



June 30, 2021

The Regional  
Municipality  
of Durham

Planning and Economic  
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Sean Avery  
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Ministry of the Environment, Conservation and Parks  
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Dear Mr. Avery,

**Re: Regional Comments on the draft Land Use Compatibility  
Guidelines**

**ERO No.: 019-2768**  
**Regional File No.: E05-000001**

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Thank you for the opportunity to provide comments on the draft Land Use Compatibility Guidelines ("draft Guideline") available through the Environmental Registry of Ontario (ERO). It is our understanding these draft guidelines replace a number of outdated Ministry guidelines and were updated based on evidence of complaints received by the Ministry of the Environment, Conservation and Parks (MECP) over a ten-year period (between 2005-2015).

The draft Guidelines have been reviewed by our Regional Planning Division and Works Department. The comments provided below are for clarification, and further consideration to strengthen the document, and provide a solid foundation to guide implementation by municipalities.

### **Background**

The Province of Ontario is delivering on one of their commitments in the Made-in-Ontario Environment Plan to update ministry guidelines to help municipalities avoid impacts of conflicting land uses and to ensure land uses can co-exist and thrive for the long-term health and well-being of a community.

The draft Guideline seeks to replace the following existing MECP guidelines:

- **D-1 Land Use and Compatibility**
  - **D-1-1 Land Use Compatibility: Procedure for Implementation**
  - **D-1-2 Land Use Compatibility: Specific Applications**
  - **D-1-3 Land Use Compatibility: Definitions**

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- **D-2** Compatibility Between Sewage Treatment and Sensitive Land Use
- **D-4** Land Use on or Near Landfills and Dumps
  - **D-4-1** Assessing Methane Hazards from Landfill Sites
  - **D-4-3** Registration or Certificates and Provisional Certificates
- **D-6** Compatibility Between Industrial Facilities
  - **D-6-1** Industrial Categorization Criteria
  - **D-6-3** Separation Distances

The objectives of the draft Guideline as it relates to land use compatibility are to:

- protect employment areas designated for future major facilities from incompatible uses and encroachment by sensitive uses;
- protect existing or planned major facilities from potential impacts from new sensitive land uses; and
- prevent adverse effects to existing or planned sensitive land uses from new and/or expanding major facilities.

The Guideline is to be applied when the planning authority receives an application, under the Planning Act, with one of the following circumstances:

- a new or expanding sensitive land use (e.g. consent application for an infill residential use, a residential subdivision or condominium, a site plan for a new school, or a hotel) is proposed near an existing or planned major industrial facility; or
- a new or expanding major facility is proposed near an existing or planned sensitive land use.

## **Provincial Policies**

The Provincial Policy Statement (2020) sets out the Province's long-term vision for building strong, healthy communities through land use planning decisions which support the long-term prosperity, environmental health and social well-being of Ontario.

PPS policies 1.2.6.1 and 1.2.6.2 provide direction to planning authorities to ensure that major facilities and sensitive land uses are appropriately planned and developed to avoid, or if avoidance is not possible, minimize and mitigate adverse effects (e.g. from odour, noise and other contaminants) and ensure the long-term viability of major facilities. As such, planning proposals need to demonstrate how land use compatibility has been assessed and addressed. The PPS policies are minimum standards and it is understood that municipalities may recommend a greater separation distance between major facilities and sensitive land uses, unless it conflicts with any policy in the PPS.

Planning authorities also need to ensure that long-term viability and functions of employment areas are protected from encroachment within and surrounding these areas, as per PPS policies 1.3.2.2 and 1.3.2.3. Employment Area conversion is also an important issue, as per PPS policies 1.3.2.4 and 1.3.2.5.

A Place to Grow: the Growth Plan for the Greater Golden Horseshoe (“the Growth Plan”) also provides guidance on separation of incompatible land uses through the policies of 2.2.5 by requiring municipalities to plan all employment areas within settlement areas to ensure there is an appropriate interface between employment areas and adjacent non-employment areas to maintain land use compatibility.

### **Area of Influence (AOI) and Minimum Separation Distance (MSD)**

The new guidelines have introduced two arcs, which are to be modelled around major facilities.

First, is the Area of Influence (AOI) arc, which is defined as an area surrounding the property boundary of an existing or planned major facility where adverse effects on surrounding sensitive land uses have a moderate likelihood of occurring. AOIs are intended to be used as the study area as well as the default separation distance from a major facility unless compatibility studies recommend a different separation distance.

Second, is the Minimum Separation Distance (MSD) arc, which is defined as recommended minimum separation distances. This arc is smaller than the AOI and are the distance within which adverse effects and compatibility issues are highly likely to occur. Incompatible proposals should only be considered where there is a demonstrated need for the proposed use in that location and no other location is feasible, and mitigation to prevent adverse effects is possible and will be implemented. A demonstration of need will also be required if the proposed land use is a sensitive land use within the MSD of an existing or planned major facility.

### **Comments on the Draft Guideline**

The Region of Durham offers the following comments, concerns and requests for clarification to help finalize the provincial Land Use Compatibility Guideline:

<b>Page # / Section</b>	<b>Regional Comment</b>
Overall	It is the Region’s understanding that the MECP did not consult with Public Health agencies on the draft Guidelines. The Region suggests that further meaningful consultation is conducted with these agencies prior to finalization of this Guideline.

<b>Page # / Section</b>	<b>Regional Comment</b>
Overall	An improvement could be made to the various guidelines by further combining the Odour and Compliance documents into the Land Use Compatibility Guideline.
Overall	The Region owns and operates 11 Water Pollution Control Facilities. Several existing facilities will not comply with the proposed Minimum Separation Distances (MSD). The Area of Influence (AOI) criteria will outline the type of odour study that is required. The suggested separation distances are quite large, and we expect a lot more odour studies will be triggered. This will add significant expense and time to any required facility upgrades. Question if the Guideline is meant to apply to municipal facility upgrades and improvements?
Overall	The Guideline should give preference to new major facilities that are proposed to be located near existing major facilities when the the AOIs overlap – even if there is existing sensitive land use within the AOI.
Overall	Similar to Environmental Site Assessments, Land Use Compatibility reports should have an expiry date (e.g. 18 months) to ensure the findings of the report reflect the current landscape at the time of approval.
Overall	<p>Throughout the document, the Province has identified “Qualified Individuals” who must undertake the various studies, however, their preferred or required qualifications have not been listed in the document.</p> <p>The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) recently completed guidance on Agricultural Impact Assessments. In this material they included a section on “Qualified Professionals / Practitioners (QPs) which provided municipalities guidance on the knowledge and qualifications consultants should possess. A section similar to this would be helpful in the LUC guidelines to ensure the studies are being conducted, and peer reviewed properly.</p>
Pg. 7 / Key concepts	Minimum Separation Distance – there could be value in consistency between terms used by OMAFRA

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	(Minimum Distance Separation) and MECP (Minimum Separation Distance), if possible.
Page 8 / 1.5.1 - Audience	With the most recent change in name from the Local Planning Appeal Tribunal to the Ontario Land Tribunal, the Ministry may want to consider additional wording after Ontario Land Tribunal such as “or its successor.”
Pg. 12 / 1.6.2 – Proponents of Major Facilities and Sensitive Land Uses	Obligations apply equally to proponents regardless of if the proponent is a major facility owner or sensitive land use owner – this is a significant improvement over the current approach which places more burden on the major facility owner to address concerns related to a sensitive land use, which in some cases was developed or expanded after the major facility was already in place and operational.
Pg. 22, 25 and 26 /  Guidance between Table 1 and Table 2	The discussion and explanations for determining the AOI and MSD for major facilities based on facility type and class of facility is confusing. While it is helpful to understand the types of major facilities and the minimum separation distance, it is confusing which ones fall within the different categories between Table 1 and 2. It is recommended that Tables 1 and 2 be combined.
Pg. 23 /  Table 1 – AOI and MSD for Select Major Facilities	<ul style="list-style-type: none"> <li>• The Region is responsible for seven closed landfills, three of which have operating Waste Management Facilities on them. The Oshawa and Scugog Waste Management Facilities already have sensitive land uses within the MSD (500m). Improvements to the functionality of these WMFs could require Environmental Compliance Approval amendments and trigger land use compatibility studies which will add time and cost to any improvement projects. MECP should consider options for LUC requirements to be waived by planning authorities in instances where changes are likely to improve any existing adverse effects and no significant change to operations is proposed.</li> <li>• Anaerobic digester (AD) facilities are identified as known sources of odour in the guideline. However, when they are fully enclosed, properly operated and managed AD systems do not generate significant</li> </ul>

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	<p>odours. Question if different classes of AD facilities been accounted for.</p> <ul style="list-style-type: none"> <li>• The Region's Material Recovery Facility in Whitby pre-dates a housing development that is within its AOI. Similar to WMF, the LUC guidelines could limit the feasibility of changes to improve this facility. The Region is currently undertaking studies to determine the highest and best use for this property after the Region ends responsibility for the blue box program in mid-2024. LUC obligations could impact the valuation of the site. Triggers for LUC should be outlined in the guideline such that existing major facilities can make changes without undertaking compatibility studies if they can demonstrate no change or improvement to current operations.</li> <li>• Auto wreckers are considered major facilities. Suggest this list be expanded to include vehicle repair shops with spray painting booths. It is recommended that the painting/coating major facility be clarified to include such uses.</li> <li>• Other industrial uses should include dry cleaning establishments and printing establishments (not including manufacturing).</li> <li>• It is also recommended that a "general industrial use that is not obnoxious" be included under major facility.</li> <li>• Conversely, it would also be helpful to know what is considered to be a "minor facility" and not requiring study of compatibility between sensitive land uses.</li> </ul>
<p>Page 30 /</p> <p>What to Do if Development is Proposed within an AOI or MSD</p>	<p>The last paragraph of this section is confusing, particularly the following statement, "When adverse effects from major facilities cannot be minimized and mitigated such that no adverse effects are expected, the planning authority must not permit the new development".</p> <p>It is suggested that the word "no" be removed.</p>

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Pg. 30 / Compatibility Studies	<p>In addition, it is concerning that in a scenario where major facilities are not willing to divulge their emissions information, <b>conservative estimates</b> are to be used for a Land Use Compatibility Study. This is discretionary and could lead to challenges and conflicts between the proponents consultants and the municipal peer reviewer if there are differing opinions on what is considered appropriate estimates. These situations could lead to a number of these studies ending up at the OLT (formerly LPAT) more often for the Tribunal's consideration. It would be beneficial if the Province would release some Guidance on general emissions for different types of major facilities, to give municipalities a benchmark. If estimates are to be used in the study, the proponent could then be required to justify to the municipality why they are higher or lower than the provincial guidance materials.</p>
Pg. 34 / Demonstration of Need	<p>While there is a need for flexibility, it is concerning that an alternative route to siting sensitive land uses within areas of existing or planned major facilities has been clearly defined in the Guideline. The Region is concerned that this exception is overly flexible, and could allow proponents to continue to propose incompatible land uses. Proponents may ignore the remainder of the Guideline, where the focus is on strongly discouraging sensitive land uses in certain areas, and instead, will focus their efforts on demonstrating need on properties they currently own.</p> <p>In addition, it is concerning that the Province would consider the need for housing diversification, or the results of a housing strategy as a catalyst for permitting new housing in proximity to major facilities. This may continue to exacerbate housing inequality issues across the Province. It is suggested that these requirements be removed from the list of questions to satisfy the Demonstration of Need study.</p> <p>The Region suggests that the "Demonstration of Need Study" become an appendix. It is suggested that the Guideline should instead reference where municipalities may consider other circumstances to demonstrate need, on a site-by-site basis in consultation with the appropriate agencies.</p>

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	<p>The Demonstration of Need should also consider infill situations where a new residential lot is proposed in transition areas identified in an Official Plan or Secondary Plan (e.g. consent application to sever an existing residential lot into smaller lots to support infill housing).</p>
Pg. 37 / Mitigation	<p>The importance of mitigation measures and how integral they can be to allow incompatible land uses to coexist with each other is understood. However, as our urban areas become more populated, and efforts are focused on intensification, an increased need for compatibility studies and mitigation measures to mitigate these transitional areas will be created.</p> <p>The draft Guideline identifies several ways in which municipalities can ensure mitigation measures are included on the property. However, there are also several instances where the Province refers to ongoing monitoring by the municipalities. This is a concern for Durham, as we do not have the staff or technical expertise to monitor or enforce ongoing issues or compliance of these studies. We request that the Province provide additional funding and training to help implement these new draft Guidelines at the Regional and area municipal level, if not already contemplated.</p>
Pg. 45 / Implementation and Planning Tools	<p>The protection of employment areas is complex as they contain existing uses which are subject to change. In addition, many employment areas are currently zoned for a range of uses, which would make it difficult to map potential compatibility issues. As a result, there is no significant value in mapping all facilities in upper-tier official plans.</p> <p>As an alternative, the mapping of municipally-owned facilities could be included in upper tier official plans, but these would still be subject to the same potential changes as private operations. These limitations should be incorporated into the guidelines and flexibility must be included to help municipalities integrate these proposals into their official plans.</p> <p>Further clarity is required on how official plans are to incorporate AOIs and MSDs. Upper Tier, or, Regional</p>



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	<p>Official Plans will not be able to map individual private facility locations, because of the scale of the upper-tier official plan. Mapping of AOIs and MSDs should be completed through local official plans. Clarity is needed from the Province directed at the lower or single-tier municipalities so this type of mapping could be completed through their upcoming official plan reviews.</p> <p>Currently, Durham is in the process of our Municipal Comprehensive Review. This review has been ongoing since 2018 and we are currently in the policy development phase of the MCR. Allowance should be granted to municipalities who are in the process of MCRs as implementing these new recommendations would put conformity dates at serious risk.</p> <p>Incorporating and mapping AOIs and MSDs into official plans represents a substantial change to existing official plans and will require significant time and resources to implement. Conducting a study and having consultation to determine the thresholds of these AOIs and MSDs as part of an MCR would require significant planning and time and would not be appropriate for in-progress MCRs. These changes would require a fulsome review and they should not be rushed through an MCR if time does not allow for the proper consideration.</p>
Pg. 46-53 / Key Planning Tools	<p>Plans of Subdivision/Condominium</p> <ul style="list-style-type: none"> <li>• It is suggested that where a land use compatibility study is required for a plan of subdivision of condominium, that the study is completed prior to draft approval, to ensure that there is no conflict between the draft approved plan, and the approved minimum separation distance. This was mentioned under the last bullet point for Unorganized Territories (Page 52), but it did not come across clearly for Municipalities.</li> <li>• We question if applications for Minor Variance to expand a legal non-conforming use have to complete land use compatibility studies, if there is a trigger.</li> </ul>

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Pg. 122 /  Appendix K – Information on sectors not included in this Guideline	<b>Transportation Infrastructure and Corridors, Rail and Marine Facilities</b> – This section speaks to specifics regarding transportation infrastructure and corridors, which are classified as major facilities. It appears that the Guideline for these facilities specifically requires a noise impact study, but does not require a dust and particulate study. We request that the Province clarify why these additional studies were not included as requirements within proximity to major highways or other transportation infrastructure and corridors. Major highways contribute particulates to the surrounding air space, and should likely be addressed.

If you have any questions or concerns, please do not hesitate to contact Heather Finlay at 905-668-7711 x 2561 or by email at [heather.finlay@durham.ca](mailto:heather.finlay@durham.ca).

Yours truly,

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cc: Lino Trombino, Regional Planning  
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