



# CITY OF CONCORD

## REPORT TO MAYOR AND THE CITY COUNCIL

**FROM:** Matthew R. Walsh, Director of Redevelopment, Downtown Services, and Special Projects

**DATE:** May 4, 2021

**SUBJECT:** Acquisition of Real Estate from Pan Am Systems (i.e. Boston and Maine and Northern Railroad) for Merrimack River Greenway Trail (CIP #543) and Concord-Lake Sunapee Rail Trail

### **Recommendation:**

- 1) Accept the following report; and,
- 2) Set the attached resolution authorizing the City Manager to execute Purchase and Sales Agreements with the Boston and Maine Corporation and the Northern Rail Road, each of which are subsidiaries of Pan Am Systems, Inc., concerning the acquisition of portions of the Northern Main Line and Concord to Claremont Line to support the Merrimack River Greenway Trail (CIP #543), and the Concord-Lake Sunapee Rail Trail, for public hearing on June 14, 2021.
- 3) Set the attached resolution appropriating the sum of \$700,000, including \$600,000 in General Fund supported bonds and notes and \$100,000 from the Conservation Reserve, for the acquisition of property from Pan Am Systems, Inc. to support the Merrimack River Greenway Trail (CIP #543) and the Concord-Lake Sunapee Rail Trail, for public hearing on June 14, 2021.

### **Background:**

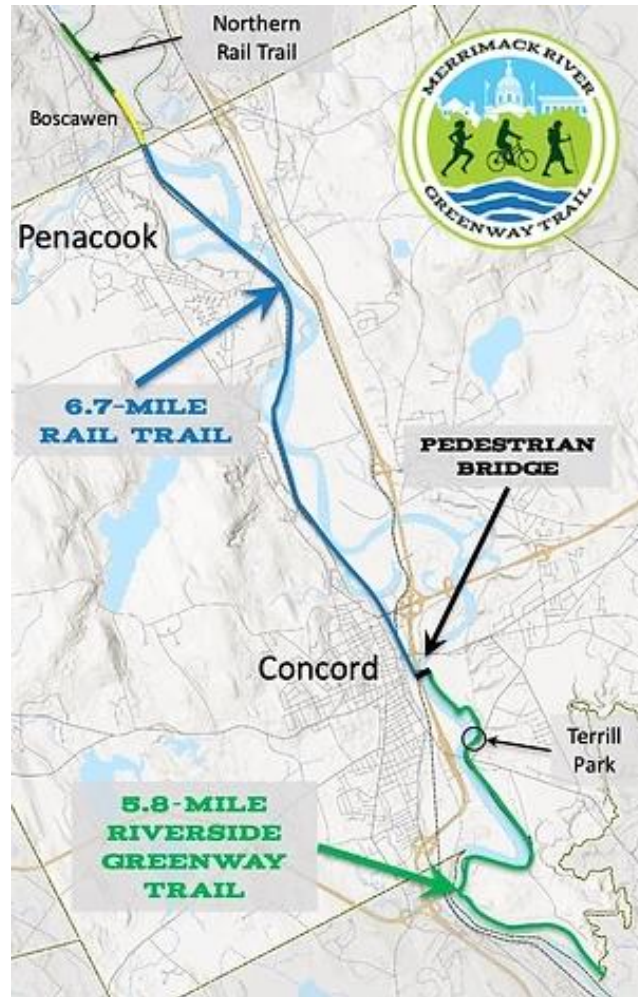
- 1) **Introduction:** The Merrimack River Greenway Trail (MRGT) and Concord-Lake Sunapee Rail Trail (C-LSRT) are regional multi-use rail trail projects which have been works in progress for decades.

Locally, implementation of these initiatives is supported by goals and objectives set forth in several City master plans, including the 2001 Concord 20/20 Vision Plan, 2030 City Master Plan, the Bicycle Master Plan, as well as the Conservation Commission's Endowment for the 21<sup>st</sup> Century Conservation and Open Space Initiative.

When completed, both trails will create significant benefits for Concord residents, including, but not limited to, improved livability, quality of life, intermodal connectivity of neighborhoods, as well as preservation and access to open space.

- 2) Merrimack River Greenway Trail (MRGT): The MRGT is a regional multi-modal pathway that currently extends from Salem, New Hampshire to Terrill Park in Concord. The goal is to extend the MRGT north to the Northern Rail Trail located in Boscawen, which, in turn, runs to Lebanon, New Hampshire. When completed, approximately 12.7 miles of the MRGT will be located in Concord per the map below.

### Map of the Merrimack River Greenway Trail (CIP #543)



Several years ago, the City created CIP #543 “Merrimack River Greenway Trail Project” within the City’s Capital Improvement Program (CIP) for the purposes of extending the trail through Concord. Over the past decade or so, the City, working the Friends of the MRGT, have secured grant funds to design and construct limited portions of the trail within the vicinity of Terrill Park.

Currently CIP #543, as included in the FY2021 City Budget and associated Capital Improvement Program, calls for the extension of the MRGT from its current terminus at Terrill Park north to the Northern Rail Trail located in Boscawen.

In order to bring the MRGT to fruition, the City will need to acquire various properties, or easements thereon. The majority of property rights required for the trail are controlled by subsidiaries of Pan Am Systems, Inc.

In December 2021, the City filed an application with the NH Department of Transportation seeking \$1,000,000 of TAP funds to support development of a MRGT from Sewalls Falls Road to the Contoocook River. Pan Am Systems provided a letter of support. Grant awards are expected in early calendar 2022.

- 3) Concord - Lake Sunapee Rail Trail: The Concord-Lake Sunapee Rail Trail (C-LSRT) is another regional multi-modal trail, which runs from Concord to Lake Sunapee in Newbury.

Construction of the trail, and acquisition of property related thereto, is a key recommendation of the 2017 Conservation and Open Space Master Plan Update.

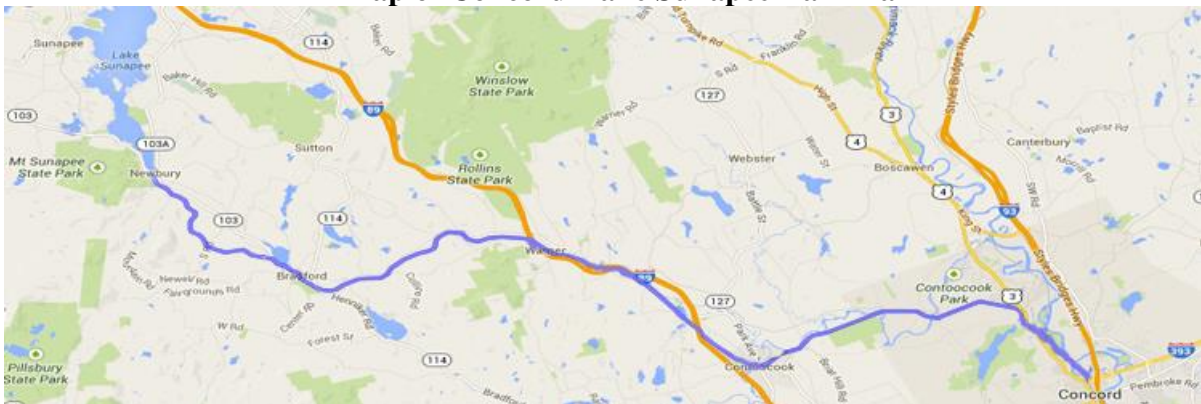
Led by the Friends of the C-LSRT, significant gains have made in recent years to fill trail gaps and construct improvements in order to achieve a complete trail corridor between Concord and Newbury.

When fully established, it is envisioned that the trail will originate on the Concord-Claremont line near the Franklin Pearce Manse at 14 Horseshoe Pond Lane to McGuire Street. The trail will then use sidewalks on North State Street and then rejoin the rail corridor near LAD Welding on North State Street. The trail generally continues cross country to the Hopkinton town line.

The C-LSRT will also connect to the MRGT at Horseshoe Pond Lane.

In order to fulfill this vision, a 5.5 acre portion of the Concord to Claremont Line, located directly adjacent to the Concord Fire Department Central Headquarters, will need to be acquired from Pan Am Systems, Inc.

### Map of Concord-Lake Sunapee Rail Trail



### Discussion:

- 1) Acquisition of Property from Pan Am Systems: In April 2019, the City began formal negotiations with Pan Am Systems, Inc. to acquire those portions of the Boston and Maine Northern Main Line, as well as the Concord – Claremont Line, to support the MRGT and C-LSRT projects.

These negotiations have resulted in the attached Purchase and Sales Agreement between the City and the Boston and Maine Corporation (Pan Am Systems, Inc.)

Purchase and Sales Agreement #1 concerns acquisition of 5.5 acres of land, which was previously part of the Concord-Claremont Line and discontinued in the 1960s. Specifically, the subject property is located between the Franklin Pierce Manse on Horseshoe Pond Lane and Brook Street (a small private road located off North State Street). The property directly abuts several City conservation properties, Horseshoe Pond, as well as the Concord Fire Department Headquarters / Central Station Complex. The sale price of the property is \$71,350. Upon acquisition, it will be used by the City to foster development of approximately 0.5+/- miles of the Concord-Lake Sunapee Rail Trail.

Purchase and Sales Agreement #2 pertains to the acquisition of 72.53+/- acres of land which was formerly part of the Northern Main Line. The sale price for this parcel is \$431,500 per a 2018 real estate appraisal. This portion of the Northern Main Line was formally discontinued by the Surface Transportation Board on March 22, 2017. Although discontinued, it remains part of Boston to Montreal High Speed Rail Corridor. Upon acquisition, it will be used by the City to facilitate development of 5.68+/- miles of the Merrimack River Greenway Trail. This property abuts various conservation properties, the State of New Hampshire's Sewalls Falls Recreational Area, and the City's Beaver Meadow Golf Course.

- 2) Schedule: The schedule for these acquisitions is as follows:
  - a. June 14, 2021: City Council public hearing. Votes on purchase and sales agreements and appropriation resolutions.
  - b. June 15, 2021: Start of City's Due Diligence Period.
  - c. October 15, 2021: End of City's Due Diligence Period; last day for Pan Am to salvage rails and restore the property.
  - d. November 5, 2021: Closing.
- 3) Budget: The proposed budget for these acquisitions is \$700,000, as detailed in the table below.

City Administration recommends that \$600,000 of the acquisition budget be funded by General Fund supported bonds. For the purposes of future financial planning, City Administration recommends that this bond be credited against the remaining \$2,565,626 available for CIP 352 Acquisition of Conservation Lands and Open Space as previously appropriated by Resolutions #7661 and #8510.

The remaining \$100,000 shall be derived from the Conservation Fund Reserve. As of June 30, 2020, the Conservation Fund had a total of \$608,088 to support acquisition of conservation and open space properties. City Administration met with the Conservation Commission on November 13, 2019 to discuss potential use of the Conservation Trust Fund to support this transaction. The Commission was in favor of using the Fund to support this acquisition.

## Budget for Acquisition of Pan Am Properties for MRGT & C-LSRT

	B&M Northern Line Horseshoe Pond Ln. to Contoocook River	Concord-Claremont Line Franklin Pierce Manse to Brook Street	<u>Total</u>
Acres of Land	72.53	5.5	78.03
Miles of Track	5.68	0.5	6.18
Purchase Price	\$431,500	\$71,350	\$502,850
Environmental Assessment			
Phase I Environmental Site Assessment	\$10,000	\$5,000	\$15,000
Post Acquisition Supplemental Environmental Investigations (Soil & Groundwater Analysis; Potential US EPA Targeted Brownfields Grant Matching Funds)	\$60,000	\$10,000	\$70,000
Title			
ALTA Boundary Survey	\$70,000	\$5,000	\$75,000
Outside Legal Counsel Title Review	\$14,000	\$2,000	\$16,000
Title Insurance Policy	\$3,000	\$1,000	\$4,000
Closing Costs			
Recording Fees	\$1,000	\$650	\$1,650
NH Transfer Taxes	Exempt	Exempt	Exempt
Contingency	\$10,500	\$5,000	\$15,500
<b><u>Total</u></b>	<b><u>\$600,000</u></b>	<b><u>\$100,000</u></b>	<b><u>\$700,000</u></b>
<b><u>Funding Source</u></b>	<b><u>Bonds</u></b>	<b><u>Conservation Reserve</u></b>	

- 4) Important Items: The following is a summary of important items and issues associated with these acquisitions.
- a. CSX Purchase of Pan Am Systems: CSX, one of the nation's largest transportation providers who controls more than 20,000 miles of railroad lines, is in the process of acquiring Pan Am Systems. As such, the proposed sale of the Northern Main Line and Concord-Claremont Lines shall be subject to CSX's approval. As of the date of this report, CSX had not yet reviewed the attached P&S Agreements. Pan Am shall not execute the P&S Agreements until CSX reviews and approves the agreements, and authorizes the sale. Pan Am intends to secure CSX's review and approval of the P&S Agreements by the June 14<sup>th</sup> public hearing.
  - b. Friends of the Northern Rail Trail Boscawen Acquisition (Trestle and Hannah Dustin Island): The Friends of the Northern Rail Trail ("FONRT") are currently negotiating with Pan Am to acquire that portion of the Northern Main Line starting at the Contoocook River north to the existing Northern Rail Trail. In total, they plan to acquire approximately 0.5 miles of rail corridor.

A portion of the FONRT's acquisition is located in Concord, which specifically includes a major 150' long railroad trestle spanning the Contoocook River, as well as approximately 4,000SF of a land on Hannah Dustin Island.

Although the FONRT plans to fundraise the moneys required for the purchase, they also plan to provide said funds to the NH Department of Transportation to effectuate the purchase in accordance with NH RSA 228:60-b, II. Presently, it appears that the NHDOT shall own this segment of line.

The FONRT and NHDOT's acquisition of the trestle over the Contoocook River in Concord is advantageous for the City, as those parties shall be responsible for maintenance of the structure.

c. NH Department of Transportation Items:

- i. In accordance with NH RSA 228:60-b, the NH Department of Transportation has a right of first refusal (ROFR) to acquire these former railroad properties. Per the statute, the NHDOT has 90 days to determine whether it shall invoke its ROFR after being formally notified of the sale. Should the NHDOT elect to proceed with its ROFR for either rail corridor, the City's affected P&S Agreement shall be terminated, unless the parties otherwise agree to assign the agreements to the NHDOT.
- ii. As noted in the discussion above concerning the Friends of the Northern Rail Trail Purchase, the NHDOT, in accordance with RSA 228-60-B, II, has the ability to acquire rail corridors on behalf of municipalities. However, said transactions must be financed by the municipality or other non-NHDOT sources.

Under this approach, the City would be the owner of the property. However, the City and NHDOT would enter into a "Cooperative Use and Management Agreement" for the rail corridor. Recreational uses, such as a rail trail in accordance with RSA 216-F, would be permitted under the terms of any such agreement. In the event any portion of the property is required for a transportation use per the sole discretion of the NHDOT, the municipality would receive of its financial contribution used to acquire the property, or replacement of land in accordance with RSA 4:40.

In addition, RSA 228:60-a includes unique provisions which appear to unilaterally resolve any potential title issues with rail corridors purchases facilitated by the NHDOT. Such provisions could be advantageous to the City's purchase pending title due diligence.

The NHDOT has expressed interest in potentially working with the City to acquire these properties within the context of RSA 228:60. However, such a partnership may result in the City ceding some control over these parcels to the NHDOT. Therefore, this approach is not presently preferred by City Administration. However, this potential option will continue to be evaluated as the City proceeds with its environmental and title due diligence.

- d. Highspeed Rail Corridor Designation: In November 2000, the Federal Railroad Administration designated portions of the Northern Main Line to be part of the Northern New England Corridor, a highspeed rail corridor intended to stretch from Boston to Montreal. Although the Northern Main Line has been

discontinued north of Horseshoe Pond Lane, the line remains subject to this designation and could be re-activated in the future for highspeed rail service.

There are significant engineering and financial challenges influencing the viability of restoring highspeed rail service within the historic Northern Main Line corridor. However, if highspeed rail were to be established in the future, it is presently unclear how the City's potential investments in these properties, or the associated rail trials, would be affected.

The Concord-Claremont line is not designated for highspeed rail service at this time.

e. Environmental Considerations:

- i. Due Diligence Limited to Phase I ESA: Pan Am Systems has mandated that the City's pre-purchase environmental due diligence be limited to a Phase I Environmental Site Assessment (ESA). While that effort will include a visual inspection of the properties, as well as review of available databases and historical records, the City is expressly *prohibited* from conducting any soil and groundwater sampling at these properties prior to closing. This prohibition is unusual within the context of a commercial real estate transaction. It will also inhibit the City from gaining a more complete understanding of environmental issues at the property prior to closing. However, the Phase I ESA will be sufficient to satisfy the "all appropriate inquiry" standard under Federal and State Law to access potential future US Environmental Protection Agency and NH Department of Environmental Services Brownfields Grants.

Given the history of the property, the potential exists that the property is contaminated with a variety of hazardous substances, including, but not limited to, coal ash (PAHs), creosote (a chemical used to preserve wooden railroad ties), and petroleum products.

- ii. Release Deed Environmental Provisions: Pan Am has insisted that the Release Deeds which shall be used to convey the properties to the City contain provisions which expressly release Pan Am from any responsibility or liability for environmental contamination at the property. The legality of such provisions is debatable within the context of State and Federal Law.
- iii. NH Brownfields Program and Targeted Brownfields Assessment Grant for Phase II Environmental Site Assessment: Due to limitations on pre-acquisition environmental due diligence, as well as provisions in the release deed, City Administration intends to pursue the following course of action:
  1. Enroll the properties in the New Hampshire Brownfields Program. This *voluntary* program, which is administered by the NH Department of Environmental Services (NHDES), provides cooperative property owners with certain environmental liability protections in exchange for completing environmental remediation projects. Owners that successfully complete the program earn a

“Covenant Not to Sue” from the State, which runs with the land protects all current and future owners of the property from liability related to known hazardous materials. The City has used this program for the former Allied Leather Tannery complex with good results.

2. Pursue a Targeted Brownfields Assessment Grant from the US Environmental Protection Agency (USEPA) to conduct Phase II Environmental Site Assessment of the property. Phase II ESA activities include soil and groundwater sampling, and potential development of a remedial action plan for any hazardous materials which might be identified at the properties. The \$70,000 carried in the project budget is meant to serve as matching funds for the potential USEPA grant. If the grant is not successful, the City could use these funds to conduct limited sampling on its own.

USEPA Targeted Brownfields Grants are available annually each fall on a competitive basis in amounts up to \$350,000 per site.

- f. Existing Leases, Licenses, and Agreements: These properties are reportedly subject to numerous easements, licenses, and other agreements.

In addition, the Northern Main Line is subject to lease with the Scenic Rail Riders, Inc. concerning a pedal car operation near Sewalls Falls Road. Staff has yet to see a copy of this agreement; however, it is rumored that the lease is scheduled to expire in 2024.

Pan Am has declined to share the details of all such agreements until the P&S Agreements are executed. Once the P&S Agreements are executed and the due diligence period begins, these documents shall be provided to the City for review.

All such agreements, and revenues associated therewith (if any), shall accrue to the City at closing. Staff shall inform the City Council of any agreements which might require the City Council to make a policy decision regarding management, renewal, or extension thereof, as well as potential use of revenues associated therewith.

- g. Pan Am’s Salvage Rights: In accordance with the terms and conditions of the attached P&S Agreements, Pan Am has the right to salvage steel rails, as well as abandon existing ties located at the premises through October 15, 2021.
- h. Other Ongoing Negotiations with Pan Am (Storrs Street North CIP #18): Lastly, it is important to note that the City and Pan Am remain engaged in ongoing negotiations concerning the City’s acquisition of another segment of the Northern Main Line located between Loudon Road and Horseshoe Pond Lane. This segment of rail, which totals approximately 4.5 acres of land and features 0.7+/- miles of track, is currently active and would need to be discontinued by Pan Am Systems and the Surface Transportation Board prior to acquisition by the City.

The City desires to acquire the property to facilitate Storrs Street North Extension (CIP # 18). City Administration anticipates presenting a Purchase and Sales Agreement to the City Council in the coming months for public hearing.



5) Benefits of Proposed Acquisitions: City Administration believes that the community will receive following benefits from these proposed transactions:

- a. Acquisition of these railroad corridors will help facilitate connectivity with, and access to, 395+/- acres of conservation land, 330+/- acres of City owned property (including the Beaver Meadow Golf Course and Central Fire Station / Headquarters Complex), as well as 339+/- acres of other State owned property. Please see the attached map for more information.

Relative to Beaver Meadow Golf Course, acquisition of the corridor could foster winter cross country skiing activities.

Regarding the Central Fire Station Complex, acquisition of the Concord-Claremont line might afford the City some additional flexibility regarding space constraints at the campus.

- b. Acquisition of these corridors, and subsequent development of the rail trail, shall provide intermodal connectivity between Downtown Concord, Penacook Village and the Heights.
- c. The purchase and future development of the Merrimack River Greenway Trail and Concord-Lake Sunapee Rail Trail shall expand recreational opportunities for all City residents.
- d. In the long-term, the City may enjoy some economic development benefits associated with the acquisition of these properties, and subsequent development of the respective rail trails.

Tangible benefits may include tax base expansion associated with potential growth of property values for those parcels and neighborhoods with convenient access to these future rail trail systems. In addition, potential limited commercial enterprises such as cafes or trail focused cottage industries like bicycle rental or cross country ski rental shops, may develop near key intersections or trail heads along the Merrimack River Greenway Trail and Concord-Lake Sunapee Rail Trail. Such activity could result in tax base expansion, job creation, and expanded community vitality.

Because these rail trails will be important quality of life amenities for the community, it is also anticipated that they shall generate less tangible economic development benefits. For example, such amenities are often cited as being beneficial for employers looking to attract or retain employees in the regional labor market. In addition, the rail trails will be one more important public amenity which will serve to make Concord that much more desirable among consumers of commercial and residential real estate.

For these reasons, City Administration believes that these acquisitions, and the subsequent development of the Merrimack River Greenway Trail and Concord-Lake Sunapee Rail Trail, will enhance the City's position of being one of the premiere communities in New England in which to live, work, and play.