

RTD Eagle P-3 Project A Passenger-Freight Success Story

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2012 RAIL CONFERENCE



Regional Transportation District

- A political subdivision of the State of Colorado
- Enabling Act at C.R.S. 32-9-101 et seq.
- FasTracks election in 2004 provided funding for and authorized build out of multiple light and commuter rail corridors

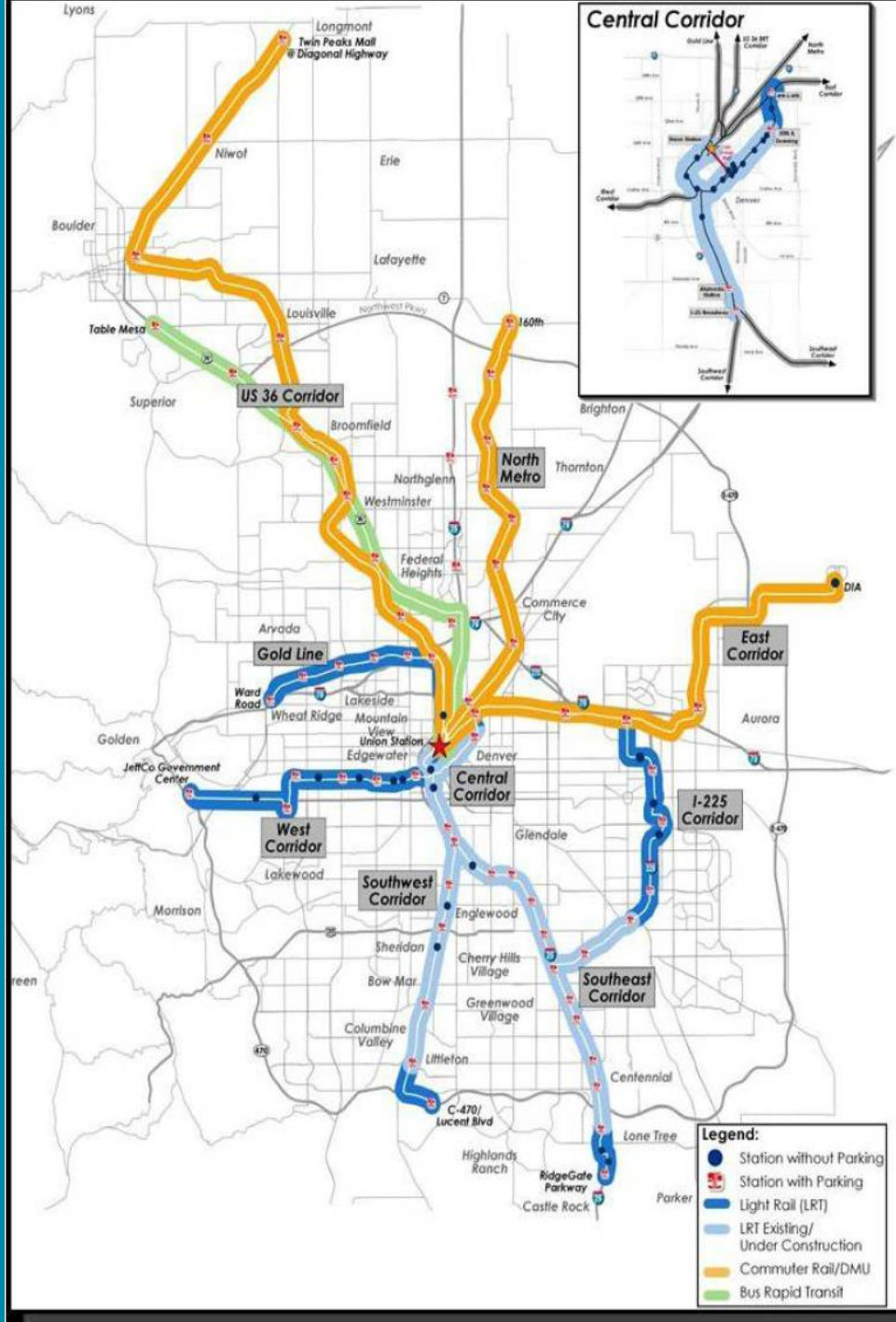


RTD Eagle Project

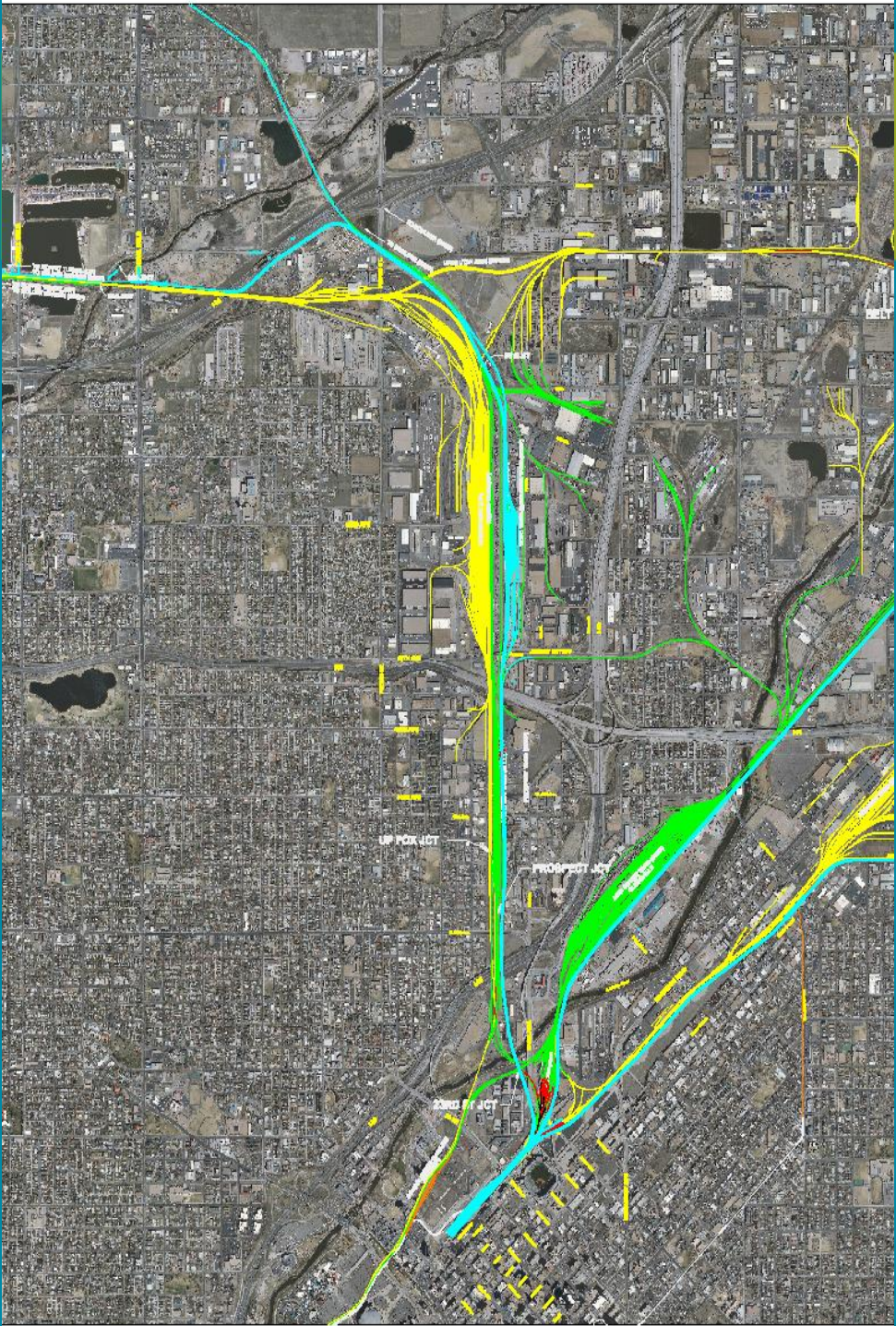
- Four Commuter Rail Lines
- Shared right of way –freight railroads relocated within their own right of way
- Electric multiple unit vehicles – FRA Compliant



FasTracks Map



Eagle Aerial Map



Eagle P-3 Project Elements

■ East Corridor Line

- Denver Union Station to Denver International Airport – 18 miles
- Union Pacific right of way (about 8 miles)

■ Gold Line

- Denver Union Station to Ward Road – 14 miles
- BNSF Railway Company right of way

■ Northwest Electrified Segment

- Denver Union Station to Westminster – 6 miles – some shared with Gold Line
- BNSF Railway Company right of way



Negotiations 2005-2010

BNSF Agreements executed March 31, 2010

- Purchase & Sale Agreement – multiple Parcels & Easements
- Construction & Relocation Agreement
- Joint Corridor Use Agreement

Union Pacific Railroad Company Agreements executed August 4, 2010

- Property Transfer Agreement with Addendums for each segment
- Construction and relocation agreement, flyover easements, form of deeds, operations and maintenance agreements all attachments to Addenda



Property Acquired

East Corridor

- Approximately 8 miles from UP

Gold Line

- 2.2 miles from UP
- Approximately 12 miles from BNSF
 - Trackage agreement between BNSF and UP to allow UP expansion was a prerequisite to RTD-UP transaction
 - RTD Acquired additional 5 miles from BNSF spur not needed for current project

Northwest Electrified

- Approximately 4 miles from BNSF



Acquisition Process

- All property appraised
- Across the fence plus corridor multiplier from 1-2 depending on location, length, rights
- FTA required up to date appraisals for participation - reappraisals at time of closing
- BSNF required closing and payment prior to construction subject to Relocation Agreement and Joint Corridor Use Agreement
- UP required relocation prior to closing
- RTD generally acquired fee
 - East Corridor RTD acquired approximately 40-50' strip from UP
 - Gold Line- RTD acquired entire spur from BNSF - BNSF retained operating easement
 - Northwest Rail and Gold Line shared segment- RTD acquired 40' operating easement from BNSF and will receive fee for 40' after construction and relocation are complete
 - RTD signed Memorandum of Understanding with BNSF establishing land price in 2009
 - RTD and UP had letter agreement establishing land price in 2008



Construction and Relocation

Railroads

- Require approval of 100% design plans prior to construction
- Require approval of schedule and any customer impacts or alternative access has to be scheduled in advance
- Performed all trackwork and signed work

Buy America applied to all federally funded railroad relocation

RTD

- Responsible for all relocation costs
- Performs civil, drainage, and utility relocation
- Acquires any additional right of way needed
- Responsible for all crossings at grade and grade separated
- Responsible for all permitting
- Paid for acquisition of property but did not participate in design and construction of any new railroad facilities outside the corridors - did not want to expand project scope for NEPA purposes



Operations and Maintenance

- ❖ RTD required to maintain crossings, drainage
- ❖ RTD required to maintain insurance – limits subject to periodic review
- ❖ Accident notification and responsibility for passenger, freight and environmental issues addressed
- ❖ BNSF requires approval of RTD future modifications to commuter rail to the extent modifications may affect BNSF operations
- ❖ Permits and flagging required to enter other parties right of way even for required maintenance



Liability and Indemnification Issues

- RTD subject to the Colorado Governmental Immunity Act (CGIA) (C.R.S. 24-10-101 et seq)
- Railroads will not increase their risk to allow passenger use of right of way
- Railroads want to be held harmless for liability as a result of passenger rail use **regardless of fault**
- 49 U.S.C. § 28103 limits liability for commuter rail accidents to \$200 million per incident including punitive damages where allowed by state law
- UP requires insurance during operations in amounts up to \$400 million
- Based on amendment to Colorado law punitive damage coverage is not required



Colorado Approach

- CGIA limits liability for types of claims to \$150,000 per person, \$600,000 per incident
- Expansion of liability permitted if done publicly by governing body in advance of claims
- Government entity cannot be liable directly or by indemnification for punitive damages
- Change in state law was needed to meet railroad requirements



Amendment to Governmental Immunity Law

- C.R.S. 24-10-114 amended so that “a railroad operating in interstate commerce that sells to a public entity or allows the public entity to use such railroad’s property or tracks for the provision of public passenger rail service shall not be liable either directly or by indemnification for punitive or exemplary damages for damages for outrageous conduct to any person for any accident or injury arising out of the operation and maintenance of the public passenger rail service by a public entity.”
- CGIA also amended to allow participation in a risk retention pool for procurement of insurance. No risk retention pool is in place. Coverage is procured through commercial insurers.



Current Status

- Construction is underway on all corridors
- Buy America compliance has required ongoing verification
- Changes requested by local governments have created a challenge for RTD and Railroads
- Corridor protection was not fully defined prior to signing of all agreements – there has been increased cost due to additional protection requested by Railroads

