

## FCM/RAC Proximity Initiative

### Submission to the Canada Transportation Act Review

The practice of developing land in close proximity to rail operations, as well as the expansion of rail operations in urban areas have generated a variety of opportunities as well as challenges for municipalities, developers and railways, who must work together to balance a variety of sometimes competing goals and aspirations.

How can we build better today to avoid proximity safety issues inherent when urban development and railways are in close proximity? The push to intensify urban development to avoid urban sprawl has led to increased development on lands in close proximity to rail operations. These new developments include the conversions of industrial or commercial properties to residential ones, usually built without any mitigation measures and sited next to major railway corridors. This absence of mitigation measures creates serious safety and quality of life issues for residents due to the lack of crash walls, noise and vibration mitigation and proper separation barriers leading to trespass issues. When proximity issues, arising from the growth and expansion of rail facilities or municipalities, are not understood and addressed, problems can often be intractable and long lasting. This review provides an important opportunity to discuss these issues and their significance as we plan and look ahead at transportation policy in Canada.

The Federation of Canadian Municipalities (FCM) and the Railway Association of Canada (RAC) are committed to building a common approach to the prevention and resolution of issues that may arise when people live and work in close proximity to railway operations. Building on back-to-back memorandums of understanding (MOU), both organizations continue to work in sync with their most recent open-ended MOU signed in January 2009. The FCM–RAC Proximity Initiative Steering Committee was established in 2004, with equal representation from the FCM (elected officials) and RAC (senior railway representatives) and includes members from the Canadian Association of Municipal Administrators (CAMA) and observers from Transport Canada and the Canadian Transportation Agency. The three main goals of the MOU are to; build awareness, establish guidelines and develop dispute resolution protocols and processes.

Recommendation 34 of the Rail Safety Act Review (2007) Chapter 7 – Proximity, stated: The *Railway Safety Act* should be amended to require the developer and municipalities to engage in

a process of consultation with railway companies prior to any decision respecting land use that may affect railway safety.

In response to this recommendation, the FCM-RAC Proximity Initiative developed the revised *Guidelines for New Development in Proximity to Railway Operations (Guidelines)* in May 2013 which built upon an earlier version of Best Practices and Guidelines issued in 2003. These new guidelines assist municipal governments and railways in reviewing and determining general planning policies and provisions for conversion of land in proximity to rail operations, addressing such issues as safety, noise and vibration. To date the Guidelines have been adopted into the Land Use Plans of the cities of; Windsor, London, Ottawa (rural), and Montreal. The planning departments of the cities of Calgary, Edmonton, Ottawa and Toronto are currently working on adopting the Guidelines.

Adoption of these guidelines into municipal land use regulations can provide greater assurance that our communities of the future are safe and sustainable, and that existing communities built in proximity to railway operations can be rebuilt or redesigned as required. However safety in proximity to railway operations varies from one municipality to another and it is a long process to have the guidelines adopted using a city by city approach. Furthermore there are no guarantees that all relevant municipalities will adopt them.

While it is understood that land planning is a provincial jurisdiction; we believe that the federal government should work collaboratively with provincial governments to advance land use planning practices in proximity to railway operations.

For example, the Regulations under Ontario's *Planning Act* that require railways to be notified of official plans (and amendments), subdivision plans, zoning bylaws and consents to sever lands if activities are to occur within 300 metres of a railway line. Under this framework railways may review the documents and recommend provisions to address any potential land use compatibility issues. If the railway's proposed adjustments are not incorporated into the land development project, the railways may raise the matter with the Ontario Municipal Board.

The federal government should work closely with its provincial counterparts to support provincial efforts to develop a notification process that is aligned with provincial land use regulations. This would advance our shared objective of consistency in land use planning in proximity to railway operations while recognizing the reality that a one-size-fits-all approach is not suitable for a country as geographically and jurisdictionally diverse as Canada.

The FCM-RAC Proximity Initiative members wish to build on the continued support of the Canadian Transportation Agency (CTA). The CTA is represented on the Steering Committee and working groups of the Proximity Initiative. There has been collaboration over the years including the development of noise assessment methodology and a dispute resolution model which is posted on both the CTA and Proximity websites. The Guidelines were cited in CTA decision (69-R-2014), the Agency dismissed the complaint – the following are excerpts from the decision:

55] The Agency notes that despite the close proximity to the busy main line track, no evidence was presented that the residential developer assessed the impacts of the railway noise and vibration on the residential development. No evidence was presented that the developer incorporated mitigation measures in the construction of the house to lessen the exposure to noise and vibration.

[56] Furthermore, beyond a *post facto* municipal council resolution expressing concern about noise and vibration and affirming that the Municipality aims to ensure that its citizens get the best possible quality of life, there is no evidence before the Agency indicating that when approvals were sought for the housing development, any consideration was given by the Municipality to issues of noise and vibration or to the proximity of residences to CP's main line, notwithstanding the Federation of Canadian Municipalities and Railway Association of Canada's *Proximity Guidelines and Best Practices*, which pre-date the Municipality's decision to approve the construction and of which the Municipality should have been aware.

[57] A Municipality takes a risk when deciding to allow housing development in close proximity to a railway right of way and the Agency is of the opinion that Municipalities have a responsibility to assess compatibility issues before approving a housing development along a railway right of way, and if they approve a development, to ensure that the necessary mitigation measures are implemented. The Agency notes that the Municipality apparently authorized the residential construction along CP's main east-west rail transportation corridor. However, there was no evidence presented to the Agency of any mitigation measures having been implemented. In fact, CP draws attention to the fact that no berm or noise wall was constructed.

We are greatly encouraged by this decision as it clearly outlines the responsibility of the municipality in assessing the compatibility and mitigation measures required when issuing permits for development in proximity to railway operations.

The FCM-RAC Proximity Initiative members believe that our model of collaboration demonstrates that municipalities, railways and government can work together to improve rail safety. Thank you for this opportunity to submit our comments.

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