoid, minimize or mitigate adverse effects from the use/storage of chemicals/hazardous materials including source reduction and recycling. Include development of a spill prevention plan.

Response: No chemicals or hazardous materials will be used or stored during construction or operation of the project. The project will not include installation of above- or below-ground tanks to store petroleum. During the construction activities, machinery containing diesel fuels will be present on the site. The contractor will be responsible for maintaining the equipment, providing a suitable area for fueling, and cleaning up any spills that may occur on the site during construction.

- d. Project related generation/storage of hazardous wastes - Describe hazardous wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from hazardous waste handling, storage, and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of hazardous waste including source reduction and recycling.

Response: CP trains and other trains operating in the project area currently transport a variety of hazardous chemicals, including petroleum products. The project will make the transport through the corridor more efficient and reduce switching and delays within the CP yard. Moving trains more quickly and efficiently should reduce the potential for accidents or spills in the corridor.

The railroad operates within the General Code of Operating Rules that applies to the majority of railroads operating in the U.S. The code includes standards and requirements for the transport of hazardous materials. CP's Engineering Services Red Book of Track Requirements (dated May 25, 2012) lists the speeds for various track conditions. All of the tracks in the CP yard are rated to carry hazardous materials. CP also employs environmental staff that are trained in managing emergency response to spill events.

CP does not own the tank cars that transport petroleum and other hazardous chemicals through the corridor. The tank cars are inspected based on frequencies established by the Federal Railroad Administration. Trains that carry petroleum products are handled as unit trains – all of the cars are carrying one commodity. The trains typically take on a new crew in Saint Paul and continue without being handled in the yard. The proposed project will not affect how unit trains are handled, but the track extension will allow for more efficient operation of the mainline track through the yard area and more efficient movement of the unit trains through the Saint Paul yard.

The design of the project includes a new connection from the access road to Highway 61 at the south end of the CP yard. This will provide an access for emergency vehicles to the yard area (see Figures 4A-D).

CP has three emergency plans that will be implemented in the event of a spill of hazardous materials or similar emergency:

- A Facilities Evacuation Plan
- A Spill Prevention Control and Countermeasures Plan
- A Storm Water Pollution Prevention Plan

CP has conducted emergency drills with local fire departments and first responders on emergency procedures, and is working with the City of Saint Paul's Department of Emergency Management on a Commodities Study that includes planning for potential incidents involving hazardous materials. The Commodities Study is not yet complete. It may quantify risks associated with the hazardous materials traveling through Saint Paul on the rail corridor, and identify responsibilities for reducing or mitigating for potential risks for the organizations that transport hazardous materials through the City.

Mitigation:

- CP will continue to work with the City's Department of Emergency Management on the Commodities Study and emergency response planning related to hazardous materials and potential incidents.
- CP will implement its Facilities Evacuation Plan, Spill Prevention Control and Countermeasures Plan, and Storm Water Pollution Prevention Plan, as appropriate, in the event of a spill of hazardous materials or other incident.

13. Fish, wildlife, plant communities, and sensitive ecological resources (rare features):

- a. Describe fish and wildlife resources as well as habitats and vegetation on or in near the site.

Response: The project area has been occupied by the CP yard for many years. The project area includes a variety of wetland types (described in Item 11) and woodland and brush/grassland plant communities as noted on the Cover Types table, Item 7.

The area to the west of the site includes Pig's Eye Lake and related wetland areas in the Pig's Eye Preserve. The Pig's Eye Lake area is included in a Site of Moderate Biodiversity identified by the Minnesota DNR and includes marsh and floodplain wetlands.

The Mississippi River and associated wetlands and floodplain areas include a variety of wetlands and natural plant communities, provide significant habitat for a variety of fish and wildlife resources, and are an important migratory route for many bird species. The wetland and woodland areas that will be impacted by the project include a narrow band of "edge" habitats adjacent to the CP Rail Yard. The location of the impacts is identified on exhibits included with the Wetland Permit Applications, which are included in the attachments.

Wildlife species in the area include species that utilize edge habitats, including deer, geese and other waterfowl, songbirds, birds of prey, small mammals, reptiles, and amphibians. Habitat that will be directly impacted by the proposed project consists of wetlands and adjacent wooded areas adjacent to the rail yard. It is expected that wildlife in the area will be disturbed during construction of the project, and some may be displaced. However, significant impacts to wildlife in the area are not anticipated to occur as a result of the project.

- b. Describe rare features such as state-listed (endangered, threatened or special concern) species, native plant communities, Minnesota County Biological Survey Sites of Biodiversity Significance, and other sensitive ecological resources on or within close proximity to the site. Provide the license agreement number (LA-____) and/or correspondence number (**ERDB 20130312**) from which the data were obtained and attach the Natural Heritage letter from the DNR. Indicate if any additional habitat or species survey work has been conducted within the site and describe the results.

Response: The DNR's Natural Heritage Information System (NHIS) review letter (attached) noted that the proposed project is adjacent to a Site of Moderate Biodiversity Significance (MBS). The site is a marsh and floodplain forest area southeast of Pig's Eye Lake. The DNR letter noted that invasive species are present within the project area, recommended that measures be taken to minimize disturbance to the MBS site, and recommended that indirect impacts from surface water runoff or the further spread of invasive species be minimized.

The NHIS review letter also noted that Blanding's turtles (*Emydoidea blandingii*), a state-threatened species, have been reported in the vicinity of the proposed project and may be encountered on the site. The DNR recommended that CP consider a list of recommendations to protect turtles in the area.

No additional habitat or species survey work has been conducted within the project area for this EAW.

- c. Discuss how the identified fish, wildlife, plant communities, rare features and ecosystems may be affected by the project. Include a discussion on introduction and spread of invasive species from the project construction and operation. Separately discuss effects to known threatened and endangered species.

Response: The CP yard and adjacent rail and roadway corridors have existed next to the river corridor and its plant communities and ecosystems for decades. The project will affect approximately 2.24 acres of wetland during Phase 1a and approximately 4.13 acres of wetland during Phase 1b. The project will also impact a narrow band of woodland adjacent to the wetlands and the CP Rail Yard (2.52 acres in area). CP will complete the required mitigation for the wetland impacts, as described in Item 11.iv. The mitigation activities that minimize wetland disturbance will minimize the potential to introduce or spread invasive species in the disturbed areas. The project will not impact the Mississippi River or Pig's Eye Lake.

- d. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to fish, wildlife, plant communities, and sensitive ecological resources.

Response: Construction activities will occur within a well-defined area within the existing CP yard. Sheet piling above the Ordinary High Water Level of 692.8, silt fence, and best management practices required by project permits will be utilized to limit impacts in wetland areas and avoid impacts to the MBS site. No construction impacts will occur to resources outside the immediate project area.

Wetlands that are impacted by the project will be mitigated through purchasing credits from a State Wetland Bank and/or the creation of new wetland areas on City of Saint Paul Parks and Recreation and/or the DNR property that will be planted with native seed mixes consistent with the approved permit and recommended by the Technical Evaluation Panel (convened by the City of Saint Paul in its role as the LGU for the WCA) that reviewed the Wetland Delineation Report. All disturbed vegetated areas will be restored as required by the wetland permit.

CP will also minimize and mitigate for impacts to the wooded areas that will be impacted by the project. The project will impact a narrow band of wooded areas adjacent to the tracks, and CP will avoid impacts to woodland areas outside the construction limits. CP will add a planting of native Swamp White Oak (*Quercus bicolor*) to the area adjacent to the rail yard to mitigate for the loss of the narrow band of woodland that will be lost due to expansion of the yard. The proposed planting and project limits to protect existing vegetation are identified on the Planting Plan, which is included in the attachments.

Mitigation

CP will implement the recommendations for avoiding and minimizing potential impacts to Blanding's turtles and the MBS site, including the following:

- CP will provide the DNR's Blanding's turtle flyer to all contractors working in the project area.
- Contractors will be directed to safely move any Blanding's turtle identified in the construction area to a safe area outside the area of disturbance.
- Contractors will avoid disturbance to any turtle nest.
- Silt fencing will be placed on the site to keep turtles out of construction areas. Silt fence will be removed after the project is completed.
- No pesticides will be used during construction.
- No curbing is proposed.
- Actions taken to avoid, minimize, or mitigate wetland impacts are described in Item 11b.iv. Wetland impact areas will be seeded with a native mix, as recommended by the Technical Evaluation Panel that reviewed the Wetland Delineation Report. No invasive species are included in the seed mix. Early establishment of the seed mix will help to minimize the potential for the spread of invasive species in the wetlands or areas near the MBS site.
- Storm water will be managed to avoid impacts to the MBS site.

14. Historic properties:

Describe any historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Include: 1) historic designations, 2) known artifact areas, and 3) architectural features. Attach letter received from the State Historic Preservation Office (SHPO). Discuss any anticipated effects to historic properties during project construction and operation. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to historic properties.

Response: CP requested that the State Historic Preservation Office (SHPO) complete searches of the archaeological database and historic structures database to identify properties on or in close proximity to the site. The initial search used incorrect location information. A second search was completed with the correct location. A copy of the second SHPO response (May 20, 2014) is attached.

SHPO response indicated that there are no archaeological sites in or near the project area.

The SHPO response identified 17 historic structures within Township 29, where the project area is located. Ten of the identified historic structures are located in Maplewood and North St. Paul, and are more than 4 miles from the project area.

Seven of the historic structures are located within the City of Saint Paul. All of the sites are 3 to 4 miles from the project area. None of the historic structures will be affected by the construction of the project.

SHPO recommended that CP complete a Phase I Archaeological Survey due to the nature and location of the proposed project. The survey needs to meet the requirements of the Secretary of the Interior's Standards for Identification and Evaluation and should include an evaluation of National Register eligibility for any properties that are identified. CP contracted with an eligible consultant to complete the Phase I survey and will provide the results to SHPO. CP and the City will follow the recommendations of the Phase I survey report if archaeological resources are identified and will contact SHPO if needed to discuss the findings.

The Canadian Pacific Railway itself has been identified as eligible for the National Register. The Chicago, Milwaukee and St. Paul/Milwaukee Road line (now Canadian Pacific) from La Crescent to Saint Paul was identified as eligible in a previous project (SP 85-00132), with SHPO concurrence, in 2003.

15. Visual:

Describe any scenic views or vistas on or near the project site. Describe any project related visual effects such as vapor plumes or glare from intense lights. Discuss the potential visual effects from the project. Identify any measures to avoid, minimize, or mitigate visual effects.

Response: Saint Paul's Comprehensive Plan includes Figure LU-O, Significant Public Views (a copy is attached). The views identified in the area of the project include views toward the project area from the bluff areas to the east. The proposed project will extend five existing railroad tracks, add one new track, and add one access road in an area that currently includes multiple rail tracks and existing access roads that serve the CP and BNSF tracks. The addition of the access road and track extension will not significantly change the views of the rail and transportation-dominated corridor from the bluffs to the east of the project area.

Recreationists using the Mississippi River and Pig's Eye Lake also have views toward the bluffs and the project site. The vegetated areas between the river and the project area are visible on an aerial photo of the project environs (Figure 8).

The project will include the addition of a sheet piling retaining wall on the west side of the project area, along the east side of the Pig's Eye Lake wetlands. The sheet piling will be screened from view from the Mississippi River by the existing dense vegetation within the floodplain areas along the river between the river channel and Pig's Eye Lake. In order to screen the sheet piling from views from Pig's Eye Lake and its wetlands, the project mitigation will include planting live Willow tree stakes

on the riprap slope below the sheet piling. The sheet pile retaining wall will vary from 5.4 feet to 10 feet in height above ground level, and from 23 to 43 feet below ground level. The willows will grow to a height of 20-35 feet and will screen the wall and views toward the yard area from Pig's Eye Lake. The sheet pile retaining wall construction plans are attached. The planting plan is included in the construction plans, which are also attached.

The project area is already intensely developed for transportation uses and includes multiple railroad tracks and Highway 61. The extension of existing tracks will not change the character or content of the views from the Significant Public View areas on the bluff that were identified in the City's Comprehensive Plan. The existing mature vegetation in adjacent areas between the project area and the Mississippi River will limit the visual effects of the project on recreation users, and the Willow trees that will be added between Pig's Eye Lake and the sheet piling along the edge of the project will screen views of the sheet piling from Pig's Eye Lake. The project will not include additional lighting in the yard area.

Mitigation

CP will plant live Willow tree stakes within the riprap slope below the sheet piling retaining wall that will be placed between the project area and Pig's Eye Lake to screen the retaining wall and rail yard from views of recreationists on Pigs Eye Lake. Opportunities for further vegetative screening will be explored as part of the site plan review process.

16. Air:

- a. Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants, and any greenhouse gases. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project's effect on air quality and the results of that assessment. Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.

Response: The project area does not include any stationary sources of air emissions such as boilers or exhaust stacks, and none will be added with the proposed project.

- b. Vehicle emissions - Describe the effect of the project's traffic generation on air emissions. Discuss the project's vehicle-related emissions effect on air quality. Identify measures (e.g. traffic operational improvements, diesel idling minimization plan) that will be taken to minimize or mitigate vehicle-related emissions.

Response: The traffic associated with this project is rail traffic, including diesel locomotives. Implementation of the project will result in more efficient operation of trains and locomotives through the CP yard, which should decrease air emissions generated by CP operations. CP currently generates approximately 40 percent of the rail traffic through the rail corridor east of downtown Saint Paul; BNSF generates approximately 60 percent of the traffic in the area. This proportion is likely to remain unchanged for the foreseeable future.

It should be noted that the project will not increase the number of trains travelling through the corridor, but will make train movements more efficient. The *East Metro Rail Capacity Study* (Ramsey County Regional Rail Authority, 2012) estimates that rail traffic in the corridor will increase approximately 36 percent during the next 10 years. This increase will occur with or without the proposed track extension within the CP yard that is the subject of this EAW.

The project and other ongoing railroad efforts are expected to improve the efficiency of rail operations in the CP yard and affect air emissions in the following ways:

- The existing CP yard can handle trains up to approximately 7,000 feet in length. In recent years, trains have expanded and are frequently 10,000 feet in length. In order to handle the longer trains, the trains are split into sections as they enter the yard and placed on different tracks, to be reconfigured later before they leave the yard. This requires additional locomotives for switching operations and results in locomotives idling within the yard. The extension of the tracks to handle longer trains will reduce the number of locomotives operating in the yard and reduce idling time, and therefore reduce air emissions from locomotives.
 - Each train currently requires approximately 30 minutes of locomotive time for splitting and switching operations. Approximately 15 trains travel into the yard on an average day. Implementing the project could therefore result in up to 7.5 fewer hours of locomotive operations per day and avoid the emissions that would have resulted from those operations.
 - CP is also gradually switching to new locomotives that are more efficient and produce fewer emissions. Each of the new locomotives is approximately 10 percent more efficient than the older locomotives operating today.
- c. Dust and odors - Describe sources, characteristics, duration, quantities, and intensity of dust and odors generated during project construction and operation. (Fugitive dust may be discussed under Item 16.a). Discuss the effect of dust and odors in the vicinity of the project including nearby sensitive receptors and quality of life. Identify measures that will be taken to minimize or mitigate the effects of dust and odors.

Response:

Dust: Construction activities may produce some dust while the project is being built. Dust generation during construction will be temporary. CP and its contractor will utilize the following dust control measures as necessary to control fugitive dust:

- Minimize the period and extent of areas being exposed or graded at any one time.
- Spray construction areas and haul roads with water, especially during periods of high wind or high levels of construction activity.
- Minimize the use of vehicles on surfaces that are not paved or compacted.
- Cover or spray material piles and truck loads with water.

Odors: The construction and/or operation of this project is not anticipated to involve any processes or materials that would generate odors, except odors from diesel locomotive operation. The project impacts on locomotive operation are addressed in Item 16.b.

17. Noise

Describe sources, characteristics, duration, quantities, and intensity of noise generated during project construction and operation. Discuss the effect of noise in the vicinity of the project including 1) existing noise levels/sources in the area, 2) nearby sensitive receptors, 3) conformance to state noise standards, and 4) quality of life. Identify measures that will be taken to minimize or mitigate the effects of noise.

Response Summary: There are a number of potential noise sources at rail yard operations that can impact noise-sensitive areas. This analysis describes the sources, characteristics, duration, quantities, and intensity of noise that was monitored at receptors around the project area in January and February, 2014; identifies the noise attributable to CP operations in the project area; and compares the noise monitoring results to Minnesota standards.

The data gathered in the monitoring activities provided baseline information for noise generated in and around the Saint Paul yard by all transportation activities. The monitoring indicated that some locomotive operations in the yard area may violate State nighttime noise standards. MPCA staff indicated that most noise generated by railroad operations is regulated by the federal government as it regulates interstate commerce. State regulation of railroad noise is a “gray” area, and MPCA staff are currently studying the State’s potential role, if any, in regulating noise in rail yards.

Noise Monitoring Process

The first step in the noise monitoring and analysis completed for this EAW was the placement of noise receptors in locations determined to be potential noise-sensitive areas near the CP project area. Four receptors were placed in locations directly east of the project site in a residential neighborhood on the river bluffs. This residential area is separated from the CP yard by Highway 61 and the BNSF Railway. Receptors 1-4 (Rec 1-4) are identified in Figure 9.

The analysis also identified potential noise sources in the project area, including:

- Highway 61: Highway 61 traffic noise is a constant noise source for much of the daytime and nighttime hours in the transportation corridor adjacent to the CP project area.
- BNSF and CP Rail Lines: Both CP and BNSF operate rail lines along the east edge of the rail yard. Noise from the CP and BNSF trains that pass through the corridor includes the engine noise and the noise from the rail cars as they travel on the tracks. CP operates approximately 40 percent of the trains that run through the corridor, and BNSF operates approximately 60 percent of the trains through the corridor.
- CP Rail Yard Operations: Noise sources in the yard operations include:
 - Noise from the engines bringing the cars into and out of the rail yard.
 - Noise from the engines moving cars on the tracks and over the hump.
 - Banging noise from cars shifting, coupling, and decoupling as they are moved around in the yard and as they connect with other cars after going over the hump.
 - Brake noise from the brakes on the cars and from the braking system used in controlling the cars as they go over the hump.

Minnesota Noise Rules and Noise Descriptors

Minnesota has adopted noise standards that are designed to be consistent with sleep, speech, annoyance, and hearing conservation requirements for receivers within areas grouped according to land use activities. The Minnesota standards are as follows:

	<u>7:00 AM to 10:00 PM</u>		<u>10:00 PM to 7:00 AM</u>	
	L ₁₀	L ₅₀	L ₁₀	L ₅₀
NAC-1 (Residential)	65	60	55	50
NAC-2 (Commercial)	70	65	70	65
NAC-3 (Industrial)	80	75	80	75

L₁₀ means the sound level that is exceeded for 10 percent of the time for a one-hour period.

L₅₀ means the sound level that is exceeded 50 percent of the time for a one-hour period. Sound levels are expressed in dBA. A dBA is a unit of sound level expressed in decibels and weighted for the purpose of approximating the human response to sound.

The impact of the CP yard noise on a residential area is limited by the NAC-1 values.

Noise Assessment Approach

The approach to assessing the noise impacts of this project included the following tasks:

1. The noise monitoring consultant selected representative noise-sensitive receptor locations along the length of the project.
2. The consultant conducted a noise monitoring program at these locations to assess the existing project area noise levels during the daytime and nighttime. The rail yard operates 24 hours per day, seven days per week. Noise impacts from the yard activities are intermittent and variable at the receptor locations, depending upon when and where yard activities are occurring at any time. In order to help assure that the potential rail yard noise impacts were identified, over ten hours of monitoring data were collected at four different representative receptor locations on five different days. Yard activities were documented during each monitoring period. The detailed monitoring data are included in the Attachments.
3. The consultant analyzed the data gathered during monitoring to assess the rail yard impacts relative to the State standards and project whether the CP project to extend the tracks in the yard area has the potential to cause changes to the impacts.
4. In addition to monitoring at the sensitive receptor locations, the consultant conducted simultaneous monitoring at reference points within the rail yard property to assist in defining the impacts of specific operations. The reference point locations are shown as Ref 1-2 in Figure 9. Documentation of the yard activities and the noise monitoring data collected at the reference sites is included in the Attachments.

Representative Noise Receptor Locations

Monitoring occurred at four noise receptors (Rec 1-4 in Figure 9) that were located along the bluffs east of the CP project area, within the residential area east of the CP yard. The receptor locations gathered noise data at locations that are representative of conditions in the residential areas adjacent to the project area and included:

- REC-1: This receptor is located on the western edge of a residential property on Pt. Douglas Road directly across from where incoming trains currently begin to be separated. The line of site from this monitoring location to the rail yard operations is obstructed by the elevated Highway 61 bank. This acts as a noise barrier between the residential location and the rail yard operations. This site is representative of a number of residential areas adjacent to Pt. Douglas Road where the bank to Highway 61 provides a barrier to noise from the rail yard operations.
- REC-2: This receptor is located at the same property as REC-1 but near the home that is part way up the river bluff, with partial obstruction of the yard operations by the elevated Highway 61. This site is representative of a number of residential areas adjacent to Pt. Douglas Road and part way up the bluff where the bank to Highway 61 provides a partial barrier to noise from the rail yard operations.
- REC-3: This receptor is located along Pt. Douglas Road and has a direct line of sight to much of the rail yard operations. This site is representative of a number of residential areas adjacent to Pt. Douglas Road where there is a direct line of sight to the rail yard operations.
- REC-4: This receptor is on Skyway Drive, high on the river bluff. This site is representative of a number of residential areas high on the river bluff and adjacent to Pt. Douglas Road where there is a direct line of site to the rail yard operations.

Monitoring Results

Results of the monitoring at each sensitive receptor location, including a description of the individual noise sources encountered during the monitoring period, are provided in the following Tables 17-1 through 17-4.

The noise levels shown on the tables below for each monitoring period are the total noise levels identified at each receptor, and include highway noise as well as noise from all railroad operations. The notes below the table (in bold type) identify the noise that was attributed to the CP operations during each monitoring event.

Table 17-1
REC-1 – Noise Monitoring Results

Monitoring Period	Date	Time	L ₁₀	L ₅₀
1	1/19/14	1:47 - 2:53 pm	66.0	63.0
2	1/19/14	2:53 – 3:54 pm	67.0	63.0
3	2/18/14	12:21 – 1:22am	64.0	50.0

Notes: Daytime noise levels dominated by Highway 61 traffic. **No CP yard rail activity occurred near the monitoring location during Monitoring Period 1, just one pass-through train noted on BNSF track .** Monitoring Period 2 includes CP yard activity throughout the monitoring period. Occasional brake squeaking and low frequency pulse noted during Monitoring Period 2. **Pass-through trains noted as causing 54-57 dBA at the monitoring location, with a 61 dBA peak as the engine passes. Engine idling noise noted at 50-51 dBA.** Detailed documentation of the yard activities and the monitoring data for each monitoring period are included in the Attachments.

Table 17-2

REC-2 – Noise Monitoring Results

Monitoring Period	Date	Time	L ₁₀	L ₅₀
1	2/3/14	1:45 - 2:45 pm	65.0	61.0
2	2/18/14	2:53 – 3:54 am	60.0	52.0

Notes: Daytime noise dominated by traffic. **Train noise audible during the day, but not adding noticeably to readings. Short brake squeaks and banging of cars coupling noted. Trains passing through with engine peaking at 60-65 dBA and rail car noise at 47-52 dBA.** Detailed documentation of the yard activities and the monitoring data for each monitoring period are included in the Attachments.

Table 17-3

REC-3 – Noise Monitoring Results

Monitoring Period	Date	Time	L ₁₀	L ₅₀
1	1/19/14	4:33-5:33 pm	69.0	64.0
2	2/3/14	5:16-6:05 pm	67.0	63.0
3	2/19/14	12:52-1:52 am	66.0	58.0

Notes: Significant traffic on Point Douglas Road impacting L₁₀ readings for daytime measurements. Pass-by trains in 65-69 dBA range. Daytime noise dominated by traffic. **Yard engine noise audible during the day, but did not add noticeably to monitoring equipment readings. Short banging of trains noted. Brake squeaking from hump area occasionally noted for a few seconds at a measured level in the mid-60s dBA range. Yard engines 60-62 dBA when revved up. Period 2 monitoring was terminated prior to one hour of monitoring due to temperatures falling below recommended operating range for the noise monitoring equipment.** Detailed documentation of the yard activities and the monitoring data for each of the monitoring periods are provided in the Attachments.

Table 17-4

REC-4 – Noise Monitoring Results

Monitoring Period	Date	Time	L ₁₀	L ₅₀
1	2/12/14	5:33-6:33pm	65	61
2	2/18/14	3:59-5:00am	59	53
3	2/18/14	5:00-5:17am	63	60

Notes: **Through trains causing 62-70 dBA from engines and 54-58dBA with rail car noise.** Short brake squeaks and banging of cars coupling noted. **Yard train engine pushing cars over hump causing levels of 60 dBA at the receiver. Monitoring Period 3 was conducted to confirm the potential of yard train engines to cause an exceedance of the State nighttime standards as it pushes a line of rail cars over the hump It includes 11 minutes of yard train causing levels of greater than 58 dBA. Only six minutes of impacts at this level would be an exceedance of the 55 dBA standard.** Detailed documentation of the yard activities and the monitoring data for each of the monitoring periods are provided in the Attachments.

Summary of Noise Impacts for All Sources in the Highway 61 Corridor

The residential areas along the rail yard are subject to noise impacts from Highway 61 and local road traffic, from trains passing through on the BNSF and CP rail lines, and from operations in the CP yard.

The noise monitoring results (Tables 17-1 through 17-4) show the total noise levels from all sources at every monitored receptor to be above the Minnesota standards during every monitoring period.

Impact of Rail Yard Operations

- Banging Noise From Cars Coupling: The banging noises that result from cars coupling as trains are reconfigured in the yard are short-term impact noises that, because of their short duration, do not contribute significantly to the L₁₀ or L₅₀ results. (L₁₀ means the sound level is exceeded for 6 minutes in a one-hour period and L₅₀ means the sound level is exceeded for 30 minutes in a one-hour period.) Increased train length could cause the duration of these banging noises to increase. However, this would be offset by the reduced frequency of banging due to less maneuvering of cars being required when the tracks are lengthened as proposed in the project.
- Brake Noise From Cars and Hump Operations: The brake noise encountered during the monitoring was intermittent and lasted for only a few seconds at a time, with the most noticeable source being the hump operation. Instantaneous noise level readings at receptor REC-3 showed the levels in the mid-60s dBA from this source. Increased train length could cause the duration of these brake noises to increase. However, this could be offset by the reduced frequency of the brake squeak noises when the tracks are lengthened if fewer trains need to be split and reconfigured in the hump area.
- Noise From Yard Engines: Noise from the engines pushing the cars to the hump was shown to have the potential to cause noise level impacts above State standards at receptors REC-3 and REC-4. Because the engines operate at load for a significant period of time as they slowly push the cars to the hump, they can cause impacts that exceed the L₁₀ nighttime noise standard of 55 dBA. One monitoring period at receptor REC-4 showed impacts from this source to be near 60 dBA for 11 minutes in a 17-minute period. The monitoring data indicates that the noise generated by engine operations could exceed the nighttime standard to distances beyond 800 feet from the engines.

Impact of the Proposed Modifications and Regulation of Noise

Because the proposed site modifications will reduce the amount of time that engines are moving rail cars and maneuvering cars around the CP yard, the amount of time that the engines are creating high noise levels will be reduced from the existing condition. This may result in a reduction of noise attributable to CP operations at its yard. However, there may still be periods when the impacts from these engines exceed the State's nighttime standards.

MPCA staff noted that most noise generated by railroad operations is regulated by the federal government, as part of the federal government's role in regulating interstate commerce. MPCA staff indicated that the regulation of noise in yard areas is a "gray" area, and MPCA staff are currently studying the State's potential role, if any, in regulating noise in rail yards. The noise data reported above do not trigger an immediate enforcement action by MPCA. The MPCA

suggested the proposed mitigation item, below. Federal noise standards are focused on the performance of individual pieces of equipment under controlled test conditions rather than on the impact of actual operations on receiver land use activities. Evaluation of noise levels relative to federal standards requires specific monitoring protocols that were not used in this case. However, based on the data collected, it is unlikely that current operations result in exceedances of federal standards, which allow for higher noise levels than state standards.

Mitigation

- The City will work with the MPCA as the agency determines whether the State of Minnesota has authority to regulate noise generated by rail yard operations, and on any potential regulatory response to the noise data reported in this EAW.

18. Transportation

- a. Describe traffic-related aspects of project construction and operation. Include: 1) existing and proposed additional parking spaces, 2) estimated total average daily traffic generated, 3) estimated maximum peak hour traffic generated and time of occurrence, 4) indicate source of trip generation rates used in the estimates, and 5) availability of transit and/or other alternative transportation modes.

Response: The project does not include existing or proposed parking spaces. It will not affect daily vehicle traffic or other transit modes.

- b. Discuss the effect on traffic congestion on affected roads and describe any traffic improvements necessary. The analysis must discuss the project's impact on the regional transportation system. *If the peak hour traffic generated exceeds 250 vehicles or the total daily trips exceeds 2,500, a traffic impact study must be prepared as part of the EAW.* Use the format and procedures described in the Minnesota Department of Transportation's Access Management Manual, Chapter 5 (available at: <http://www.dot.state.mn.us/accessmanagement/resources.html>) or a similar local guidance.

Response: The proposed extension of the tracks will allow for more efficient handling of existing trains that are traveling on mainline tracks through Saint Paul and through the CP yard. The trains that move through the Saint Paul yard operate on BNSF that come from the north (Como area) of Saint Paul (see Figure 10 in the attachments). The major at-grade crossing along the route is at Como Avenue. The extension of the track is proposed to allow the mainline to operate more efficiently, so there will be fewer slow-downs or stoppages on the mainline, trains will move through the mainlines and yard area more quickly, and there should be less congestion in the yard and on the mainline track at the at-grade intersections along the route.

- c. Identify measures that will be taken to minimize or mitigate project related transportation effects.

Response: Not applicable.

19. Cumulative potential effects: (Preparers can leave this item blank if cumulative potential effects are addressed under the applicable EAW Items)

- a. Describe the geographic scales and timeframes of the project related environmental effects that could combine with other environmental effects resulting in cumulative potential effects.

Response: The project will occur within a relatively limited geographic scale and time frame. The project area is approximately 1/4 mile wide and 1.5 miles in length. The project will occur entirely within property owned by CP. CP anticipates construction of the project during the 2014 construction season.

CP has not completed other projects in or near the project area in recent years and has no other projects scheduled in the area at this time. CP is not aware of any projects proposed by BNSF or others in or near the project area that would have the potential for cumulative effects with this project.

- b. Describe any reasonably foreseeable future projects (for which a basis of expectation has been laid) that may interact with environmental effects of the proposed project within the geographic scales and timeframes identified above.

Response: Not applicable.

- c. Discuss the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects.

Response: Not applicable.

20. Other potential environmental effects: If the project may cause any additional environmental effects not addressed by items 1 to 19, describe the effects here, discuss the how the environment will be affected, and identify measures that will be taken to minimize and mitigate these effects.

Response: None identified.

RGU CERTIFICATION. (The Environmental Quality Board will only accept **SIGNED** Environmental Assessment Worksheets for public notice in the EQB Monitor.)

I hereby certify that:

- The information contained in this document is accurate and complete to the best of my knowledge.
- The EAW describes the complete project; there are no other projects, stages or components other than those described in this document, which are related to the project as connected actions or phased actions, as defined at Minnesota Rules, parts 4410.0200, subparts 9c and 60, respectively.
- Copies of this EAW are being sent to the entire EQB distribution list.

Signature Krista Adley Date 6/12/14

Title Senior Director

FIGURES

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Figures 4A-D	Site Plan – Proposed
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ATTACHMENTS

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Attachment 2	State Historic Preservation Office Response
Attachment 3	Figure LU-O, Significant Public Views
Attachment 4	Wetland Delineation Report
Attachment 5	CP Rail Noise Study - Detailed Monitoring Observations and Data
Attachment 6	RWMWD Grading Permit Application for Phase 1a
Attachment 7	RWMWD Grading Permit Application for Phase 1b
Attachment 8	Minnesota Local/State/Federal Application Form for Water/Wetland Projects for Phase 1a
Attachment 9	Joint Application Form for Activities Affecting Water Resources in Minnesota for Phase 1b
Attachment 10	Construction Plans Phase 1a
Attachment 11	Construction Plans Phase 1b
Attachment 12	Retaining Wall Plans
Attachment 13	Phase 1a NPDES Permit Coverage Card
Attachment 14	Phase 1b NPDES Permit Coverage Card
Attachment 15	MPCA Section 401 Waiver

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT C



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

February 20, 2014

Mr. Tim Havlicek
Canadian Pacific
Canadian Pacific Plaza, Suite 900
120 South 6th Street
Minneapolis, MN 55402

RE: Unauthorized work near Pig's Eye Lake, Saint Paul
Site Plan file #13-250410

Dear Mr. Havlicek,

It has come to our attention that you, or persons acting for you, have initiated unauthorized work associated with Canadian Pacific's proposed yard expansion project.

As you know, this project is currently under review by local, state, and federal agencies. Canadian Pacific has applied to the City for various approvals associated with this proposed project. In addition to the Site Plan application (File 13-250410), this proposed project is subject to completion of an Environmental Assessment Worksheet as well as federal and local wetland permitting approvals.

To our knowledge, no permits or approvals have been provided to Canadian Pacific for any activity associated with the proposed yard expansion project.

You are hereby directed to immediately discontinue any work. A Department of Safety and Inspections representative will verify compliance in the next few days.

Please contact me if you have any questions.

Sincerely,



Stephen Ubl
City of St. Paul Building
Official

Department of Safety & Inspections
375 Jackson St
Saint Paul, MN 55101
P: 651-266-9021
F: 651-266-9099
stephen.ubl@ci.stpaul.mn.us

The Most Livable
City in America



*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT D

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements Access Road Construction

**City of Saint Paul
Ramsey County, Minnesota**

Prepared for the Canadian Pacific Railway

November 4, 2013
Revised December 16, 2013

Prepared by
TKDA
444 Cedar Street, Suite 1500
Saint Paul, Minnesota 55101
Project Number 15321.003

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements Access Road Construction Saint Paul, Minnesota

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Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements
Access Road Construction
Saint Paul, Minnesota

Section 1

Application Minnesota Local/State/Federal Application Form for Water/Wetland Projects

- **Project Purpose, Description, and Dimensions**
- **Project Alternatives**
- **Adjoining Property Owners**
- **Status of Other Approvals**
- **Special Considerations**
- **How Proposed Replacement will be Accomplished**
- **Application for Withdrawal of Wetland Credits from the Minnesota Wetland Bank**
- **Draft Purchase Agreement for Wetland Banking Credits**

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

For Internal Use Only			
Application No.	Field Office Code	Date Initial Application Received	Date initial Application Deemed Complete

PART I: BASIC APPLICATION

"See HELP" directs you to important additional information and assistance in Instructions, Page 1.

1. LANDOWNER/APPLICANT CONTACT INFORMATION (See Help 1)

Name: Tim Havlicek, Canadian Pacific Railway Phone: (612) 904-5931 E-mail: tim_havlicek@cpr.ca
Complete mailing address: Suite 900 Canadian Pacific Plaza, 120 South 6th Street, Minneapolis, MN 55402

1A. AUTHORIZED AGENT (See Help 1A) (Only if applicable: an agent is not required)

Name: Matt Wassman, PE, TKDA Phone: (651) 292-4631 E-mail: matt.wassman@tkda.com
Complete mailing address: Suite 1500, 444 Cedar Street, Saint Paul, MN 55101

2. NAME, TYPE AND SIZE OF PUBLIC WATERS or WETLANDS IMPACTED (Attach Additional Project Area sheets if needed)

Name or I.D. # of Waters Impacted (if applicable; if known):

(Check all that apply): Lake River Circular 39 Wetland type: 1. 11. 2. 3. 4. 5. 6. 7. 8

Wetland plant community type¹: shallow open water. deep marsh. shallow marsh. sedge meadow. fresh meadow.

wet to wet-mesic prairie. calcareous fen. open bog or coniferous bog. shrub-carr/alder thicket.

hardwood swamp or coniferous swamp. floodplain forest. seasonally flooded basin

Indicate size of entire lake or wetland (check one): Less than 10 acres (indicate size: 2.24 acres) 10 to 40 acres Greater than 40 acres

3. PROJECT LOCATION (Information can be found on property tax statement, property title or title insurance):

Project street address: 1010 Shop Road Fire #: City (if applicable): Saint Paul, MN
¼ Section: Section: Township #: Range #: County: Ramsey
Lot #: Block: Subdivision: Watershed (name or #) UTM location: N E

Attach a simple site locator map. If needed, include on the map written directions to the site from a known location or landmark, and provide distances from known locations. Label the sheet *SITE LOCATOR MAP*.

4. TYPE OF PROJECT: Describe the type of proposed work. Attach *TYPE OF PROJECT* sheet if needed.

New road construction

5. PROJECT PURPOSE, DESCRIPTION AND DIMENSIONS: Describe what you plan to do and why it is needed, how you plan to construct the project with dimensions (length, width, depth), area of impact, and when you propose to construct the project. **This is the most important part of your application. See HELP 5 before completing this section; see What To Include on Plans (Instructions, page 1).** Attach *PROJECT DESCRIPTION* sheet. See attached.

Footprint of project: acres or square feet drained, filled or excavated.

6. PROJECT ALTERNATIVES: What alternatives to this proposed project have you considered that would avoid or minimize impacts to wetlands or waters? List at least **TWO** additional alternatives to your project in Section 5 that avoid wetlands (one of which may be "no build" or "do nothing"), and explain why you chose to pursue the option described in this application over these alternatives. Attach *PROJECT ALTERNATIVES* sheet if needed. See attached.

7. ADJOINING PROPERTY OWNERS: For projects that impact more than 10,000 square feet of water or wetlands, list the complete mailing addresses of adjacent property owners on an attached separate sheet. (See HELP 7) See attached.

8. PORTION OF WORK COMPLETED: Is any portion of the work in wetland or water areas already completed? Yes No. If yes, describe the completed work on a separate sheet of paper labeled **WORK ALREADY COMPLETED**. (See HELP 8)

9. STATUS OF OTHER APPROVALS: List any other permits, reviews or approvals related to this proposed project that are either pending or have already been approved or denied on a separate attached sheet. See HELP 9. See attached.

10. I am applying for state and local authorization to conduct the work described in this application. I am familiar with the information contained in this application. To the best of my knowledge and belief, all information in Part I is true, complete, and accurate. I possess the authority to undertake the work described, or I am acting as the duly authorized agent of the applicant.


Signature of applicant (Landowner)

12/16/13
Date


Signature of agent (if applicable)

12/16/13
Date

This block must be signed by the person who desires to undertake the proposed activity and has the necessary property rights to do so. If only the Agent has signed, please attach a separate sheet signed by the landowner, giving necessary authorization to the Agent.

¹See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers.

The public burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT: Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, 33 USC 1413, Section 103. Principal purpose: Information provided on this form will be used in evaluating the application for a permit. Routine uses: This information may be shared with the Department of Justice and other Federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be evaluated nor can a permit be issued.

ITEMS 1 THROUGH 4 TO BE FILLED IN BY THE CORPS

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
--------------------	----------------------	------------------	-------------------------------

YOU DO NOT NEED TO COMPLETE ITEMS 6-10 and 12-25 in the SHADED AREAS.

All applicants must complete non-shaded items 5 and 26. If an agent is used, also complete items 8 and 11. This optional Federal form is valid for use *only* when included as part of this entire state application packet.

5. APPLICANT'S NAME Tim Havlicek, Canadian Pacific Railway	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) Matt Wassman, PE, TKDA
---	---

6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
------------------------	--------------------

7. APPLICANT'S PHONE NO.	10. AGENT'S PHONE NO.
--------------------------	-----------------------

11. STATEMENT OF AUTHORIZATION (if applicable: complete only if authorizing an agent)

I hereby authorize Matt Wassman to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE: Tim HavlicekDATE: 12-16-13

12. PROJECT NAME OR TITLE (see instructions)	
13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)	
17. DIRECTIONS TO THE SITE	18. NATURE OF ACTIVITY
19. PROJECT PURPOSE	20. REASON(S) FOR DISCHARGE
21. TYPES OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS	
22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED	
23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES _____ NO _____ IF YES, DESCRIBE COMPLETED WORK.	
24. ADDRESSES OF ADJOINING PROPERTY OWNERS,	
25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION.	

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

Tim Havlicek
Signature of applicant

12/16/13
Date

Matt A. Wassman
Signature of agent (if any)

12/16/13
Date

The application must be signed by the person who desires to undertake the proposed activity (applicant), or it may be signed by a duly authorized agent if the statement in Block 11 has been filled out and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up with any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

ENG FORM 4345, Jul 97

EDITION OF FEB 94 IS OBSOLETE.

(Proponent; CECW-OR)

FOR LGU USE ONLY:

- Determination for Part 1:**
- No WCA Jurisdiction
 - Exempt: No. ____ (per MN Rule 8420.0122)
 - No Loss: ____ (A,B, . . G, per MN Rule 8420.0220)
 - Wetland Boundary or type
 - Replacement required – applicant must complete Part II

COMPLETE THE SECTION BELOW ONLY IF REPLACEMENT IS NOT REQUIRED:

Application is (check one): Approved Approved with conditions (conditions attached) Denied

Comments/Findings: _____

LGU official signature

Date

Name and Title

For Agricultural and Drainage exemptions (MN Rule 8420.0122 Subps. 1 and 2B), LGU has received proof of recording of restrictions (per MN Rule 8420.0115):

County where recorded

Date

Document # assigned by recorder

LGU official signature

Date

PART II: REPLACEMENT PLAN SUPPLEMENT

For assistance in completing Part II, contact your Local Government Unit or a professional consultant

11. DESCRIPTION OF WETLAND IMPACTS: Complete the chart below: 1) Use one row of boxes for each wetland impact; 2) If your project has more than one wetland impact, reference your overhead view (part of Section 5) to this chart by identifying and labeling "first impact" and "second impact" on your overhead view; 3) If you are identifying only one wetland type within a given wetland impact area, use the first dotted line and leave the others blank; 4) If you have chosen to identify more than one wetland type within a given wetland impact area, use the extra dotted lines to indicate each wetland type, and identify predominant vegetation and size of impacted area for each separate wetland type within that impact area; 5) If you do not have access to some of this information, call your LGU or SWCD office for assistance. *(Photocopy chart for more impacts, if needed.)*

DESCRIPTION OF WETLAND IMPACTS

Wetland impact (as noted on overhead view)	Watershed name or number (if known)	Watershed and Bank Service Area	Wetland plant community type ¹	Predominant vegetation in impacted wetland area	Size of area impacted (in acres or square feet)	Existing land use in project area (check all that apply)
First impact	20 Mississippi (Metro)	7	1L/PF01A Floodplain Forest	Cottonwoods, aspen, green ash, boxelder, buckthorn	2.16 ac	<input type="checkbox"/> Housing <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Parks/recreation areas <input type="checkbox"/> Highways and associated rights-of-way <input type="checkbox"/> Forested <input type="checkbox"/> Farmsteads/agricultural <input type="checkbox"/> Vacant lands <input type="checkbox"/> Public and semi-public (schools/gov't facilities) <input type="checkbox"/> Airports <input type="checkbox"/> Extractive (gravel pits/quarries) <input type="checkbox"/> Other:
Second impact	20 Mississippi (Metro)	7	3/PEMF Shallow Marsh	Reed canary grass, sedge, purple loosestrife bulrushes, cattail	0.08 ac	<input type="checkbox"/> Housing <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Parks/recreation areas <input type="checkbox"/> Highways and associated rights-of-way <input type="checkbox"/> Forested <input type="checkbox"/> Farmsteads/agricultural <input type="checkbox"/> Vacant lands <input type="checkbox"/> Public and semi-public (schools/gov't facilities) <input type="checkbox"/> Airports <input type="checkbox"/> Extractive (gravel pits/quarries) <input type="checkbox"/> Other:

¹If you are identifying only one wetland type within a given wetland impact area, use the first dotted line and leave the others blank. If you have chosen to identify more than one wetland type within a given wetland impact area, use the extra dotted lines to indicate each separate wetland type, and identify predominant vegetation and size of impacted area for each separate wetland type with that impact area.

TOTALS OF AREA(S) IMPACTED FOR EACH WETLAND TYPE ON CHART (indicate acres or square feet)

Wetland plant community type ¹: Shallow open water: Deep marsh: Shallow Marsh: 0.08 Sedge meadow:
 Fresh wet meadow: Wet to wet mesic prairie: Calcareous fen: Open bog or coniferous bog: Shrub carr or alder thicket:
 Hardwood swamp or coniferous swamp: Floodplain forest 2.16 Seasonally flooded basin

12. SPECIAL CONSIDERATIONS: Are you aware of any special considerations that apply to either the impact site(s) or the replacement site(s)? Yes No
 (Examples: the presence of endangered species, special fish and wildlife resources, sensitive surface waters, or waste disposal site.) If YES, list and describe briefly.

See attached.

13. SHORELAND IMPACT ZONE: Please identify each wetland impact site noted in Section 15 that is within 1000 feet of a lake or 300 feet of a river.

There will be wetland impacts within 1000 feet of the Ordinary High Water of Pigs Eye Lake. There will be no impacts within 300 ft of Mississippi River.

¹ See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers.

14. **HOW PROPOSED REPLACEMENT WILL BE ACCOMPLISHED:** Indicate how proposed replacement will be accomplished (check only one box below and continue as indicated):

- A. Wetland banking credits only
Complete *Application for Withdrawal of Wetland Credits Form* and include with your application. Copies of this form are available from your LGU, or download a copy from www.bwsr.state.mn.us
Skip to Section 19, page 6 (You do not need to complete Sections 15-18).
- B. Project-specific replacement only
Continue with Section 15 below.
- C. A Combination of wetland banking and project-specific replacement. If using project specific replacement that will result in surplus wetland credits that you propose to deposit in the state wetland bank for future use, then you must submit a wetland banking application directly to your LGU before or concurrently with submittal of this form. Also, Complete *Application for Withdrawal of Wetland Credits Form* and include with your application. Copies of this form and the wetland banking application is available from your LGU, or download a copy from www.bwsr.state.mn.us
Continue with Section 15 below.

15. **DESCRIPTION OF REPLACEMENT WETLAND(S) CONSTRUCTION** (Complete this section only if you marked Box B or Box C in Section 14 above):

Describe in detail how replacement wetland(s) will be constructed. If several methods will be used, describe each method. Details should include the following: 1) type of construction (such as excavated in upland, restored by tile break, restored by ditch block or revegetated); 2) type, size and specifications of outlet structures; 3) elevations relative to Mean Sea Level or established benchmarks or key features (such as sill, emergency overflow or structure height); 4) what best management practices will be implemented to prevent erosions or site degradation; 5) proposed timetable for starting and ending the project; and 6) a vegetation management plan. Write this description on a separate sheet of paper labeled *DESCRIPTION OF REPLACEMENT WETLAND CONSTRUCTION*.

16. **SURPLUS WETLAND CREDITS:** If using project-specific replacement (Box B or Box C in Section 14 above), will the replacement result in any surplus wetland credits that you wish to have deposited in the State Wetland Bank for future use? Yes No. If yes, submit a **Wetland Banking Application** directly to your LGU before or concurrently with submittal of this form. Copies are available from your LGU, or download a copy from www.bwsr.state.mn.us

17. **DESCRIPTION OF REPLACEMENT WETLANDS:** Complete the chart below: 1) Use one row of boxes for each wetland replacement site; 2) If your project has more than one wetland replacement site, reference your overhead view (part of Section 5) to this chart by identifying and labeling "first replacement site" and "second replacement site" on your overhead view; 3) If you are identifying only one wetland type within a given replacement site, use the first dotted line(s) and leave the others blank; 4) If you have chosen to identify more than one wetland type in a given replacement site, use the extra dotted lines to indicate each separate wetland type, and identify type(s) of replacement credits and "restored or created" for each separate wetland type with that replacement site; 5) If you do not have access to some of the information, or if you do not know your replacement ratio, call your LGU or SWCD office for assistance. *Photocopy chart for more wetland replacements, if needed.*

DESCRIPTION OF REPLACEMENT WETLANDS

Identify Wetland replacement site <i>(as noted on overhead view)</i>	Watershed name or number <i>(if known)</i> Bank Service Area	County	Section, Township, Range	Wetland Plant Community Type ¹	Type(s) of replacement credits <i>(in acres or square feet)</i>		Restored or created? Indicate R or C
					New Wetland Credits (NWC)	Public Value Credits (PVC)	
Name of First replacement site							
Name of Second replacement site							
If you are identifying only one wetland type within a given wetland impact area, use the first dotted line and leave the others blank. If you have chosen to identify more than one wetland type within a given wetland impact area, use the extra dotted lines to indicate each separate wetland type, and identify predominant vegetation and size of impacted area for each separate wetland type within that impact area.					TOTAL NWC	TOTAL PVC	
					REQUIRED REPLACEMENT RATIO: <i>(If known)</i>		

Wetland plant community type: Shallow open water: Deep marsh: Shallow Marsh: Sedge meadow:
 Fresh wet meadow: Wet to wet mesic prairie: Calcareous fen: Open bog or coniferous bog: Shrub carr or alder thicket:
 Hardwood swamp or coniferous swamp: Floodplain forest: Seasonally flooded basin

* See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers.

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements Access Road Construction Saint Paul, Minnesota

Item 5. Project Purpose, Description, and Dimensions:

The Canadian Pacific Railway (CPR) recently constructed a new track on the existing gravel access road that paralleled the St. Paul Yard to the southwest. The track was constructed on the existing grade of the gravel road. The total area of the existing gravel access road that was converted to track was 3.01 acres. The construction of the new track did not disturb subsurface soils or impact wetlands.

The access road construction project includes the construction of a new 13' gravel access road adjacent to the new track. The length of the new gravel access road will be approximately 6600 lineal feet. Constructing the new access road will require a sheet pile wall along the Ordinary High Water line (elev. 692.8) of Pigs Eye Lake, removal of any organic soil material within the limits of the new access road, and the placing and compacting of material for the new access road. The organic soil excavated will be reused within the project limits as topsoil. The project will import common embankment material from a local source. The sheet pile wall will be constructed to avoid any impacts below the OHW of Pigs Eye Lake. All material removed to construct the sheet pile wall will be placed upland. No fill will be allowed to fall within wetlands that have not been identified as being impacted. Silt fence will be installed at the wetland impact boundary prior to any grading activities to identify the limits of construction.

The purpose of the new access road is to allow the CPR to transport train crews, for mechanical inspection of train cars, and for slow moving track maintenance equipment to travel from one end of the site to the other without using TH 61. The access road will also be used by Xcel Energy to access their site and will be used as a second entrance and exit for vehicles in case of an emergency. See Appendix A for the general location of the project. See Appendix E for preliminary construction plans.

Item 6. Project Alternatives

Wetlands are located in the project area west of the existing railroad embankment for the entire project length. These wetlands are all located in close proximity to the toe of slope of the existing embankment, meaning that any construction outside the existing toe of slope in this area will result in wetland impacts.

Wetland Avoidance

While developing plans for the proposed project, design alternatives were considered to determine if permanent wetland impacts could be avoided. The access road construction is planned along an existing transportation corridor. Due to the density and distribution of wetlands within the corridor, no practicable alternative would completely avoid wetland impacts.

The "no build" alternative was considered, which would avoid wetland impacts; however, it was not selected because it does not adequately address the safety of the maintenance crews.

Bridging the wetland was another alternative that was considered, which would avoid permanent fill being placed into the wetland (except at pier locations) however the wetland type would still be affected. The bridge would need to be constructed at the same elevation as the adjacent tracks. Prior to constructing the bridge, all the trees within the footprint of the bridge would need to be removed. The low point of the bridge structure would be near the water surface in many locations. The bridge overhead would affect the amount of sun light thus affecting the type of vegetation that will grow under the bridge. The wetlands under the bridge would no longer be considered Type 1L floodplain forest wetlands.

Wetland Minimization

Measures have been taken during project development to minimize wetland impacts to the greatest extent practical. Wetland impact minimization measures included utilizing the narrowest access road top width (13') acceptable for the type of vehicles that will be using the access road. The 13' driving surface is the minimum width required to allow for one-way traffic of maintenance vehicles, equipment, and their loads and still maintain a 4' clear separation from the rail so they don't foul the track. The 13' driving surface is also the minimum width required for an ATV (5') and a vehicle (8') to pass by one another. A sheet pile wall is being constructed adjacent to Pigs Eye Lake to avoid impacts to wetlands below the Ordinary High Water of the lake. The design also incorporated 1V:2H side slopes, the steepest embankment side slopes that design standards allow.

Item 7. Adjoining Property Owners:

Ramsey County
2015 N. Van Dyke Street
Maplewood, MN 55109

Gerdau Steel
1678 Red Rock Road
Saint Paul, MN 55101

BNSF
80 44th Avenue NE
Minneapolis, MN 55421

Item 9. Status of Other Approvals:

Permits approved:

Minnesota Pollution Control Agency NPDES Permit
Ramsey Washington Metro Watershed District Permit

Permits Pending:

City of Saint Paul Site Plan Review Approval

Item 12. Special Considerations:

The project area is adjacent to two DNR Public Waters: Pigs Eye Lake, PWI 62000400, and an Unnamed Wetland, PWI 62023700. The project will not encroach into these two public water bodies.

The Mississippi River is designated as an Impaired Water on the MPCA's 303d list. The River is impaired for Aquatic Consumption (PCB's and PFOS in fish tissue) and turbidity. Additional BMPs outlined in C.1. and C.2. of Appendix A of the NPDES permit have been incorporated in the construction plans.

The DNR's Natural Heritage Information System (NHIS) Review letter noted that the proposed project is partially within or adjacent to a Site of Moderate Biodiversity Significance. The DNR has identified the marsh and floodplain forest area southeast of Pigs Eye Lake as a Site of Biodiversity Significance, and the DNR recommends minimizing disturbance to this site. The NHIS Review letter also noted that Blanding's Turtles, a state-threatened species, have been reported in the vicinity of the proposed project and may be encountered on the site. CPR will provide the DNR's Blanding's turtle flyer to all contractors working in the project area. See Appendix

A search of state and federal databases that list existing contamination sites and environmental hazards was performed. The databases identified two sites near the project area where leaks of diesel fuel have occurred in the past. The sites include the following

- Canadian Pacific Track 4 (MPCA Leak Site #16530) – The leak was identified in 2006 and closed in 2010. The leak included contamination of site soils and groundwater.
- Canadian Pacific Caboose Track (MPCA Leak Site #16529) – The leak was identified in 2006 and the site was closed in 2010. The leak contaminated soils at the site.

The two sites are not within the project area and will not be disturbed during the construction of the project. The proposed project will occur around Track 6 in the CPR Saint Paul Yard. Track 4 (Leak Site #16530) is separated from the Track 6 project area by Track 5 and an access road. The Caboose Track (Leak Site #16529) is located 500 feet from the project site. CPR is aware of the locations of the contamination sites, and will avoid disturbance of the sites during construction activities.

The databases also noted the location of the BNSF CERCLIS site near Dayton's Bluff and the Pigs Eye Landfill CERCLIS site. Each of the sites is approximately one mile from the project site, and will not be disturbed by site activities.

The databases review indicated that the project site does not include and is not in proximity to other sites of soil or ground water contamination, abandoned dumps, landfills, existing or abandoned storage tanks, and hazardous liquid or gas pipelines.

If any unexpected environmental hazards are encountered during construction, they will be addressed in conformance with State requirements.

Item 14. How Proposed Replacement Will be Accomplished:

Consideration was given to on-site mitigation. Two areas considered were an area north of Dayton's Bluff and the area directly southwest of the new access road. Unfortunately, these areas around the project site are not conducive to wetland mitigation. The Dayton's Bluff area is a State Superfund Site, and the area southwest of the project is Pig's Eye Landfill. See Appendix G for information on the landfill.

After further discussions with the Board of Water and Soil Resources, it was determined that purchasing credits from a Minnesota Wetland Bank site is the preferred way to mitigate for wetland impacts.

The will project permanently impact 0.08 acres of Type 3 shallow marsh wetlands and 2.16 acres of Type 1 floodplain forest wetlands, for a total of 2.24 acres. Mitigation will be provided at a 2:1 replacement ratio. CPR is currently working with multiple owners of local wetland bank sites to secure wetland banking credits.



Application for Withdrawal of Wetland Credits from the Minnesota Wetland Bank

4. Withdrawal Information

To be completed by seller of credits.

Account Number: 1137

Credit Subgroup Letter	Plant Community Type	Number of Credits to be Withdrawn	Cost per Credit
A	Shallow Marsh	3.6656	87,120
B	Upland	0.8144	87,120
TOTAL CREDITS		4.48	390,298

Fee Calculation (pick one method):

- 1) Fee per credit (see [Fee Schedule](#) on BWSR website) X total credits = \$4,569 x 4.48 = \$20,469
- 2) Total Cost of Credits X .065 = \$ 25,370

Attach check payable to Minnesota Board of Water and Soil Resources.

By signature below I (seller) authorize the debiting of this account and attest that the credits have not been sold nor have I agreed to sell them to another user, and this debit will not result in a negative account balance. I also attest that the sale price reflected in the credit cost is accurate for fee purposes.

Signature:

Date:

When this form is completed and all required signatures are obtained, send to:

Wetland Bank Administration
Minnesota Board of Water and Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155

The following is a sample of a possible Purchase Agreement for the sale of Wetland Banking Credits. This Purchase Agreement does not necessarily cover all of the issues that would be important to Sellers and Buyers, nor does it address the terms that would be appropriate for any particular transaction. Sellers and Buyers should obtain the services of qualified legal counsel to adapt this Purchase Agreement to meet their specific needs.

**PURCHASE AGREEMENT
FOR
WETLAND BANKING CREDITS**

THIS AGREEMENT is made this 4 day of December, 2013, between
_____ (Seller) and CP Railway _____ (Buyer).

1. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the wetland banking credits (Credits) listed below:

CREDITS TO BE SOLD						
Credit Sub-Group ¹	Acres or Sq. Ft.	Wetland Circ. 39 Type ²	Plant Community Type ³	Cost per Acre or Sq. Foot	State Fee 6.5%	Fee Cost
A.	0.8144	U	Upland	87,120	0.065	3,721
B.	3.6656	3	Shallow Marsh	87,120	0.065	16,748
C.					0.065	
D.					0.065	
E.					0.065	
Totals	4.48			\$390,298		\$20,469

Check here if additional credit sub-groups are part of this account and are listed on an attachment to this document.

¹A separate credit sub-group shall be established for each wetland or wetland area that has different wetland characteristics.

²Circular 39 types: 1, 1L, 2, 3, 4, 5, 6, 7, 8, B, U.

³**Wetland plant community type:** shallow open water, deep marsh, shallow marsh, sedge meadow, fresh meadow, wet to wet-mesic prairie, calcareous fen, open bog or coniferous bog, shrub-carr/alder thicket, hardwood swamp or coniferous swamp, floodplain forest, seasonally flooded basin. See *Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed, 1997)* as modified by the Board of Water and Soil Resources, United States Army Corps of Engineers..

2. Seller represents and warrants as follows:
- a) The Credits are deposited in an account in the Minnesota Wetland Bank administered by the Minnesota Board of Water and Soil Resources (BWSR) pursuant to Minn. Rules Chapter 8420.0700-.0760.
 - b) Seller owns the Credits and has the right to sell the Credits to Buyer.

3. Buyer will pay Seller a total of \$ 390,298 for the Credits, as follows:
- a) \$ 39,000 as earnest money, to be paid when this Agreement is signed; and
 - b) The balance of \$ 351,298 to be paid on the Closing Date listed below.
4. Buyer, Seller agrees to pay to a withdrawal fee of \$ 20,469 to the State of Minnesota based on 6.5% of the agreed to purchase price. At the Closing Date, Buyer, Seller will execute a check made out for this amount, payable to the Board of Water and Soil Resources.
5. The closing of the purchase and sale shall occur on or before June 1, 2014 (Closing Date) at location TBD. The Closing Date and location may be changed by written consent of both parties. Upon payment of the balance of the purchase price, Seller will sign a fully executed Application for Withdrawal of the Credits in the form specified BWSR, provide a copy of the Application for Withdrawal to the Buyer and forward the same to the BWSR along with the check for the withdrawal fee.
6. Buyer has applied or will apply to City of St. Paul (Local Government Unit (LGU) or other regulatory authority) for approval of a replacement plan utilizing the Credits as the means of replacing impacted wetlands. If the LGU has not approved the Buyer's application for a replacement plan utilizing the Credits by the Closing Date, and no postponement of the Closing Date has been agreed to by Buyer and Seller in writing, then either Buyer or Seller may cancel this Agreement by giving written notice to the other. In this case, Seller shall return Buyer's earnest money, and neither Buyer nor Seller shall have any further obligations under this Agreement. If the LGU has approved the replacement plan and the Seller is ready to proceed with the sale on the Closing Date, but Buyer fails to proceed, then the Seller may retain the earnest money as liquidated damages.

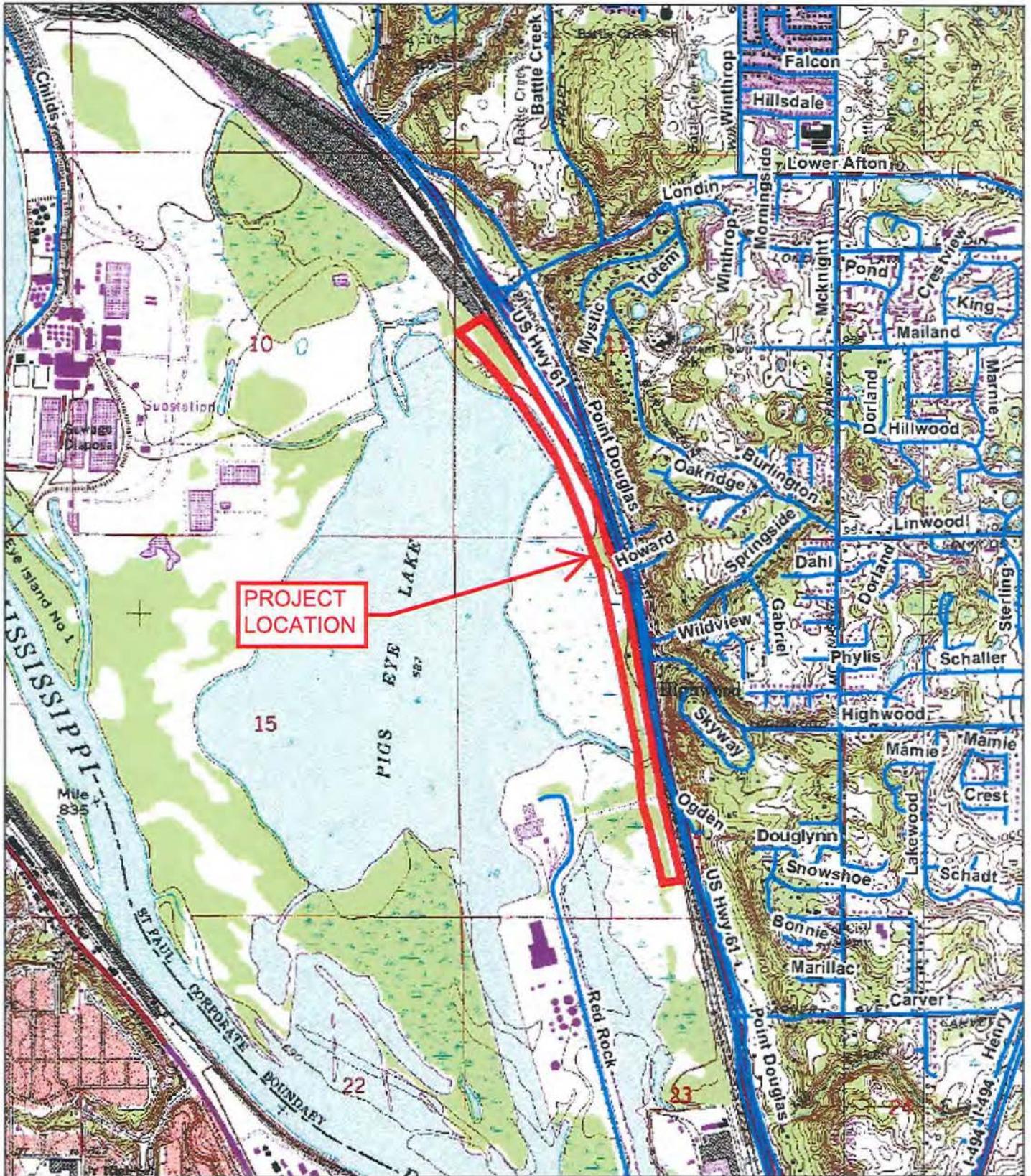
 (Signature of Seller) (Date)

 (Signature of Buyer) (Date)

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements
Access Road Construction
Saint Paul, Minnesota

Appendix A
Project Location Maps



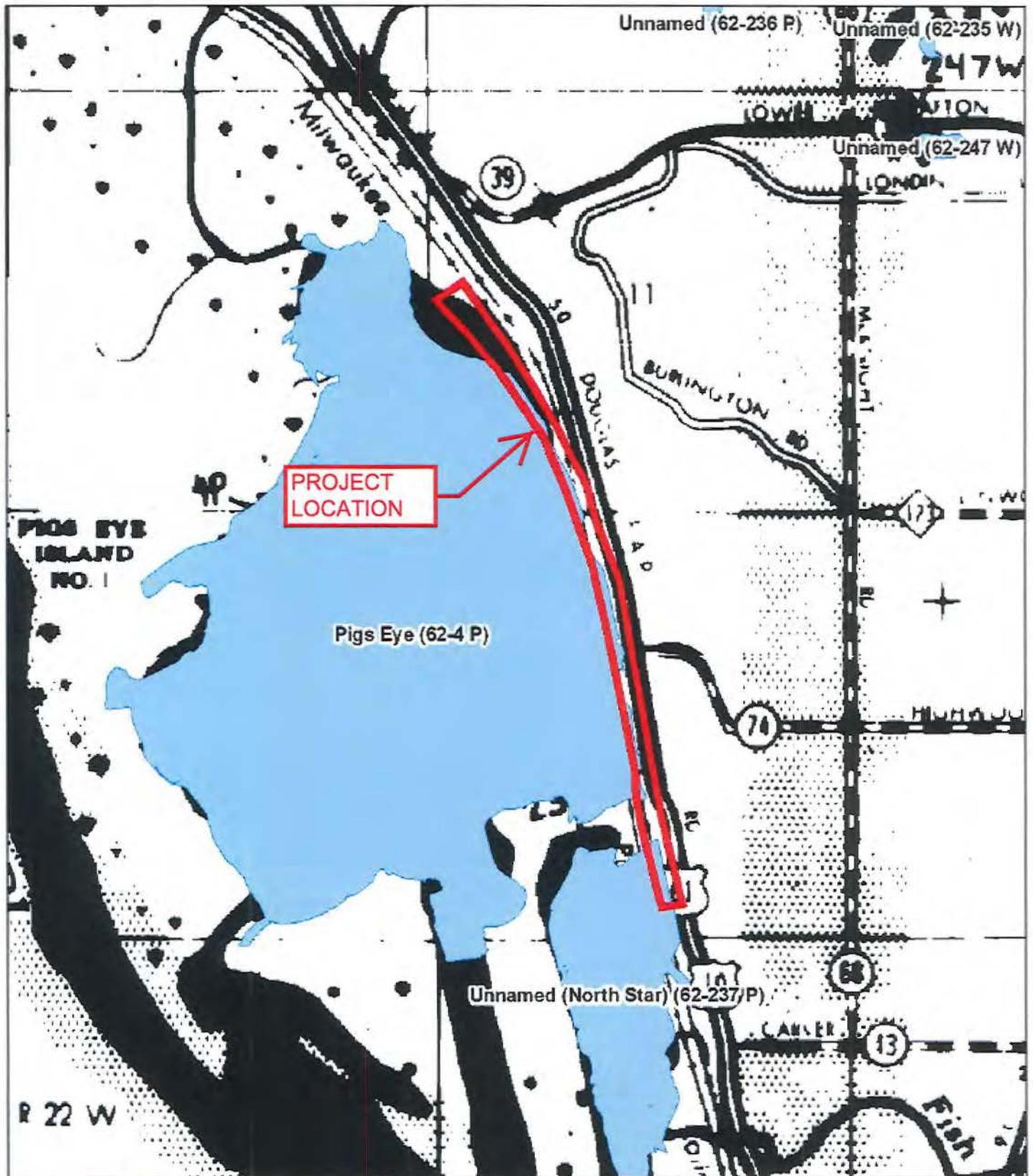
Map of Project Location

Overlaid on USGS Topo Map

 August 26_2013 Review Area

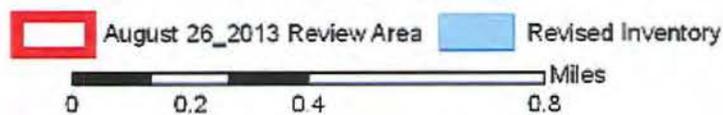


Figure 1
 CP Rail Project
 St. Paul, MN
 TKDA



Map of Project Location

Overlaid on MN DNR PWI Map



arrowhead
environmental
consulting

Figure 2
CP Rail Project
St. Paul, MN
TKDA

Minnesota Local/State/Federal Application Form for Water/Wetland Projects

CP Railway 2013 St. Paul Yard Improvements
Access Road Construction
Saint Paul, Minnesota

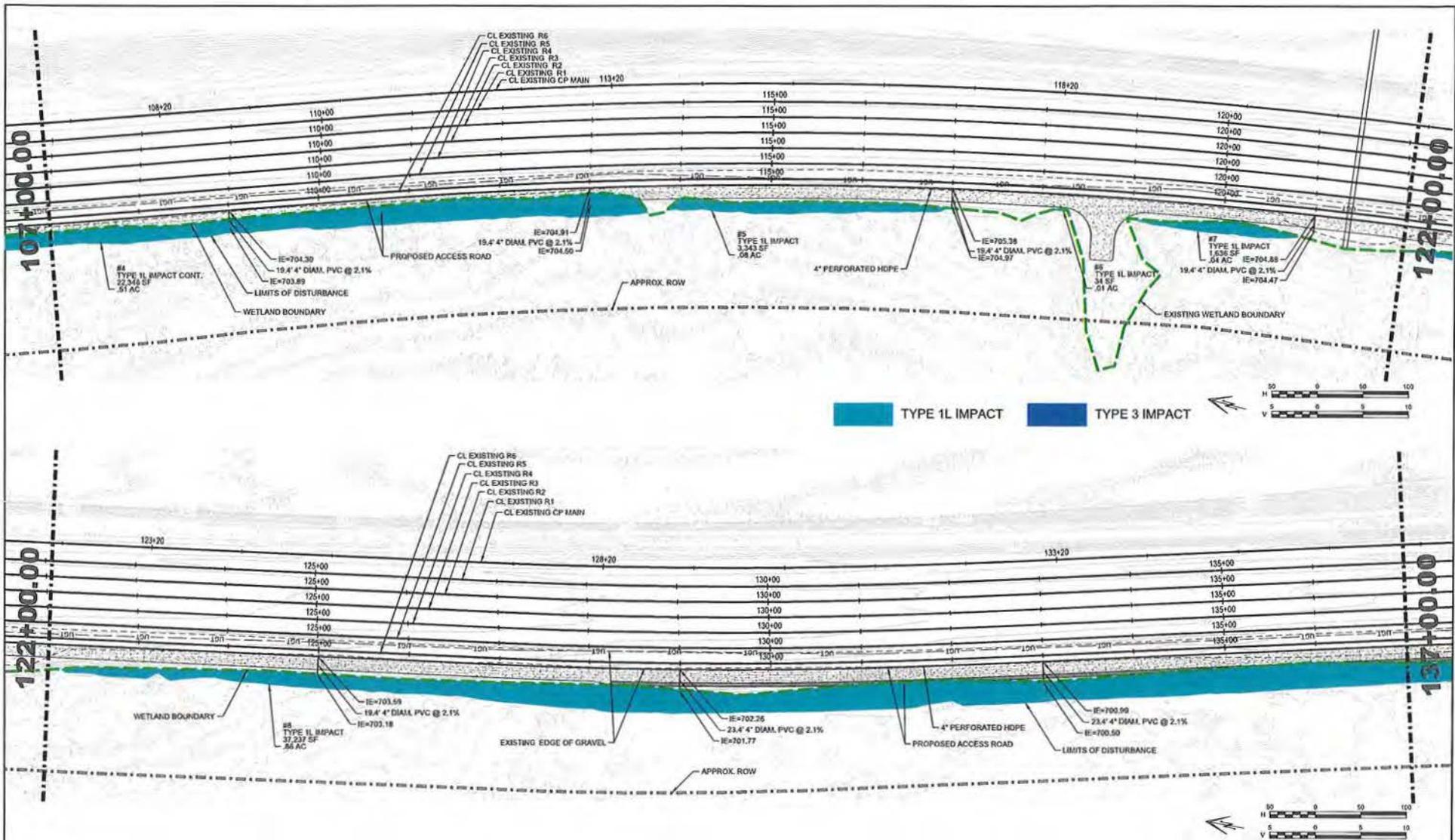
Appendix C
Wetland Impact Figures

D SIZE 27" x 36" (1/4" = 100') (SCALE)

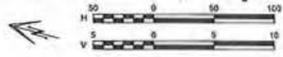
USPC

PLDT

AECOM FILE NAME: 60301636-001



TYPE 1L IMPACT
 TYPE 3 IMPACT



Do not scale PG. dimensions. All measurements must be obtained from stated dimensions.



AECOM PROJECT NO: 60301636

DRW	CHK	DES	ENG	ISR	APP
RFH	ESB	RFR	SPK		

PROFESSIONAL SEALS

NO.	DATE	REVISION DESCRIPTION	BY

CANADIAN PACIFIC

PROJECT SERVICES - US WEST NETWORK CAPACITY
ENGINEERING SERVICES

US DIVISION
ST PAUL YARD IMPROVEMENTS
WETLAND IMPACTS

107+00.00 TO 137+00.00

DWG BY: CHK BY: SHEET NO: SP-102 OF 51

APPROVED BY: DATE: OCTOBER 21, 2013

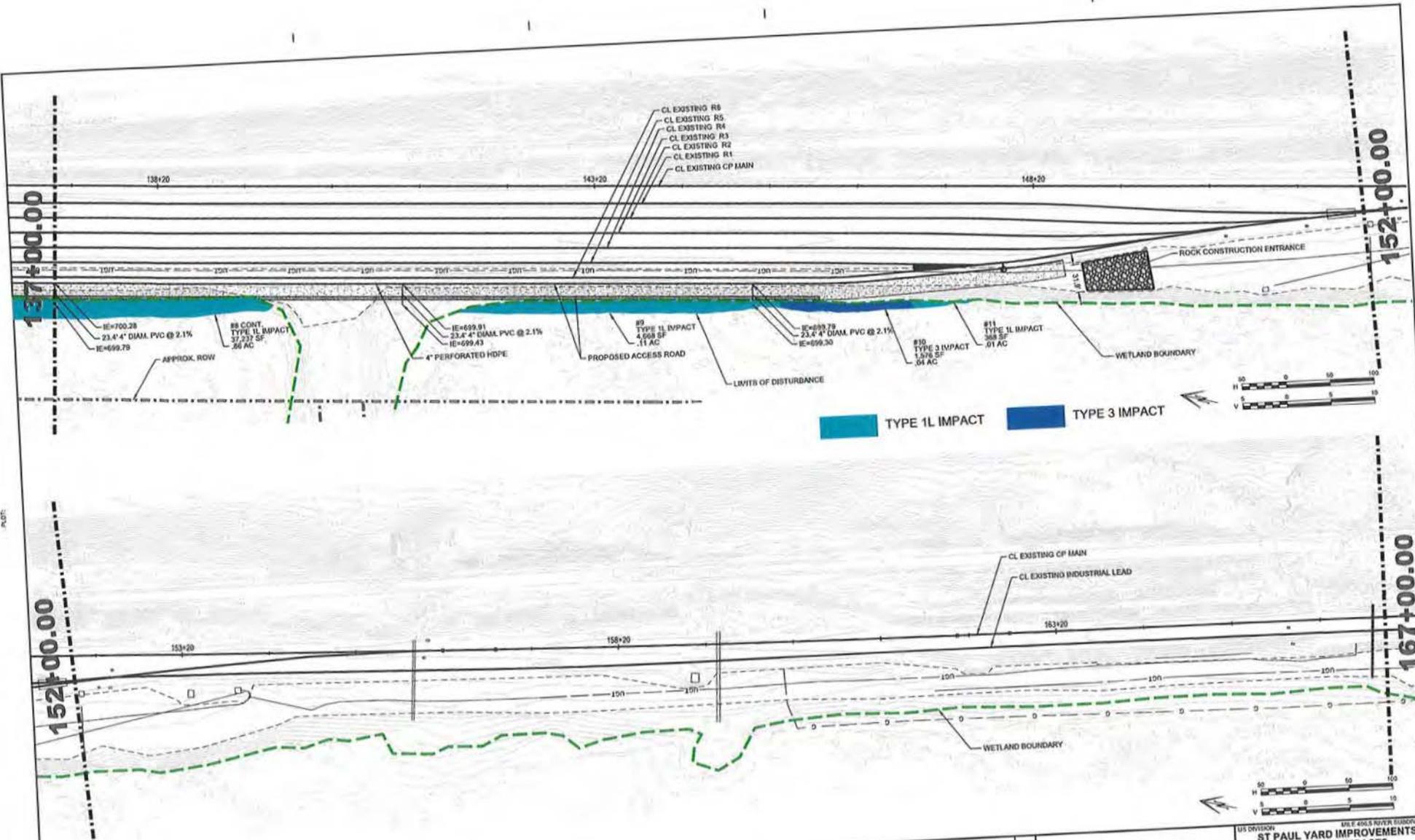
DPL PROJECT SERVICES - US: AECOM PLAN NO: P-102 REV

DATE: 10/23/2013 10:45:00 AM

DATE: 10/23/2013 10:45:00 AM

DATE: 10/23/2013 10:45:00 AM

DATE: 10/23/2013 10:45:00 AM



TYPE 1L IMPACT
 TYPE 3 IMPACT



Do not scale from drawings. All measurements must be obtained from field data.

AECOM

AECOM PROJECT NO: 60301636

DATE	CHK	DES	ENG	DR	APP
RPR	ESB	RPR	RPR		

PROFESSIONAL SEALS

#	YEAR/NO	REVISION DESCRIPTION	BY

CANADIAN PACIFIC
PROJECT SERVICES - US WEST NETWORK CAPACITY
ENGINEERING SERVICES

US DIVISION: MILE 400S RIVER SUBDIVISION	
ST PAUL YARD IMPROVEMENTS WETLAND IMPACTS	
137+00.00 TO 167+00.00	
DATE BY: CHK BY:	SHEET NO: SP-103 OF 91
APPROVED BY:	DATE: OCTOBER 23, 2013
DPL PROJECT SERVICES - US:	REC'D PLAN NO: P-103
	REV

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT E

Joint Application Form for Activities Affecting Water Resources in Minnesota

CP Railway 2014 Saint Paul Yard Improvements Phase 1b Receiver Yard Track Extension

**City of Saint Paul
Ramsey County, Minnesota**

Prepared for the Canadian Pacific Railway

April 3, 2014

Prepared by
TKDA

444 Cedar Street, Suite 1500
Saint Paul, Minnesota 55101
Project Number 15321.003

**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

**CP Railway 2014 Saint Paul Yard Improvements
Phase 1b Receiver Yard Track Extension**

**City of Saint Paul
Ramsey County, Minnesota**

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Appendix E Wetland Delineation Report
Appendix F WCA TEP Pre-application Meeting Minutes
Appendix G WCA Notice of Application and Notice of Decision
Appendix H Wetland Mitigation Sites
Appendix I Purchase Agreement for Wetland Banking Credits

**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

**CP Railway 2014 Saint Paul Yard Improvements
Phase 1b Receiver Yard Track Extension**

**City of Saint Paul
Ramsey County, Minnesota**

**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

Joint Application Form for Activities Affecting Water Resources in Minnesota

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

Regulatory Review Structure

Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

Submission Instructions

Send the completed joint application form and all required attachments to:

U.S Army Corps of Engineers. Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact Information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

Section 401 Water Quality Certification: Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

Wetland Conservation Act Local Government Unit: Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

DNR Public Waters Permitting: In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name: Tim Havlicek, Canadian Pacific Railway

Mailing Address: Suite 900, Canadian Pacific Plaza, 120 South 6th Street, Minneapolis, MN 55402

Phone: 612-904-5931

E-mail Address: tim_havlicek@cpr.ca

Authorized Contact (do not complete if same as above):

Mailing Address:

Phone:

E-mail Address:

Agent Name: Matt Wassman, PE, TKDA

Mailing Address: Suite 1500, 444 Cedar Street, Saint Paul, MN 55101

Phone: 651-292-4631

E-mail Address: matt.wassman@tkda.com

PART TWO: Site Location Information

County: Ramsey

City/Township: Saint Paul, MN

Parcel ID and/or Address: 1010 Shop Road

Legal Description (Section, Township, Range): Sections 11, 14 and 23, T28N, R22W

Lat/Long (decimal degrees): 44.9072 N/93.0136 W

Attach a map showing the location of the site in relation to local streets, roads, highways.

Approximate size of site (acres) or if a linear project, length (feet): 9.37 ac

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

Canadian Pacific Railway (CP) is proposing to improve the efficiency of its Saint Paul railroad yard (called the Dunn Yard), located east of downtown Saint Paul, by lengthening the tracks in the yard. CP is proposing to extend six existing tracks to the east and build a new access road adjacent to the extended tracks. The track extension area is entirely within CP

property. The existing railroad yard in the project area includes a main and six yard tracks that are bounded by Pigs Eye Lake to the west and Trunk Highway 61 and tracks owned by BNSF Railway to the east.

Constructing the track extension and access road will require removal of any organic soil material and placing and compacting fill material, subballast material, and ballast material. The organic soil excavated will be reused within the project limits as topsoil. Common embankment material will be imported from a local source. All material removed to construct the new tracks and access road will be placed upland. No fill will be allowed to fall within wetlands that have not been identified as being impacted. Silt fence will be installed at the wetland impact boundary prior to any grading activities to identify the limits of construction.

The purpose of the track extension is to allow CP to handle longer trains more efficiently. The average train length has grown from 7,000 feet to 10,000 feet in recent years. Trains have become longer as a result of a variety of technical improvements to locomotives and yard operations. The existing tracks in the yard cannot handle 10,000-foot-long trains. The maximum train length that can be handled without splitting at the existing yard is 7,000 feet. When longer trains arrive at the yard, they are split into sections and prepared to go over a topographic "hump." After the "hump," the trains are channeled onto a variety of tracks where they are recombined into new trains built for departure. Because the existing tracks are shorter than the trains and the trains must be divided, the splitting and recombination of trains results in delays, noise as the cars are reconfigured, and more use of locomotives and fossil fuels.

The project will extend the length of the tracks so they can handle 10,000-foot trains. This will mean that less switching will be required, reducing the number of locomotives, locomotive fuel consumption, exhaust, and noise related to switching operations at the yard.

A summary of the land feature changes resulting from the project is shown in the following table.

Land Feature Changes

Description	Area (acres)
Total disturbed surface area	9.37
Existing impervious gravel road surface area	2.54
Existing pervious track ballasted area	0.92
Existing pervious grassed area	5.91
Post-construction impervious gravel road surface area	1.50
Post-construction pervious track ballasted area	6.16
Post-construction pervious area	1.71

See Appendix A for a project location map. See Appendix B for preliminary construction plans. See Appendix C for a proposed site plan.

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

See Appendix D for wetland impact figures.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵
Wetland 1 (as noted in the Wetland Delineation Report included in Appendix E)	Wetland	Fill	Permanent	1.84 ac	N/A	Type 1L/PF01A Floodplain Forest	Ramsey, 20 Mississippi (Metro), 7
Wetland 1 (as noted in the Wetland Delineation Report included in Appendix E)	Wetland	Fill	Permanent	2.29 ac	N/A	Type 3/PEMF Shallow Marsh	Ramsey, 20 Mississippi (Metro), 7
			Totals:	4.13 ac			

¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

Not applicable.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

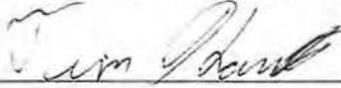
PART FIVE: Applicant Signature

Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

A pre-application meeting was held with members of the Technical Evaluation Panel on February 7, 2014. Minutes of the meeting were prepared by the Local Government Unit, Wes Saunders-Pearce, City of Saint Paul. The meeting minutes are included in Appendix F.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature: _____



Date: 3/12/2014

I hereby authorize Matt Wassman, PE to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

Wetland Type Confirmation

Delineation Concurrence. Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

Preliminary Jurisdictional Determination. A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

Approved Jurisdictional Determination. An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

A Minnesota Wetland Conservation Act (WCA) Notice of Application was submitted to the LGU on January 14, 2014. A copy of the application is included in Appendix G. A copy of the Wetland Delineation Report is included in Appendix E. A WCA Notice of Decision form was distributed by the LGU on February 27, 2014, approving the wetland boundary and type. A copy of the WCA Notice of Decision is also included in Appendix G.

Attachment B

Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part *if* you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR *if* you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

Not applicable

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

Not applicable

Attachment C

Avoidance and Minimization

Project Purpose, Need, and Requirements. Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:

CP projections indicate that meeting the demand for longer trains efficiently will require modification and extension of the facilities at the Saint Paul railroad yard. The yard was constructed in the 1950s and was a state-of-the-art facility at that time. Changes in the rail industry have made the yard's current design inefficient for train operations. Current technology, with features such as hot box detectors, distributed power, and new locomotives, allows trains to be longer than was the case in the era in which the current yard was constructed. CP's Saint Paul yard needs to be updated to handle the longer trains more efficiently.

- The yard is part of the busiest rail corridor in the state. Approximately 100 trains per day currently pass through the Saint Paul rail corridor that includes CP's yard.
- Of the 100 trains operating in the corridor daily, CP operates about 15 trains that utilize the Saint Paul yard and 17 trains that do not enter the yard. BNSF Railway operates the majority of through traffic, with as many as 40 to 60 trains daily.
- The East Metro Rail Capacity Study (Ramsey County Regional Rail Authority, October 2012) estimates that traffic may grow by 36 percent over the next 10 years. This would mean approximately 11 additional CP through trains per day and approximately 36 additional trains overall in the corridor. This increase in traffic is predicted to occur with or without the proposed Saint Paul track extension project.

The track extension is proposed to allow CP to address the expected increase in the demand for track time due to expected growth in train traffic. The track extension will reduce congestion and enable trains to quickly enter and exit the yard, reducing the time that the main lines are occupied.

The track extension will modify the yard to accommodate longer trails. Typical trains are now 10,000 feet in length. The CP yard can currently handle trains up to 7,000 feet in length. The track extension will allow for potential future passenger rail. The Saint Paul corridor has a high potential demand for future passenger rail service. The Red Rock Commuter corridor is planning to operate on this corridor. Amtrak has identified the potential for an additional roundtrip train each day. If high-speed rail between the Twin Cities and Chicago is developed, it would most likely use this corridor.

Expansion of rail service provides environmentally efficient freight transport. It takes 1 gallon of diesel fuel to ship 1 ton of freight 500 miles. In order to maintain this kind of fuel efficiency, yards need to process cars efficiently. Freight rail also reduces the wear and tear on the nation's roadways and relieves traffic congestion.

See Appendix A for the general location of the project. See Appendix B for preliminary construction plans. See Appendix C for a proposed site plan.

Avoidance. Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:

Wetlands are located in the project area west of the existing railroad embankment for the entire project length. These wetlands are all located in close proximity to the toe of slope of the existing embankment, meaning that any construction outside the existing toe of slope in this area will result in wetland impacts. See Appendix D for wetland impact figures.

While developing plans for the proposed project, design alternatives were considered to determine if permanent wetland impacts could be avoided. The proposed construction is planned along an existing transportation corridor. Due to the density and distribution of wetlands within the corridor, no practicable alternative would completely avoid wetland impacts.

The "no build" alternative was considered, which would avoid wetland impacts; however, it was not selected because it does not adequately address the need to accommodate 10,000-foot-long trains and to get trains on and off the main line as quickly and efficiently as possible.

Bridging the wetland was another alternative that was considered, which would avoid permanent fill being placed into the wetland (except at pier locations); however, the wetland type would still be affected. The bridge would need to be constructed at the same elevation as the adjacent tracks. Prior to constructing the bridge, all the trees within the footprint of the bridge would need to be removed. The low point of the bridge structure would be near the water surface in many locations. The bridge overhead would affect the amount of sunlight reaching the wetland, thus affecting the type of vegetation that will grow under the bridge. The wetlands under the bridge would no longer be considered Type 1L floodplain forest wetlands.

Minimization. Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):

Measures have been taken during project development to minimize wetland impacts to the greatest extent practical. Wetland impact minimization measures include utilizing the narrowest access road top width (13 feet in most locations) acceptable for the type of vehicles that will be using the access road. The 13-foot driving surface is the minimum width required to allow for one-way traffic of maintenance vehicles, equipment, and their loads and still maintain a 4-foot clear separation from the rail so vehicles do not foul the track. The 13-foot driving surface is also the minimum width required for an ATV (5 feet) and a vehicle (8 feet) to pass by one another. The design also incorporates 1V:2H side slopes, the steepest embankment side slopes that design standards allow.

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

Attachment D Replacement/Compensatory Mitigation

Complete this part *if* your application involves wetland replacement/compensatory mitigation not associated with the local road wetland replacement program. Applicants should consult Corps mitigation guidelines and WCA rules for requirements.

Replacement/Compensatory Mitigation via Wetland Banking. Complete this section if you are proposing to use credits from an existing wetland bank (with an account number in the State wetland banking system) for all or part of your replacement/compensatory mitigation requirements.

Wetland Bank Account #	County	Major Watershed #	Bank Service Area #	Credit Type (if applicable)	Number of Credits
1137	Ramsey	20	7	SWC	8.26

Applicants should attach documentation indicating that they have contacted the wetland bank account owner and reached at least a tentative agreement to utilize the identified credits for the project. This documentation could be a signed purchase agreement, signed application for withdrawal of credits or some other correspondence indicating an agreement between the applicant and the bank owner. *However, applicants are advised not to enter into a binding agreement to purchase credits until the mitigation plan is approved by the Corps and LGU.*

A purchase agreement is in place with Mark Vargo, the account manager with Meadowlake Preserve, Account 1137, to purchase 4.48 credits to replace the 2.24 acres of wetland impacted with Phase 1a. Account 1137 contains all Corps-certified credits. Non-refundable earnest money in the amount of \$39,000 has been paid to the seller to secure these credits. The seller has also agreed to set aside 8.26 additional credits to be used for replacement of the 4.13 acres of Phase 1b project wetland impacts. See Appendix I for a copy of the purchase agreement for wetland banking credits and agreement. CP is also pursuing the creation of wetlands for mitigation as described below. If the creation of wetlands is determined to be feasible, CP will reduce the amount of credits it will purchase from Account 1137.

Project-Specific Replacement/Permittee Responsible Mitigation. Complete this section if you are proposing to pursue actions (restoration, creation, preservation, etc.) to generate wetland replacement/compensatory mitigation credits for this proposed project. See Appendix H for figures showing the three areas being pursued for wetland creation. The sites are located on DNR and City of St. Paul Parks and Recreation Property in Ramsey County.

WCA Action Eligible for Credit ¹	Corps Mitigation Compensation Technique ²	Acres	Credit % Requested	Credits Anticipated ³	County	Major Watershed #	Bank Service Area #
Wetland Creation Subp. 7.	Creation	1.2	75	0.9	Ramsey	20	7
Wetland Creation Subp. 7.	Creation	2.3	75	1.7	Ramsey	20	7
Wetland Creation Subp. 7.	Creation	1.1	75	0.8	Ramsey	20	7
Totals		4.6		3.4			

¹Refer to the name and subpart number in MN Rule 8420.0526.

²Refer to the technique listed in *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota*.

³If WCA and Corps crediting differs, then enter both numbers and distinguish which is Corps and which is WCA.

Explain how each proposed action or technique will be completed (e.g. wetland hydrology will be restored by breaking the tile.....) and how the proposal meets the crediting criteria associated with it. Applicants should refer to the Corps mitigation policy language, WCA rule language, and all associated Corps and WCA guidance related to the action or technique:

In coordination with the City of Saint Paul and the DNR, CP has performed a cursory evaluation of three areas that have been identified in the City of Saint Paul's Great River Passage Master Plan as potential wetland restoration/creation areas. Soil types, topography, contours, and National Wetland Inventory mapping were investigated. The cursory review indicates the potential for approximately 4.6 acres of wetland creation that would result in approximately 3.4 credits. Further investigation is required. An investigation of the site and formal wetland type and boundary delineation will be performed in the spring. The site investigation will include a plant community assessment and map, including upland areas and buffer considerations, and an inventory of hydrology sources, including inlets and outlet. A meeting will be held with the TEP following the site investigation and wetland type and boundary delineation before further investigation proceeds to ensure that appropriate ecological and site information has been obtained. See the WCA TEP meeting summary included in Appendix F. If the sites are determined to be feasible for wetland creation, wetland mitigation plans will be created in accordance with the replacement standards of Minnesota Rule 8420.0522, including the establishment or preservation of unmaincured vegetated upland buffer areas. If the sites are determined to be infeasible, all replacement credits will be purchased from Account 1137 as indicated above.

Attach a site location map, soils map, recent aerial photograph, and any other maps to show the location and other relevant features of each wetland replacement/mitigation site. Discuss in detail existing vegetation, existing landscape features, land use (on and surrounding the site), existing soils, drainage systems (if present), and water sources and movement. Include a topographic map showing key features related to hydrology and water flow (inlets, outlets, ditches, pumps, etc.):

See Appendix H for figures showing the three sites that are being investigated for possible wetland creation. A discussion of the existing vegetation, landscape features, existing soils, drainage systems, etc. will be provided following the survey and delineation to be completed in the spring.

Attach a map of the existing aquatic resources, associated delineation report, and any documentation of regulatory review or approval. Discuss as necessary:

To be submitted following the survey and wetland delineation this spring.

For actions involving construction activities, attach construction plans and specifications with all relevant details. Discuss and provide documentation of a hydrologic and hydraulic analysis of the site to define existing conditions, predict project outcomes, identify specific project performance standards and avoid adverse offsite impacts. Plans and specifications should be prepared by a licensed engineer following standard engineering practices. Discuss anticipated construction sequence and timing:

To be submitted following the survey and wetland delineation this spring if it is determined that wetland creation is feasible.

For projects involving vegetation restoration, provide a vegetation establishment plan that includes information on site preparation, seed mixes and plant materials, seeding/planting plan (attach seeding/planting zone map), planting/seeding methods, vegetation maintenance, and an anticipated schedule of activities:

To be submitted if it is determined that wetland creation is feasible.

For projects involving construction or vegetation restoration, identify and discuss goals and specific outcomes that can be determined for credit allocation. Provide a proposed credit allocation table tied to outcomes:

To be submitted if it is determined that wetland creation is feasible.

Provide a five-year monitoring plan to address project outcomes and credit allocation:

To be submitted following the survey and wetland delineation this spring if it is determined that wetland creation is feasible.

Discuss and provide evidence of ownership or rights to conduct wetland replacement/mitigation on each site:

To be submitted if it is determined that wetland creation is feasible.

Quantify all proposed wetland credits and compare to wetland impacts to identify a proposed wetland replacement ratio. Discuss how this replacement ratio is consistent with Corps and WCA requirements:

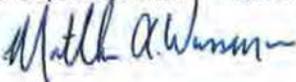
To be submitted if it is determined that wetland creation is feasible.

By signature below, the applicant attests to the following (only required if application involves project-specific/permittee responsible replacement):

- All proposed replacement wetlands were not:
 - Previously restored or created under a prior approved replacement plan or permit
 - Drained or filled under an exemption during the previous 10 years
 - Restored with financial assistance from public conservation programs
 - Restored using private funds, other than landowner funds, unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.
- The wetland will be replaced before or concurrent with the actual draining or filling of a wetland.
- An irrevocable bank letter of credit, performance bond, or other acceptable security will be provided to guarantee successful completion of the wetland replacement.
- Within 30 days of either receiving approval of this application or beginning work on the project, I will record the Declaration of Restrictions and Covenants on the deed for the property on which the replacement wetland(s) will be located and submit proof of such recording to the LGU and the Corps.

Applicant or Representative: Matthew A. Wassman, PE

Title: Water Resources Engineer

Signature: 

Date: 3/13/2014

Attachment E

Local Road Replacement Program Qualification

Complete this part *if* you are a local road authority (county highway department, city transportation department, etc.) seeking verification that your project (or a portion of your project) qualifies for the MN Local Government Road Wetland Replacement Program (LGRWRP). If portions of your project are not eligible for the LGRWRP, then Attachment D should be completed and attached to your application.

Discuss how your project is a repair, rehabilitation, reconstruction, or replacement of a currently serviceable road to meet state/federal design or safety standards/requirements. Applicants should identify the specific road deficiencies and how the project will rectify them. Attach supporting documents and information as applicable:

Provide a map, plan, and/or aerial photograph accurately depicting wetland boundaries within the project area. Attach associated delineation/determination report or otherwise explain the method(s) used to identify and delineate wetlands. Also attach and discuss any type of review or approval of wetland boundaries or other aspects of the project by a member or members of the local Technical Evaluation Panel (TEP) or Corps of Engineers:

In the table below, identify only the wetland impacts from Part 4 that the road authority has determined should qualify for the LGRWRP.

Wetland Impact ID (as noted on overhead view)	Type of Impact (fill, excavate, drain)	Size of Impact (square feet or acres to 0.01)	Existing Plant Community Type(s) in Impact Area ¹	County, Major Watershed #, and Bank Service Area # of Impact ²

¹Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

²Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

Discuss the feasibility of providing onsite compensatory mitigation/replacement for important site-specific wetland functions:

Please note that under the MN Wetland Conservation Act, projects with less than 10,000 square feet of wetland impact are allowed to commence prior to submission of this notification so long as the notification is submitted within 30 days of the impact. The Clean Water Act has no such provision and requires that permits be obtained prior to any regulated discharges into water of the United States. To avoid potential unauthorized activities, road authorities must, at a minimum, provide a complete application to the Corps and receive a permit prior to commencing work.

By signature below, the road authority attests that they have followed the process in MN Rules 8420.0544 and have determined that the wetland impacts identified in Attachment D are eligible for the MN Local Government Road Wetland Replacement Program.

Road Authority Representative:

Title:

Signature: _____

Date:

Technical Evaluation Panel Concurrence:

TEP member: _____ Representing: _____
Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No
Signature: _____ Date: _____

TEP member: _____ Representing: _____
Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No
Signature: _____ Date: _____

TEP member: _____ Representing: _____
Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No
Signature: _____ Date: _____

TEP member: _____ Representing: _____
Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No
Signature: _____ Date: _____

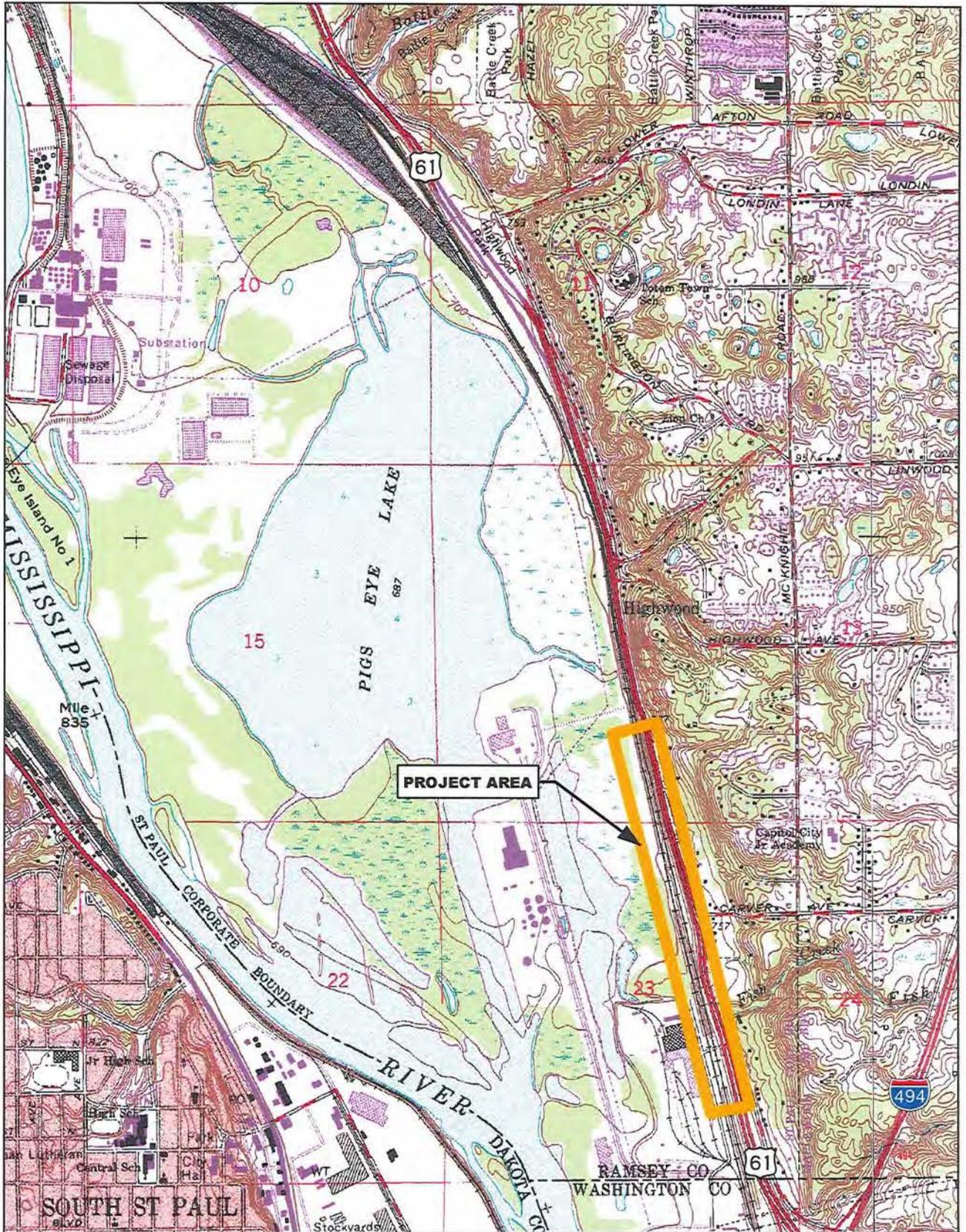
Upon approval and signature by the TEP, application must be sent to: **Wetland Bank Administration
Minnesota Board of Water & Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155**

**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

**CP Railway 2014 Saint Paul Yard Improvements
Phase 1b Receiver Yard Track Extension**

**City of Saint Paul
Ramsey County, Minnesota**

**Appendix A
Project Location Map**



PROJECT LOCATION MAP
USGS 24K QUADRANGLE
 CANADIAN PACIFIC
 ST. PAUL YARD EXPANSION
 PHASE 1B



FEBRUARY 2014
 15321.001



**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

**CP Railway 2014 Saint Paul Yard Improvements
Phase 1b Receiver Yard Track Extension**

**City of Saint Paul
Ramsey County, Minnesota**

**Appendix C
Proposed Site Plan**

BASE IF ONE INCH ON ORIGINAL DRAWING. IF NOT ONE INCH ON THIS DRAWING, ADJUST SCALES ACCORDINGLY.

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NO.	DATE	BY	DESCRIPTION OF REVISIONS

		DRVL. CEH
DESIGN FIRM PROJ. NO. 15321.001		DEL.
REV.	DESIGN FIRM PROJ. MGR. WASSMAN	CHKD. MAW
		APPROVED

ST. PAUL YARD EXPANSION
SITE PLAN - PROPOSED

SIXION	
PROJ. TYP.	
STATE	
PROJ. ID.	



DRAWING NUMBER
FIGURE 4A

SHEET
1 of 4

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NO.	DATE	BY	DESCRIPTION OF REVISION

TKDA

DESIGN FIRM PROJ. NO. 15321.001

REV. DESIGN FIRM PROJ. MGR. WASSMAN

DRWN. CEH
 DES. CEH
 CHG. MAW
 APPROVED

ST. PAUL YARD EXPANSION
 SITE PLAN - PROPOSED

STATION	
PROJ. FILE	
STATE	
PROJ. ID.	

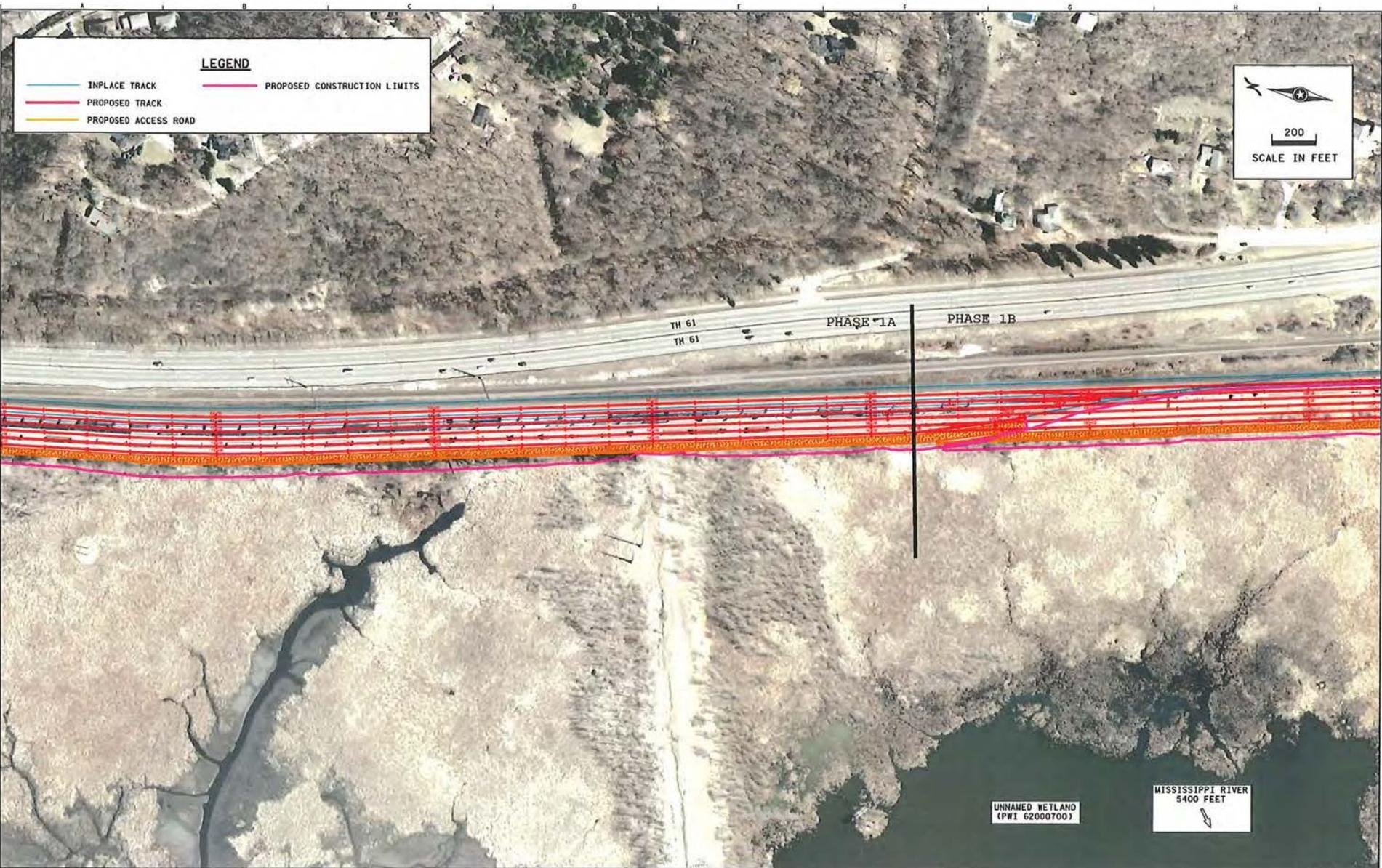


DRAWING NUMBER
FIGURE 4B

SHEET
2 of 4

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NO.	DATE	BY	DESCRIPTION OF REVISIONS

TKDA

DESIGN FIRM PROJ. NO. 15321.001

REV. DESIGN FIRM PROJ. MGR. WASSMAN

DRWN. CEH

DES. MAW

APP. MAW

ST. PAUL YARD EXPANSION
 SITE PLAN - PROPOSED

STATION	
PROJ. TYPE	
STATE	
PROJ. ID.	

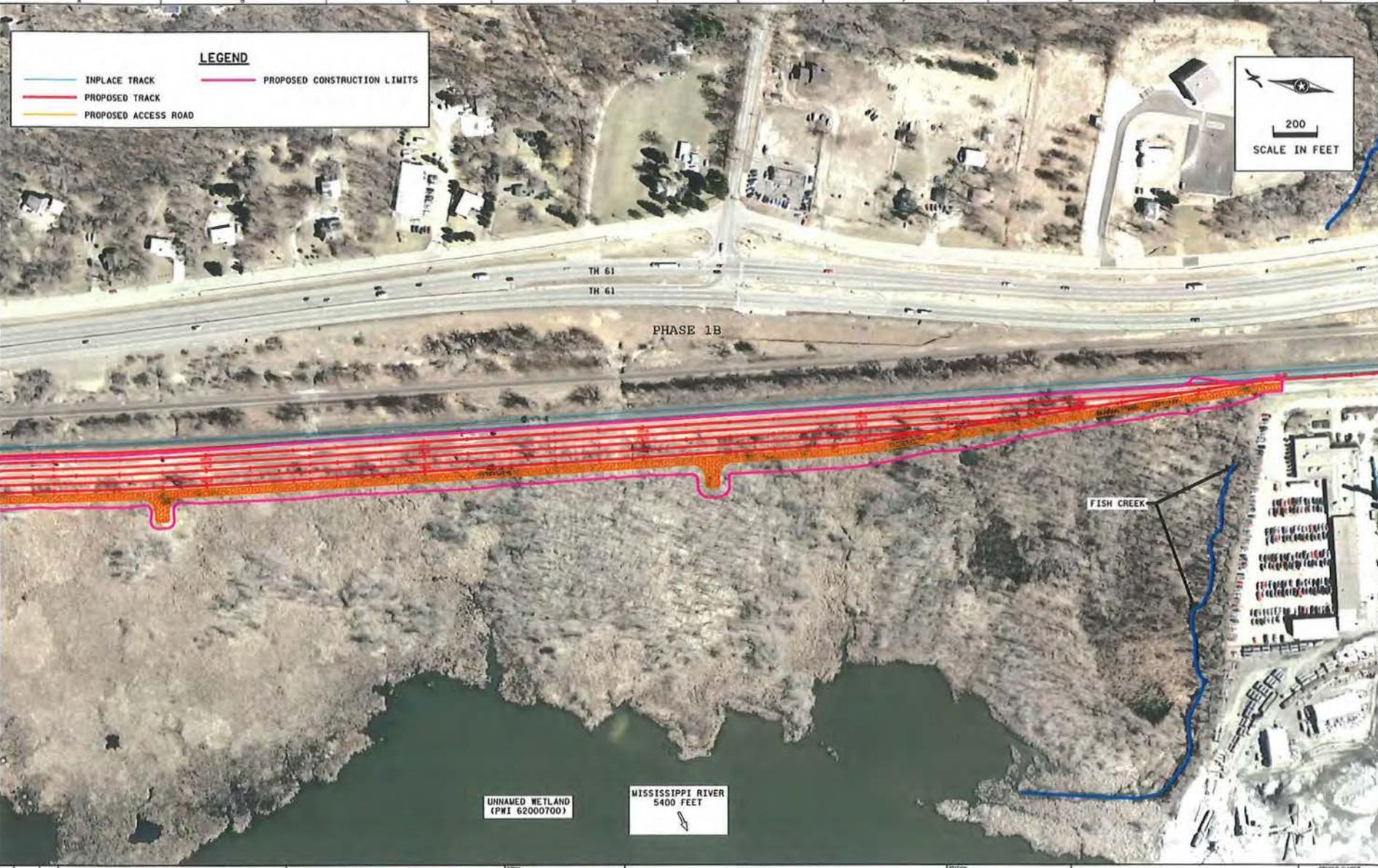
CANADIAN PACIFIC

DRAWING NUMBER: **FIGURE 4C**

SHEET: **3** of **4**

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NO.	DATE	BY	DESCRIPTION OF REVISIONS


TKDA
 DESIGN FIRM PROJ. NO.
 15321.001

DESIGNED BY: CEH
 DRAWN BY: MAW
 CHECKED BY: WASSMAN
 APPROVED:

ST. PAUL YARD EXPANSION
 SITE PLAN - PROPOSED


CANADIAN PACIFIC

DRAWING NUMBER
FIGURE 4D
 SHEET
 4 of 4

**Joint Application Form for Activities Affecting Water Resources
in Minnesota**

**CP Railway 2014 Saint Paul Yard Improvements
Phase 1b Receiver Yard Track Extension**

**City of Saint Paul
Ramsey County, Minnesota**

**Appendix D
Wetland Impact Figures**

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT F



APPLICATION FOR SITE PLAN REVIEW

STAFF USE ONLY

Department of Safety and Inspections (DSI)
375 Jackson Street
Suite 220
Saint Paul MN 55101-1806
651-266-9086

SPR # _____
Fee \$ _____
Staff meeting date: _____
City agent _____

APPLICANT
(Main contact person for project)

Name Tim Havlicek
Company Canadian Pacific Railway
Address Suite 900 Canadian Pacific Plaza
City Minneapolis State MN Zip 55402
Phone 612-904-5931 Email tim_havlicek@cpr.ca

OWNER
(if different than the applicant)

Name _____ Company _____
Address _____
Phone _____ Email _____

PROJECT

Project name / description CP Railway 2013 St. Paul Yard
Improvements Access Road Construction
Project address / Location St. Paul Yard located at 1010 Shop Road
St. Paul, MN
Legal description of the property : _____

Applicant's signature _____

Date 11-14-13

STAFF USE ONLY Type Site Plan Sub _____ Work _____ S.F. _____

Folder Name _____

Reviewed by _____

Comments:

(attach additional sheets if necessary)

Bond/letter of credit/escrow \$ _____ Date _____

Site plan approved by _____ Date _____

Work approved by _____ Date _____

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT G



APPLICATION FOR SITE PLAN REVIEW

STAFF USE ONLY

Department of Safety and Inspections (DSI)
375 Jackson Street
Suite 220
Saint Paul MN 55101-1806
651-266-9086

SPR # _____

Fee \$ _____

Staff meeting date: _____

City agent _____

APPLICANT (Main contact person for project)

Name Tim Havlicek
Company Canadian Pacific Railway
Address Suite 900 Canadian Pacific Plaza
City Minneapolis State MN Zip 55402
Phone 612-904-5931 Email tim_havlicek@cpr.ca

OWNER (If different than the applicant)

Name _____ Company _____
Address _____
Phone _____ Email _____

PROJECT

Project name / description CP Railway 2014 St. Paul Yard Improvements - Phase 1b Receiver Yard Extension
Project address / Location St. Paul Yard located at 1010 Shop Road St. Paul, MN
Legal description of the property : _____

Applicant's signature _____

Jim [Signature]

Date 2/25/14

STAFF USE ONLY Type Site Plan Sub _____ Work _____ S.F. _____

Folder Name _____

Reviewed by _____

Comments:

(attach additional sheets if necessary)

Bond/letter of credit/escrow \$ _____ Date _____

Site plan approved by _____ Date _____

Work approved by _____ Date _____

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT H



CONDITIONAL USE PERMIT APPLICATION

Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

Zoning office use only

File # _____

Fee: _____

Tentative Hearing Date: _____

APPLICANT

Name Canadian Pacific Railway
Address Suite 900 Canadian Pacific Plaza, 120 South 6th Street
City Minneapolis St. MN Zip 55402 Daytime Phone 612-904-5900
Name of Owner (if different) _____
Contact Person (if different) Tim Havlicek Phone 612-904-5931

PROPERTY LOCATION

Address / Location 1010 Shop Road, Saint Paul, Minnesota
Legal Description PIN 14-28-22-21-0007
Current Zoning R1 Residential
(attach additional sheet if necessary) (Rezoning to I2 Industrial)

TYPE OF PERMIT: Application is hereby made for a Conditional Use Permit under provisions of Chapter 68, Section 402, Paragraph b2&c7 of the Zoning Code.

SUPPORTING INFORMATION: Explain how the use will meet all of the applicable standards and conditions. If you are requesting modification of any special conditions or standards for a conditional use, explain why the modification is needed and how it meets the requirements for modification of special conditions in Section 61.502 of the Zoning Code. Attach additional sheets if necessary.

CP Railway is proposing to lengthen tracks in its Saint Paul railroad receiving yard. CP is proposing to extend six existing tracks to the east approximately 3000 feet and build a gravel access road adjacent to the tracks, all within CP property. A conditional use permit is required for filling wetlands as a result of the project.

Wetland impacts will be mitigated at a 2:1 replacement ratio following MN Rules Part 8420. An Environmental Assessment has been prepared and is currently under review. A Joint Application for Activities Affecting Water Resources in Minnesota has also been prepared and is currently under review by the LGU and US Army Corps of Engineers.

Required site plan is attached

Applicant's Signature Tim Havlicek Date 5/5/14 City Agent _____

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT I



APPLICATION FOR ZONING VARIANCE
 Department of Safety and Inspections
 375 Jackson Street
 Suite 220
 Saint Paul, MN 55101-1806
 General: 651-266-9008
 Fax: (651) 266-9099

Zoning office use only

File Number: _____
 Fee: \$ _____
 Tentative Hearing Date: _____
 Section(s) _____
 City agent _____

APPLICANT

Name Tim Havlicek Company Canadian Pacific Railway
 Address Suite 900 Canadian Pacific Plaza, 120 South 6th Street
 City Minneapolis St. MN Zip 55402 Daytime Phone 612-904-5931
 Property Interest of Applicant (owner, contract purchaser, etc) Owner
 Name of Owner (if different) _____ Phone _____

PROPERTY INFORMATION

Address / Location 1010 Shop Road, Saint Paul, Minnesota
 Legal Description _____
 (attach additional sheet if necessary)
 Lot Size _____ Present Zoning _____ Present Use _____
 Proposed Use _____

Variance[s] requested: Variance to Sec. 68.402 (wetlands and steep slopes)

Supporting Information: Supply the necessary information that is applicable to your variance request, provide details regarding the project, and explain why a variance is needed. Duplex/triplex conversions may require a pro forma to be submitted. Attach additional sheets if necessary.

CP Railway is proposing to lengthen tracks in its Saint Paul railroad receiving yard. CP is proposing to extend six existing tracks to the east approximately 3000 feet and build a gravel access road adjacent to the tracks, all within CP property.

A variance is required for impacting wetlands within a designated river corridor and for impacting and constructing steep slopes within a designated river corridor. An Environmental Assessment has been prepared and is currently under review. A Joint Application for Activities Affecting Water Resources in Minnesota has also been prepared and is currently under review by the LGU and US Army Corps of Engineers.

Attachments as required: Site Plan Attachments Pro Forma

Applicant's Signature

Tim Havlicek

Date

5/5/14

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT J

**Findings of Fact and Record of Decision
Environmental Assessment Worksheet
for the
Canadian Pacific Railway (CP) Track Extension Project
Saint Paul, Minnesota**

Proposer: Canadian Pacific Railway
Contact Person: Tim Havlicek
Title: Project Engineer
Address: 120 South 6th Street, Suite 900
Minneapolis, MN 55402
Phone: (612) 904-5931
Email: tim_havlicek@cpr.ca

RGU: City of Saint Paul
Contact Person: Josh Williams
Title: City Planner
Address: Saint Paul PED
25 West 4th Street, Suite 1300
Saint Paul, MN 55102
Phone: (651) 266-6659
Email: josh.williams@ci.stpaul.mn.us

FINDINGS OF FACT

1. Pursuant to Minnesota Rules 4410.4300, subpart 14(B) that determines the thresholds for Mandatory EAW's, the City of Saint Paul, Ramsey County, Minnesota, acting as the Responsible Governmental Unit (RGU), prepared the mandatory Environmental Assessment Workshop (EAW) for the proposed CP Railway Track Extension Project. The EAW is hereby incorporated by reference in this Record of Decision.
2. As indicated in the EAW, CP Railway is proposing to lengthen the tracks in its Saint Paul railroad receiving yard. CP is proposing to extend five existing tracks to the east, add a new track 6, and build a new access road. The project would result in the permanent fill of 6.37 acres of wetland.
3. The City filed the EAW with the Minnesota Environmental Quality Board (EQB) and notice of its availability for public review and comment was published in the *EQB Monitor* on March 31, 2014.
4. The City provided notice of the EAW via the City's Early Notification System, and made copies of the EAW available at the Central/Downtown, Dayton's Bluff, and Sun Ray (temporarily located

at the Conway Recreation Center) libraries, and on the City 's website at www.stpaul.gov/cpraileaw.

5. A press release announcing the availability of the EAW for public review and comment, including a description of the project, was published in the *Pioneer Press* on April 2, 2014.
6. A copy of the EAW was sent to all persons on the EQB Distribution List.
7. The City held a public meeting on the EAW at the Battle Creek Recreation Center on April 23, 2014, during the 30-day comment period.
8. The 30-day public review and comment period began on March 31, 2014 and ended on April 30, 2014.
9. During the 30-day public review and comment period, the City of Saint Paul received comments from agencies and individuals. Comments were submitted in writing, via email, through the Open Saint Paul forum, and verbally at the April 23 public meeting.

The City of Saint Paul has compiled a record of the comments received and responses for each comment ("Comments and Responses"). That record is hereby incorporated by reference into this Record of Decision. A copy of the Comments and Responses has been provided to the project proposer, Canadian Pacific Railway. A copy of the Comments and Responses will be provided to all commenters, the Environmental Quality Board (EQB), to all agencies included on the EAW distribution list maintained by the EQB, and to those additional governmental units to which a copy of the EAW was provided. An electronic copy of the Comments and Responses is also available on the City of Saint Paul website at <http://www.stpaul.gov/cpraileaw>. A list of commenters is included as Exhibit L to the Comments and Responses.

10. Based on the information contained in the EAW and provided in meetings, written comments received, and in the responses to those comments, the City of Saint Paul finds the following potential environmental effects associated with the proposed project.

a. Wetland Impacts (Water Resources, EAW Item 11)

Nature of Impacts

The CP Rail yard expansion as proposed would result in the permanent loss of 6.37 acres of wetlands adjacent to Pig's Eye Lake in the Mississippi River Corridor. In portions of the project area, the proposed project would fill all or nearly all wetlands above the OHWL (ordinary high water level) of Pig's Eye Lake. The OHWL demarcates the boundary of the Public Water. The areal extent and location of the wetland impacts make them significant.

An approximately 880-foot long steel sheet-piling retaining wall is proposed as part of the project. The wall would be oriented generally perpendicular to the direction of groundwater flow, and construction of the wall will require driving of the pilings to depths of between 23 and 43 feet below ground. The potential exists for interruptions of ground water flow, potentially impacting the adjacent Public Water and upgradient groundwater levels.

In addition to wetland impacts, CP Rail has identified that the project as proposed would also result in increases of in impervious surfaces of 2.12 acres and increase in tracks/ballasted areas of 5.24 acres. Due to the compact nature of the underlying soils, little infiltration of storm water into the ground is likely to occur in the track/ballasted areas. Increases in impervious areas increase storm water run-off from a site. Storm water run-off can carry pollutants, sediment and nutrients which can negatively impact water quality. Storm water run-off from large construction sites can also carry sediment which impacts water quality. The project area drains to Pig's Eye Lake, and unnamed DNR wetland, and, ultimately, the Mississippi River.

Adequacy of EAW/Proposed Mitigation

CP Rail has made applications for the proposed wetland fill to the City of Saint Paul as the LGU responsible for implementation of the Minnesota Wetland Conservation Act (WCA), and to the U.S. Army Corps of Engineers (USACE), which has permitting authority regarding proposed fill of wetlands that are part of a navigable water. Pursuant to the U.S. Clean Water Act, the Minnesota Pollution Control Agency must also certify wetland fill projects over which the USACE has permitting authority. Under WCA, mitigation for wetland fill is required in the form of creation of replacement wetlands at 2-1 ratio. WCA also requires sequenced actions as part of project design to avoid and minimize wetland impacts as possible, and documentation of these efforts. WCA also requires sequenced actions in regard to identification of sites for required mitigation.

The City of Saint Paul as the LGU and a Technical Evaluation Panel (TEP) will evaluate the adequacy of the applications made by CP Rail in regard to the sequencing and documentation of wetland avoidance efforts and identification of mitigation. The applications are included as Exhibits to the Comments and Responses, and the Comments and Responses provides discussion of the efforts of CP Rail to identify wetland mitigation locations within the general vicinity of the project area. Based on the location of the impacts in the Mississippi River corridor, the City of Saint Paul also requires a conditional use permit and variance for the wetland fill. No permitting decisions may be made until the environmental review process has been concluded.

CP Rail has stated that groundwater will be able to migrate through seams in the proposed sheet-piling wall and through weep holes that will be made in the pilings. However, the EAW did not include any analysis of the amount/rate of groundwater movement in the project area. Neither the EAW nor project plans made available provide any indication of the proposed diameter or spacing of the proposed weep holes, or any discussion of the

amount of groundwater migration through the proposed wall these would allow. The EAW also does not provide analysis of the sensitivity of the wetlands adjacent to the wall to changes in groundwater flow/levels nor of the likely nature of any impacts to the functions and values of the wetland resulting from changes in groundwater flow/levels.

The EAW identifies project features and required permits and reviews generally adequate to control potential storm water runoff impacts of the proposed project.

b. Hazardous Materials (EAW Item 12)

Nature of Impacts

As acknowledged in the EAW and comments, trains operated by CP Rail and others currently carry a variety of materials through Saint Paul on a regular basis, including hazardous materials.

CP Rail has stated that the purpose of the proposed yard expansion is to accommodate longer trains, make yard operations more efficient, and reduce congestion on the mainline tracks running near the yard. Based on available information, including information received in comments and statements made by representatives of CP Rail, the City of Saint Paul concludes that the proposed project is also necessary to enable CP's yard to accommodate increased traffic through the yard resulting from previous, and potential future, actions taken by CP Rail.

An increase in the amount of rail traffic handled through the CP yard, and the potential for rerouting through Saint Paul of traffic that previously was handled through other yards, result in a potential for increased risk from incidents involving hazardous materials, including potential impacts to public safety and potential impacts on water quality, and wildlife and wildlife habitat. The EAW does not provide adequate information to make a reasoned decision regarding either the potential significance of these impacts.

Adequacy of EAW/Proposed Mitigation

The EAW characterized the proposed project as not impacting the amount of rail traffic passing through either the CP yard or the rail corridor as a whole, nor the types of materials carried. The EAW stated that the proposed project should result in more efficient operations in the rail corridor as a whole and therefore might actually reduce risk related to incidents involving hazardous materials being transported by rail. The EAW also noted that petroleum moving by rail typically is hauled in "unit trains", trains carrying a single commodity, and that unit trains do not typically enter the CP yard.

The EAW also noted CP Rail-specific and industry-wide regulations and procedures that generally increase safety, and cited CP Rail plans that are implemented in the event of a spill of hazardous materials or similar emergency. CP Rail has indicated that there is no spill containment system installed in the yard presently.

A number of comments were received from agencies and individuals which expressed concern over the potential for impacts to public safety and natural systems as a result of incidents involving hazardous materials. In response to comments, CP RAILS has proposed that the storm water filtration system could act as a spill containment system. No evaluation of the efficacy of the system in containing spills was provided.

In the EAW, CP Rail proposed as mitigation their ongoing cooperation with the City of Saint Paul on a Commodities Study. The EAW states that the Commodities Study is not yet complete but may quantify risks associated with the transport of hazardous materials through Saint Paul and identify responsibilities for reducing or mitigating those risks. CP Rail also identifies the implementation, as appropriate, of its own emergency response plans as mitigation.

The EAW does not evaluate the potential increased risk associated with an increase in the amount of, or change in type of, hazardous materials that may travel through or be temporarily stored in the CP yard as a result of the proposed expansion. Therefore, the EAW does not provide adequate information to make a determination regarding the potential for significant impacts to public safety or natural systems related to incidents involving hazardous materials.

The Commodities Study may help to provide the information needed to assess the potential significance of environmental impacts associated with hazardous materials, the potential for which may be increased by the proposed project. However, for the City of Saint Paul as the RGU to rely on mitigation measures, those measures must be specific and reasonably expected to effectively mitigate the identified environmental impacts of a project. Absent an understanding of the scope and significance of potential impacts related to hazardous materials, the Commodity Study cannot include adequate planning for emergency response. Similarly, the adequacy of CP Rail's emergency response plans as mitigation cannot be evaluated because the EAW does not provide information sufficient to evaluate and make a decision regarding the significance of potential impacts related to hazardous materials.

c. Impacts to Plant Communities and Wildlife (EAW Item 13)

Nature of Impacts:

Based on the revised land cover table provided by CP Rail in response to comments, the proposed project would result in the loss of 2.52 acres of wooded/forest areas, and 2.07 acres of brush/grassland. 3.64 acres of the project area would be replanted as brush/grassland. Information supplied by the Minnesota DNR for the EAW indicated that portions of the project area are identified as falling within a Central Region Regionally Significant Ecological Area (CRRSEA) and that a significant portion of the shoreline in the project area is classified as a Site of Moderate Biodiversity Significance. A number of commenters also

identified the importance of plant communities in the project area as wildlife habitat. The location and large areal extent of impacts makes them significant.

DNR comments on the EAW also identified potential impacts of construction noise on the nearby Pig's Eye Rookery, and the potential for impacts to turtle populations from loss of habitat and access to nesting grounds.

Adequacy of EAW/Proposed Mitigation:

Based on information provided by the DNR, the EAW identified the potential for establishment and spread of invasive plant species as a result of construction disturbances as a primary concern. In response to this information and comments provided, CP Rail has proposed the use MN Department of Transportation native seed mixes and construction methods which minimize open areas of disturbance and quick vegetation establishment to minimize the potential for spread of invasive species.

In response to comments, CP Rail has proposed additional plantings of hardwood trees at some locations along the toe of the new embankment proposed by the project. DNR staff have informally reviewed the planting plan. They have indicated that greater species diversity in tree plantings and the inclusion of native shrubs would result in a more robust plant community more resistant to disease, insects, and other environmental factors and that would provide greater wildlife habitat. They also noted that the proposed six-inches of top soil in embankment areas proposed to be planted with native seed mix may be insufficient for the establishment of woody species.

CP Rail has agreed to avoid pile driving during nesting incubation season in order to avoid impacts to the bird species utilizing the Pig's Eye Rookery. DNR has provided guidelines for avoidance of impacts to turtle populations during construction, which CP Rail has committed to follow. DNR comments also suggested the use of turtle escape ramps to prevent stranding of turtles in railroad

tracks. CP Rail has stated that they do not intend to install turtle escape ramps, and that existing culverts would be a preferable alternative for turtles to traverse the area of the yard.

d. Historic/Cultural Resources (EAW Item 14)

Nature of Impacts:

A number of historic and cultural sites are located within the general vicinity of the project. The railroad itself is also eligible for listing on the National Register of Historic Places.

The proposed project would not impact historic resources other than the railroad itself. However, the State Historic Preservation Office (SHPO) has indicated the need for a Phase I Archaeological Survey to evaluate the potential for impacts to cultural resources. The survey will provide information necessary to evaluate the potential for impacts and the significance of those impacts.

Adequacy of EAW/Proposed Mitigation:

The project proposer requested a list of historic and cultural resources potentially impacted by the proposed project from SHPO in response to Item 14 of the EAW. As noted by several commenters, information was requested for the wrong location. In response, CP Rail submitted a request to SHPO for information for the correct project location. The new information supplied by SHPO was incorporated into the EAW. Comments received identified the railroad itself as eligible for the National Register of Historic Places. This information has been incorporated into the EAW.

In response to comments from SHPO, CP Rail has hired a consultant to conduct a Phase I Archaeological Survey in the project area. CP Rail has committed to following the recommendations contained in the survey report if archaeological resources are identified.

Comments received also noted the need for Section 106 review due to the requirement of the project to obtain a federal permit. The U.S. Army Corps of Engineers is responsible for Section 106 review as part of the permit evaluation process.

e. Visual Impacts (EAW Item 15)

Nature of Impacts:

Visual impacts identified by the EAW and commenters relate to the proposed sheet piling retaining wall, the removal of vegetation, particularly forested areas and mature trees, and extension of the receiving tracks along the eastern shore of Pig's Eye Lake.

The proposed sheet piling retaining wall would be approximately 880-feet in length, and would vary in height between approximately 5.5 feet and 10.7 feet as viewed from the Pig's Eye Lake side. The top of the wall would be approximately 2 feet higher than the proposed access road. Based on the updated land cover table provided by the project proposer in response to comments received, the project as proposed would result in the loss of 2.52 acres of wooded/forest areas, and a net gain of 1.57 acres of brush/grasslands. The project as proposed would also result in expansion of the yard into an area where it is not currently located along the eastern shore of Pig's Eye Lake and adjacent to the Highwood Hills area.

Views from Pig's Eye Lake looking generally east and north would be impacted by the proposed sheet piling retaining wall and the removal of vegetation. Views from new facilities proposed by the Great River Passage Master Plan (GRP) for park lands on the western side of Pig's Eye Lake and around the shoreline of the lake would also be impacted. Pig's Eye Regional Park is identified as an important resource in the Mississippi River Corridor Plan (a chapter of the Saint Paul Comprehensive Plan) and the GRP, and represents approximately 1/3 of the Great River Passage. The

scale of the proposed vegetation removal and of the sheet piling retaining wall would result in a significant impact to views in the park.

Commenters also identified the potential for impacts to view from the neighborhoods and bluffs overlooking the proposed project area, particularly those on the downstream end of the project area where the yard is not currently located.

Adequacy of EAW/Proposed Mitigation:

The impact on views from the residential areas and bluffs in the downstream portion of the project area was not addressed in the EAW. Representatives of CP Rail stated in response to comments on the topic the opinion that the extension of the tracks would not substantially change views. No supporting analysis for this statement was provided, and no mitigation was proposed

In the EAW, CP Rail proposed planting of live willow stakes along the base of the proposed sheet piling retaining wall as mitigation for visual impacts. In response to comments on the EAW, CP Rail has added a planting plan to the project plans. The planting plan proposes planting of Swamp White Oak in various locations along the base of the proposed embankment to mitigate for the removal of forested areas, including mature trees, as part of the project.

The City of Saint Paul finds that the information provided by the project proposer is not sufficient to evaluate the feasibility or sufficiency of the proposed willow planting as mitigation. Potential changes to hydrology and the physical effect of floodwaters, particularly the potential for wave action against the sheet piling wall to create additional turbulence, need to be analyzed to evaluate whether or not the proposed willow stake plantings will be able to establish a foothold. The existing riprap to be replaced at the base of the wall may also inhibit the establishment of a sufficient number of willow to provide screening.

It is also not clear from plans provided that sufficient space will remain between the wall and the ordinary high water level (OHWL) of Pig's Eye Lake to accommodate a sufficient amount of plantings to provide screening. The plans also do not provide details regarding the location and density of willow plantings. DNR staff have indicated that it would likely be difficult for woody vegetation such as willow to establish below the OHWL.

The additional plantings proposed by CP Rail have the potential to contribute to sufficient mitigation for proposed vegetation removal in regard to visual impacts. However, a more detailed comparison of existing plant communities in the project area to proposed plantings is needed to make that determination.

f. Air Quality Impacts (EAW Item 16)

Nature of Impacts:

CP Rail has stated that the purpose of the proposed yard expansion is to accommodate longer trains, make yard operations more efficient, and reduce congestion on the mainline tracks running near the yard. Based on available information, including information received in comments and statements made by representatives of CP Rail, the City of Saint Paul concludes that the proposed project is also necessary to enable CP's yard to accommodate increased traffic through the yard resulting from previous, and potential future, actions taken by CP Rail. Increased train traffic through the yard may result in increased diesel engine emissions, which may impact air quality in the general vicinity of the proposed project. A determination regarding the potential for air quality impacts and the significance of these impacts cannot be based on the information gathered through the EAW process.

Dust generated by construction and yard operations are also potential impacts of the proposed project.

Adequacy of EAW/Proposed Mitigation:

CP Rail has stated that greater efficiency in yard operations and reductions in mainline congestion will be achieved as a result of the proposed project. The EAW estimated that the project could reduce engine running time for splitting and switching of trains in the yard by 7.5 hours per day. No discussion was provided regarding how much additional engine running time has or will be required to accommodate the increased volume of cars passing through the CP yard. No mitigation was proposed in the EAW.

In the EAW and in comments received, dust resulting from yard operations and dust from construction were both noted as potential impacts of the project. In the EAW and in response to comments, CP Rail has committed to dust control measures during construction and regular dust suppression activities during operations generally sufficient to address these impacts.

g. Noise (EAW Item 17)

Nature of Impacts:

A noise study conducted as part of the EAW found that current operations in the CP Rail Saint Paul yard produce noise at levels in excess of state standards. A number of comments received in response to the EAW also identified noise from rail operations as a major impact presently and expressed concern that the proposed yard expansion would result in increased noise impacts.

CP Rail has stated that the purpose of the proposed yard expansion is accommodate longer trains, make yard operations more efficient, and reduce congestion on the mainline tracks running near the yard. Based on available information, including information received in comments and statements made by representatives of CP Rail, the City of Saint Paul concludes that the proposed project is also necessary to enable CP's yard to accommodate increased traffic through the yard resulting from previous, and potential future, actions taken by CP Rail. The potential therefore exists for increased noise impacts associated with the project.

Minnesota Rules 7030.0040 sets state standards limiting sound levels “on the basis of present knowledge for the preservation of public health and welfare”. Noise in excess of these standards on a daily basis represents a significant impact to the public health and welfare.

The EAW contains comments from Minnesota Pollution Control Agency (MPCA) staff stating MPCA’s ability to regulate noise from railroads is a “gray” area. Although no such statement was included in the EAW, CP Rail has stated in other communications that railroad noise is regulated at the federal level. Although the City will continue to work with MPCA (staff) to clarify what authority the State of Minnesota has to regulate noise generated by rail yard operations, absent the clear ability of the City of Saint Paul to regulate noise order to mitigate the effects of noise by the CP’s yard on an ongoing basis, the City of Saint Paul finds that the potential for increased noise resulting from CP’s proposed yard expansion creates the potential for significant environmental effects.

Adequacy of EAW/Proposed Mitigation

A noise study was performed as part of the EAW. The study concluded that noise levels generated by current operations in the CP Rail Saint Paul yard, as measured at receptor locations, exceed State standards in a number of cases. The study identified brake noise from individual cars and hump operations, noise associated with coupling of cars, and noise from engines pushing cars over the hump as the primary noise generators associated with the yard. The study also found that other sources, including mainline train operations and vehicular traffic on Highway 61 also contribute to noise in the area.

The noise study stated that the proposed yard expansion would result in the reduction of time that engines spend maneuvering cars in the yard, and would therefore result in a reduction in the

noise from engines. The study concluded that this might result in a reduction in noise attribute able to CP's yard operations. As mitigation, the EAW proposed that the City of Saint Paul of should work with the MPCA to determine whether the state has authority to regulate noise generated by rail yard operations.

The EAW did not adequately evaluate the potential for significant environmental impacts resulting from noise associated with the proposed yard expansion. No modeling was performed to evaluate the effect increased traffic through the yard would have on the three primary generators of yard noise identified by the study, each of which is a function in whole or in part of the number of cars passing through the yard.

The proposed mitigation is not adequate. It does not in any way attenuate the amount of noise generated by yard operations, and is not based on a clear understanding of the noise impacts of the proposed project.

h. Cumulative Impacts (EAW Item 19)

Nature of Impacts:

In 2012, the Ramsey County Regional Rail Authority commissioned the East Metro Rail Capacity Study ("Capacity Study") regarding the rail corridor which runs along Pig's Eye Lake and encompasses the CP Rail yard. The stated purpose of the Capacity Study was to identify future capacity improvements in the corridor necessary to accommodate planned commuter and high speed passenger rail in the corridor while maintaining freight rail capacity, safety and on-time performance, and allowing for future growth in freight rail volume. CP Rail was party to the study.

Based on growth forecasts from CP Rail, Burlington Northern Santa Fe (BNSF), and Union Pacific (UP), the Capacity Study projected a 36% growth in the volume of freight traffic (measured in train-feet) in the corridor for the ten year study period beginning in 2010. The Capacity Study identified a number of

operational improvements and general low cost capital improvements such as optimizing track geometry, along with 32 individual of “higher cost capital improvements”. These improvements were identified as necessary to maintain on-time performance and hold freight rail operations whole while allowing for growth in freight (projected) and passenger (planned) rail traffic.

Based on this information, the City of Saint Paul concludes that the proposed yard expansion project is needs to be evaluated in regard to cumulative potential impacts of the rail infrastructure improvements for which the Capacity Study has laid a reasonable expectation. The list of potential impacts for which the potential for cumulative impacts needs to be evaluated includes but is not necessarily limited to impacts to water resources, impacts associated with the transport of hazardous materials, noise impacts, and air quality impacts.

Adequacy of EAW/Potential Mitigation:

The EAW did not identify any potential for cumulative impacts.

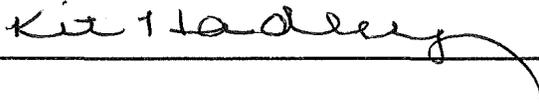
CONCLUSIONS

1. The City of Saint Paul (RGU) has fulfilled all applicable procedural requirements of law and rule regarding the determination of need for an Environmental Impact Statement (EIS) for the proposed Canadian Pacific Rail yard expansion.
2. Pursuant to Minnesota Rules Part 4410.1700, Subparts 6 and 7, the proposed project has been evaluated by the public, the reviewing agencies, and the City of Saint Paul to determine potential environmental effects. Based on the findings and record in this matter, the City of Paul has determined that the proposed Canadian Pacific Rail yard expansion has the potential for significant environmental effects. Therefore, an Environmental Impact Statement is needed.

3. Pursuant to Minnesota Rules Part 4410.1700, Subpart 5, a copy of this RGU Record of Decision is being provided, within 5 days, to all persons on the Minnesota EQB Distribution List, to persons and agencies that commented, and to persons who requested a copy.

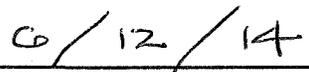
This Record of Decision and all associated information will also be made available on the City of Saint Paul's website at <http://www.stpaul.gov/cpraileaw>

Name and Title of Signer:



Kit Hadley
Interim Director,
Dept. of Planning and Economic Development
City of Saint Paul, Minnesota

Date:



June 12, 2014

*Petition for Declaratory Order and Request for Expedited Decision
of Soo Line Railroad Company*

EXHIBIT K

From: Williams, Josh (CI-StPaul) [mailto:josh.williams@ci.stpaul.mn.us]
Sent: Thursday, June 19, 2014 3:16 PM
To: Tim Havlicek
Subject: FW: Scoping costs

Tim,

Apologies, took a little longer to get the figures on City staff costs than I anticipated. The estimate of scoping costs appears below. Please consider this the final estimate.

Proposal from consulting firm:	\$	21,200.00
City staff costs 40 hours @63.98/hour	\$	<u>2,559.20</u>
	\$	23,779.20
20% contingency	x	<u>1.2</u>
	\$	28,535.04

As a head's up, I will also be sending you early next week the total fee for City review of the EAW. This will include all time spent on the responses to comments, FOF/ROD, etc. as well as what came previously. I need to compile everything and have the Planning Director review before I send that

on.

In terms of what is next with the EIS, it sounds like Sherri has briefed you in regard to the process. If you do have questions, though, I am happy to try to answer them if I can.

Thanks,

Josh



Josh Williams

Planner

Planning and Economic Development
25 W. Fourth Street
Saint Paul, MN 55102
P: 651.266.6659
josh.williams@ci.stpaul.mn.us

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From: Williams, Josh (CI-StPaul)
Sent: Wednesday, June 18, 2014 4:19 PM
To: Tim Havlicek (Tim_Havlicek@cpr.ca)
Subject: Scoping costs

Tim,

This email comes in follow-up to our earlier conversation. The City has worked with a consultant to develop a cost estimate for consultant services for the EIS scoping process. This estimate came in at \$21,200. As I said before, the City will want to hold a contingency above that; I believe I said 10%, but my supervisor has suggested 20%. She also wants me to add in City staff costs, which is provided for in the state rules, and is consistent with standard City fees for environmental review. I need to get a figure for salary, benefits, overhead for City staff. Once I have this information, I can give you a final number for the estimated scoping costs, likely some time tomorrow morning.

Thanks,

Josh

Josh Williams

Planner

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