



## **Green Coalition Brief**

**Re: Transportation Aspects for Sustainable Regional and Local Land Use Planning**

**Committee on Planning and the Public Domain**

**General consultation and public hearings on Draft Bill, Sustainable Regional and Local Land Use Planning Act**



# **Green Coalition Written Brief Regarding Transportation Aspects For Sustainable Regional and Local Land Use Planning**

## **Committee on Planning and the Public Domain**

### **General consultation and public hearings on Draft Bill, Sustainable Regional and Local Land Use Planning Act**

## **INTRODUCTION**

The Green Coalition is a non-profit association of grassroots volunteers. Its member-groups and individual members are dedicated to the conservation, protection and restoration of the environment. Members are actively involved in many issues such as saving Montreal's last natural green spaces, preventing road building through established Nature-Parks and other green spaces, boosting public transit strategies; promoting alternatives to pesticides, pressing for the clean-up of waste-water runoff and polluted creeks, and for responsible waste reduction and management. In short, the Green Coalition is working vigorously in Montreal, to shape a sustainable development city.

This brief has been composed and edited by Avrom David Shtern. Mr. Shtern is a member of the Board of Directors of the Green Coalition and serves as its Transportation Analyst.

## **ORIENTATION**

We at the Green Coalition support a truly integrated transport system and an improved public transit network. As a society we must encourage motorists out of their cars and into subways, trains and light rail vehicles. But that cannot happen without massive investments in Montreal's mass transit infrastructure. Land use planning goes hand in hand with the type of transportation we use.

Bicycling, walking and the concept of electronic telecommuting are very important. Transit Oriented Development, [TOD], should be emphasized and car oriented urban sprawl de-emphasized. Alexis Nihon Plaza is a great example of TOD. However, all too often regional transport policy is up against the excesses of local zoning and land use planning.

As such, our recommendations include:

Establish proximity rules and regulations between railways and rail yards and sensitive residential areas, as outlined by the Railway Association of Canada [L'Association ferroviaire canadienne] and Federation of Canadian Municipalities [Fédération canadienne des municipalités] and enshrine it as the law of the land.

Conservation of strategic rail corridors for future transit use such as Montreal's Doney Spur, Lasalle Loop, Montreal & Lachine Railway, Old Port of Montreal Railway, and the South Shore's CSX line.

Encourage more freight on the railways. Build a circumferential railway in concert with Highway 30 on out of service railway lines.

## **ORIENTATION**

La Coalition Verte appui un système de transport très intégré, avec l'emphase sur un réseau public amélioré. Comme société nous devons encourager les automobilistes à utiliser le métro, les trains de banlieue, les tram-trains et les véhicules légers sur rail à la place de leurs voitures. **Mais ceci ne peut être possible sans des investissements massifs dans l'infrastructure. Comme tels, nous réclamons un moratoire sur la nouvelle construction des routes/autoroutes jusqu'à ce que le réseau courant soit fixe.**

La marche, le vélo sont très importants...

Le développement urbain centre sur le transport en commun [TOD en Anglais], devrait être encouragé et le développement qui favorise seulement le transport en voiture doit être abandonné: Place Alexis Nihon est un bon exemple décrivant la bonne utilisation du transport en commun. Cependant, la politique régionale de transport est souvent en conflit avec l'excès du zonage local.

Établir les règlements de proximité entre les chemins de fer et les gares de triages et les secteurs résidentiels sensibles, comme décrit par l'Association ferroviaire canadienne et la Fédération des municipalités canadiennes, et faites-en une loi.

La conservation des couloirs de chemin de fer stratégiques pour l'usage futur comme l'Antenne Doney, la Boucle de Lasalle, l'Antenne Lachine, le chemin de fer de Vieux-Port et la ligne de la rive sud du CSX.

Encourager plus de fret sur les chemins de fer. Construire un chemin de fer circulaire en accord avec l'Autoroute 30.

## **DETAILED DESCRIPTION**

Two major issues are at hand:

**Railway Proximity** and safety issues and the conservation of railway corridors which is also called "**Railbanking**".

## **REGARDING PROXIMITY ISSUES:**

### **Québec Law on Setbacks is needed for Sustainable Development**

Cities have encroached up to the limits of industrial installations and railway yards, which have had pre-existing rights, without regard for the need of safe distance setbacks. A balance must be struck between the conflicting needs of viable economic activities and healthy residential communities.

Jim Wrinn, editor of "Trains" magazine talking about the new Transportation Security Administration and the transportation of hazardous materials, (usually in tank cars or covered hoppers), says: "Most routes through non-urbanized areas disappeared years ago, we have fewer but busier mainlines and housing is built up to the edge of the right-of-way." (April 2007). We as a society have to improve the situation in existing neighbourhoods with rail facilities.

Improvements like: Noise/sound barriers, berms, improved and safer rail, welded rail and the possible reactivation of out-of-service moribund lines such as Montreal's South Shore CSX line to divert some freight and intermodal container and trailer traffic off Montreal Island. Create a circumferential railway akin to the planned ring road "Highway 30". The Montreal Maine and Atlantic Railway had shown interest in purchasing and improving this line and this shows promise for the future.

Class 3 industries such as railway yards and the previously cancelled Asphalt/Soil Decontamination plants in Lachine for example must have setbacks of at least 300 meters from future residential developments to avoid/ mitigate technological risk and conflicting land uses.

Such setbacks apply in Ontario under the aegis of the Ministry of the Environment. Technological risks to sensitive lands and ecologically important green spaces are recognized in the Ontario Municipal Guidelines on Compatibility Between Industrial Facilities and Sensitive Land Uses. The guideline is "intended to be applied in the land use planning process to prevent or minimize future land use problems due to the encroachment of sensitive land uses and industrial land uses on one another."

Meadowbrook Golf Course located in the City of Côte-St-Luc and Lachine Borough could not be built on or developed if such guidelines were applicable here in Québec.

The Québec Government is urged to adopt setback standards – equivalent or better than those in force in Ontario, (freight railway yards only), or the City of Edmonton, AB – for future industrial and residential development, railway rights-of-way, as well as for green spaces and shorelines.

According to CN Railways, proximity issues are a "... multi-jurisdictional challenge.":

"Railways in Canada are traditionally associated with nation building. Communities have developed around rail facilities. Since the nation building days, however, rail operations have grown and evolved, often requiring railways to relocate yards and operations from their traditional city centre location to the outskirts. Community development and urban sprawl have resulted in communities creeping up to and around railway yards and operations. Unless proper land use planning is taken into consideration at the outset, such community development can lead to an exacerbation of the crossing and trespass safety concerns discussed above, but also to proximity issues such as noise, vibration and air emissions resulting from incompatible land uses.

Dealing with these issues is a multi-jurisdictional challenge in that land use planning and development is essentially a matter for provincial and municipal levels of government, while railways, at least the current Class 1 railways, are federally regulated. This means, for example, that a federal regulator can cause a railway to act on a proximity complaint, but has little or no authority over a complainant or municipal authority whose inadequate planning may have created or led to the incompatible land use situation in the first place.

With few exceptions, railways have no power beyond their rail right of way and cannot control adjacent landowners' land use. More troubling is the fact that provincial and municipal land zoning and permit procedures for land development next to railway operations rarely involve any consultation with rail operators.

An exception to this is Ontario whose legislation requires notice of Official Plans (and amendments), Plans of Subdivision, Zoning Bylaws, and Consents (to sever lands) be sent to the railway if the proposal involves any land within 300 metres of a railway line. In such cases, CN reviews the pertinent planning documents and recommends appropriate provisions to address safety, security, drainage, noise, vibration or other potential compatibility issues arising from the proposal. In cases where the proposed land use change is for the development of a new residential project next to the railway operations, this may result, for example, in the requirement for the developer to erect a proper sound barrier between the railway and the residential project, to use better sound proofing construction materials or to include a notice in the property title disclosing the fact that the property is constructed next to a railway plant which involves switching activities and railway noise. If the railway's proposed adjustments to deal with such land use compatibility issues are not incorporated into the land development project, the railway may then raise the matter with the Ontario Municipal Board.

It is understandable that railway requirements for 24 – 7 operations to meet just in time delivery and ever increasing transportation demand may not always be apparent to adjacent property owners. Indeed, some submissions made to the Panel specifically question the need to perform switching activities during the night and ask for limits to be placed on railways in the performance of such activities. Ontario's approach allows for potential incompatible land use issues to be raised and addressed prior to the matter becoming a problem. It also ensures that potential purchasers of such residential properties are properly advised of any such existing situation. Incompatible land use issues do not arise only in respect of residential developments. Building parks and bicycle paths, or, worse yet, schools next to a railway right of way by definition is creating a trespassing hazard that proper planning and consultation could avoid. This hazard can be compounded by the construction of a fast food outlet across the tracks from the school or park.

In an attempt to address the matter, the Railway Association of Canada has entered into a Memorandum of Understanding with the Federation of Canadian Municipalities on proximity issues. This initiative recognizes the need for better awareness and multidirectional communication among various stakeholders, especially railways, municipalities and developers. It engaged representatives of all the parties to establish guidelines for mitigating proximity issues, and to create a dispute resolution framework, including Community Advisory Panels.

Another recent example of attempts by the railways to address proximity and trespass issues before they arise is through the working group established by Transport Canada to develop Railway Right of Way Access Control Regulations pursuant to the Railway Safety Act. The multi-stakeholder working group, which included railways, Transport Canada, Provinces and municipalities, originally achieved consensus that municipalities or other authorities having jurisdiction over zoning and construction permits take into consideration the presence of railway infrastructure as an element of decision making, and that railways be notified of these proposals to allow them to make representations. Transport Canada was originally satisfied that section 24 of the Act provided authority for the establishment of a requirement for municipalities to inform railway companies of proposed changes in zoning or applications for building permits in respect of those lands that the municipality owned and were immediately abutting railway property. In the end, however, the regulator chose not to include such a requirement in the draft regulations.

CN continues to believe that the Railway Safety Act provides sufficient authority to the federal regulator to require municipalities or other local governments to give notice to the railways of proposed changes in zoning and land uses of lands abutting railway lines and yards in order to allow railways to comment on such changes with a view to improve land use compatibility and minimize safety hazards as described above. To the extent that the Act does not provide sufficient authority, then CN recommends that the Act should be amended to do so.

[See, Canadian National Railways Submission, RAILWAY SAFETY IN THE COMMUNITY, RAILWAY / COMMUNITY PROXIMITY ISSUES, CN Submission to the Railway Safety Act Review Panel, June 27, 2007, Ch.3, Pp.17-19, <http://www.tc.gc.ca/media/documents/rsa-lsf/CN-4.pdf>]

There must also be a "give and take" between railways and the affected communities.

Communications between city authorities, concerned citizens and grass roots groups and railway representatives must always be open. This is essential for safe operations and a safer community. A dialogue is always better and less energy intensive than a shouting match.

But for future sensitive residential areas adjacent to rail yards and main lines or natural spaces and green zones like Meadowbrook Golf Course that must be conserved, the Federation of Canadian Municipalities' and Railway Association of Canada Proximity guidelines must become the law of the land to avoid development on such precious buffer zones such as Meadowbrook and to mitigate calamities such as chemical spills, derailments near residential neighbourhoods... These setbacks guidelines would also reduce noise, vibrations etc which can affect the health of individuals.

From the Railway Association of Canada and the Federation of Canadian Municipalities joint research report entitled '**Proximity Guidelines and Best Practices**' in Nov. 2006:

- "- The recommended minimum vibration influence area is 75 meters from a railway corridor or railway yard.
- Development review of residential or other sensitive land uses proposed within these influence areas should include noise and vibration studies to assess the suitability of the proposed use to recommend mitigation requirements.
- For a rail freight yard, there is a 300 meter setback for residential uses (and) for a mainline, a 30 meter minimum setback from the property line.
- Other recommendations include a three meter minimum height acoustical fence and a 2.5 meter earth berm, as well as foundation isolation for residential structures."]

If this were law, Meadowbrook could not be developed!

[For further information please see, [www.proximityissues.ca](http://www.proximityissues.ca)

See also, **Proximity Guidelines** at:

[http://www.proximityissues.ca/english/MaterialsContent/2006\\_Guidelines\\_eng.pdf](http://www.proximityissues.ca/english/MaterialsContent/2006_Guidelines_eng.pdf)]

**Recommendation By The Federal Railway Safety Act (RSA) Review Advisory Panel, 2007:**



## **"7.1 New Development Near Railway Property**

During the 19th century, many communities in Canada sprang up around railways - their link to the rest of the country and the world. Over the next century, for demographic and economic reasons, these communities expanded and many railways moved their yards and operating facilities away from the highly populated town centres. In the late 20th century, increasing numbers of residential and commercial developments were built in close proximity to railway properties, both in the downtown cores and in outlying areas. This trend continues today. In some cases, as we witnessed only too vividly, development can result in a residential area on one side of the track and schools or recreational facilities on the other, in spite of the obvious safety concerns relating to crossings and trespassing.

Residents of the new developments complain not only about crossing safety and train speeds through their community, but also about blocked crossings, the noise, pollution and vibrations emanating from the trains and their yards, and the quantity of dangerous goods being carried on trains through densely populated areas. The Panel received many submissions regarding these issues, from residents in urban and rural municipalities alike.

### **7.1.1 Current Process for New Development**

When will our municipalities stop allowing new homes to be built so close to railway tracks?

Luba Lallouz Submission.

The issue of new development near railways is a multi-jurisdictional challenge, since land-use planning and development is both a provincial and a municipal responsibility, while the major railways and their rights-of-way are federally regulated. There are no consistent consultation protocols or land-use appeal mechanisms across the country, and provincial and municipal land zoning and permit procedures vary widely. Under the *Railway Safety Act* (s.8(1)), a railway company must give notice of a proposed railway work to adjacent landowners and the municipality. Municipalities and developers, however, are not required to provide similar notice to railway companies when they plan new development near railway lines.

With few exceptions, railways have no power beyond their rail right of way and cannot control adjacent landowners' land use. ... [A] federal regulator can cause a railway to address a proximity complaint, but has little or no authority over a ... municipal authority whose inadequate planning may have ... led to the incompatible land use situation in the first place.<sup>1</sup>

Many of the submissions we received, from railway companies, municipalities, provinces, affected residents, Members of Parliament, sector associations and the general public, expressed concern about the proliferation of new development near railways. Several municipalities wanted better coordination between regional interests and railway companies to minimize risks to people and the environment. The District of North Vancouver, for example, stressed the need for federal guidelines and enforcement powers to mitigate the impacts of rail activities in urban areas, and the participation of municipalities in this process. The City of Côte Saint-Luc cited the need for robust consultation and a dispute resolution process that would oblige municipalities and

railways to consult in planning matters, saying there is increasing pressure from developers and private landowners to develop along the railway corridor and in close proximity to the railway yards.<sup>2</sup> The Province of Manitoba raised similar issues:

Taken together, neither the Canada Transportation Act nor the RSA adequately deals with the sustainability dimension of railway operations - that is, what is reasonable from a railway operating and infrastructure planning and development perspective as it impacts on the quality of life of citizens and communities and the environment.<sup>3</sup>

We learned that municipalities and developers often do not notify railway companies when land abutting their rights-of-way is subdivided or slated for development. A 2007 Transportation Development Centre (TDC) report on safety at private crossings also discusses this issue:

In certain instances, land is sold and housing subdivisions are built without any access except across the tracks at an existing private crossing. Municipalities have issued building permits without ensuring there are legal access provisions for the new residential area. Once houses are built, the crossing becomes used by all residents and is required for emergency services access; therefore, it cannot be closed. ... The roadway does not fall under the responsibility of the road authority because there is no agreement governing it; therefore, the railway and the original crossing applicant become responsible for a de facto public crossing.<sup>4</sup>

The Panel is encouraged, however, by some recent developments. Several stakeholders mentioned Ontario's new buffer zone requirements. Regulations under Ontario's *Planning Act* now require that railways be notified of official plans (and amendments), subdivision plans, zoning bylaws and consents to sever lands if the proposal involves any land within 300 metres of a railway line.<sup>5</sup> The railways may review the documents and recommend provisions to address any potential land use compatibility issues. If the railways' proposed adjustments to deal with such issues are not incorporated into the land development project, the railways may raise the matter with the Ontario Municipal Board.

Ontario's approach allows for potential incompatible land use issues to be raised and addressed prior to the matter becoming a problem. It also ensures that potential purchasers of such residential properties are properly advised of any such existing situation.<sup>6</sup>

This is a step in the right direction, and the Community-Rail Proximity Initiative developed by the Railway Association of Canada (RAC) and the Federation of Canadian Municipalities (FCM) is another. The RAC represents most of the railways in Canada, while the FCM speaks for 1,653 municipal governments, representing 90 per cent of the Canadian population. In 2003, the RAC and FCM, supported by the Canadian Association of Municipal Administrators (CAMA), signed a three-year memorandum of understanding (MOU) on proximity issues - "to build common approaches to the prevention and resolution of issues when people live and work in close proximity to railway operations."<sup>7</sup> The MOU was renewed for two years in January 2007. This initiative recognizes the need for better communication among various stakeholders, including railways, municipalities and developers.

Under the MOU, the parties will jointly work ... to develop and implement a strategy to reduce misunderstanding and avoid unnecessary conflict arising from railway-community proximity. Areas for action include: developing commonly understood proximity guidelines; improving awareness among all stakeholders regarding the need for effective planning and management; and developing a dispute resolution protocol to guide concerned parties when issues emerge.<sup>8</sup>

The proximity guidelines are intended, among other things, to reduce trespassing potential, minimize the effects of noise and vibration, and provide appropriate buffers and berms. A dispute resolution framework was also created, which included community advisory panels.

As a result of the RAC/FCM initiative, the City of Edmonton recently passed an amendment to its zoning bylaw addressing residential development on lands adjacent to railway rights-of-way and establishing regulations to address safety, security, noise, vibration and trespass for development on lands adjacent to rail facilities in Edmonton.

Recent amendments to the *Canada Transportation Act* complement the MOU framework. Before these amendments, citizens adversely affected by noise and vibrations from railway operations could either make a formal complaint to the company or seek civil action through the courts. No federal body was mandated to regulate railway noise and vibrations. The new amendments to the Act give the Canadian Transportation Agency (CTA) the authority to resolve noise and vibration complaints caused by the construction or operation of railways under federal jurisdiction. The CTA has also issued draft guidelines setting out the collaborative measures that parties must apply before it can conduct an investigation or hearing.<sup>9</sup> The guidelines focus on required proximity elements and principles, not standards or thresholds, and promote the types of protocols and recommended practices that are contained in the MOU.<sup>10</sup> We are convinced from our consultations that there is a need to improve and formalize the communication between municipal jurisdictions and the railways on the safety implications of land use and road access near railway properties. Roles and responsibilities should be clarified and recognized. Municipalities and landowners, including the railways, should engage in robust consultation during the design and planning stages for land use and non-railway works near railway lines. Municipalities should ensure that access roads for new subdivisions are built to existing public crossings, and they should take responsibility for the crossings during the development phase. The costs for the ongoing maintenance of the crossings should also be considered in planning. Municipalities might need to require developers to absorb the costs of crossing upgrades to accommodate new land uses.<sup>11</sup>

In summary, there is an increasing need for the integration of rail transportation issues in land-use planning to ensure that adequate consultation takes place between the developer, the municipality or other local government, and the railway on proposed changes in zoning and uses of lands abutting railway lines and yards. Shared solutions arrived at through such consultations lead to the notion of shared financing of these solutions. Opportunities to promote active partnerships with local authorities should be encouraged. Railway infrastructure should be considered in the design, zoning and planning of communities to reduce opportunities for negative interaction between trains and people."

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### **Recommendation 34**

**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.**

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[See, [http://www.tc.gc.ca/eng/tcss/rsa\\_review/chapter7-394.htm](http://www.tc.gc.ca/eng/tcss/rsa_review/chapter7-394.htm)]

## **Legal Jurisdiction**

CNR stated that the Government of Canada has the power to regulate lands adjacent to railway corridors. However the Government of Canada decided not to include the proximity recommendation in the the revised Railway Safety Act because it holds that it oversteps provincial jurisdiction. As such, it should be the responsibility of Quebec to legislate in this sphere.

## **REGARDING RAILBANKING AND RAILWAY CORRIDOR CONSERVATION POLICIES**

The Doney Spur Light Rail Line is the keystone piece of the Green Coalition's integrated mass transit strategies (first proposed by the Coalition in 1989). The old Spur has the potential to become a new Surface like Metro for central West Island. Operating on a schedule comparable to existing Metro lines, the Doney Spur service can be linked at

Bois-Franc Station to the entire Metro system, once the planned extension of the Orange Line from Côte Vertu to Bois-Franc Station is complete.

The City of Pointe-Claire still sees no future in it and has not taken measures to protect it from further alienation. Once Metro line #2 is expanded to Bois Franc Station this corridor will become critical for the westward push of a light rail line to serve the 66% of the West Island's population who living along the Autoroute40/Doney Spur corridor -- one of the most congested and CO2 and pollution creating arteries in Canada.

The new Home Depot that was built on part of the spur near Saint Jean Blvd. This may not end the dream of a light rail line taking single occupancy vehicles off the road, but it makes it more difficult. Decisions such as granting local building permits adjacent to or on strategic assets like rail lines should not be deemed irreversible.

We are talking about a legacy. Do we encourage the use of energy efficient and more environmentally friendly rail transit, or do we do nothing and let nature take its course?

Rail lines should not end up at local councils being subdivided piecemeal. Like roads, rail lines are a regional if not national asset and should not be treated with such apathy and indifference.

As the recent Supreme Court of Canada decision stated: The City of Vancouver is well within its rights to tell Canadian Pacific Railway that it can't build condos on its industrial lead. Yes, it can run trains if it wishes, but Vancouver has the right to rezone the Arbutus Corridor as a greenbelt and for future rail transit. [See, **Arbutus Corridor Plan**: [http://www.city.vancouver.bc.ca/ctyclerk/newsreleases2006/NRarbutus\\_uphold.html](http://www.city.vancouver.bc.ca/ctyclerk/newsreleases2006/NRarbutus_uphold.html)]

Energy friendly transportation options like rail when operated within the recommended setbacks should be welcomed not discouraged.

If a railway right-of-way is railbanked and the tracks are lifted and it is converted into a linear park or bikeway then there should be a provision in the law allowing for rail service to be renewed, enhanced or reactivated at a later date. Furthermore, no building of immovable structures shall take place on the rail-banked right-of-way.

Quebec wide railbanking legislation should be passed to protect out of service and abandoned railway servitudes from alienation, obstruction and incursion.

Notwithstanding the opposition from the major railways, it is possible to have rails with trails. Rail lines can co-exist safely with multi-purpose trails. This is a common practice throughout the world. It is a win-win for railway passengers, pedestrians, cyclists, skateboarders, etc.

It has been shown to work in Sydney, AU, along the MBTA in the Boston, MA and in Kelowna, BC. Trails adjacent to the St Louis, IL Metrolink line function well together. [See, **Bikes + MetroLink in Illinois: Trail System**, <http://www.nextstopstl.org/2551/bikes-metrolink-in-illinois/>]

As such, we the Green Coalition would like to see a new railbanking policy be implemented whereby railway corridors could be used for green belts and bikeways, etc. until such time a railway is rebuilt and revived. The presence of urban Green belts have increased property values in such centres such as Boulder, CO.

## **CONCLUSIONS**

We at the Green Coalition hold that a railway is a utility. It is an essential publicly regulated service. It should be cherished, improved and made safer for all.

Peak oil, loss of habitat, global climate change, pollution, and health and safety issues all have to be taken into account when drafting a **Sustainable Regional and Local Land Use Act**.

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