

June 30, 2021

Sanjay Coelho  
Ministry of the Environment, Conservation and Parks, Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto, ON M4V1M2

**Re: ERO 019-2785 Proposed Land Use Compatibility Guideline**

**Public Works**

10 Peel Centre Dr.  
Suite A  
Brampton, ON  
L6T 4B9  
tel: 905-791-7800

[peelregion.ca](http://peelregion.ca)

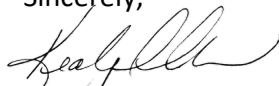
Thank you for the opportunity to review and comment on the above noted Environmental Registry of Ontario posting. The following comments are provided by Region of Peel staff as input into the Ministry's consultation on the proposed Land Use Compatibility Guideline. Please note that staff comments may be considered by Regional Council for endorsement. If additional or differing comments are provided through a Council resolution, they will be forwarded to the Ministry for consideration.

Regional staff supports the streamlining of the D-series guidelines into one comprehensive document that provides a more detailed description of the objectives, process and implementation requirements for land use compatibility. Regional staff are supportive of the Provincial approach to protecting employment areas from the potential impacts associated with new sensitive land uses while preventing adverse impacts by providing guidance and the opportunity for the proponent and approval authority to make decisions based on needs assessments, compatibility studies and mitigation efforts. The explanations provided in the draft document related to compatibility studies, demonstration of need and mitigation are comprehensive. Suggestions regarding appropriate flexibility, the strengthening of the guidance regarding public health, and areas where further clarification may be beneficial are provided to ensure that the Guidelines can be applied in all municipal contexts. Regional staff also appreciate the attempt to ensure consistency between the Guideline and other planning documents, particularly the Provincial Policy Statement, 2020 and the Growth Plan for the Greater Golden Horseshoe.

Regional staff is supportive of measures that seek to protect community health, including sensitive land uses, the general population, and vulnerable populations. It is recommended that the draft Guideline require proponents to avoid, minimize and mitigate additional risks, impacts and other relevant adverse effects that may exist such as other air contaminants, toxins, and traffic.

Attached are detailed comments pertaining to the specific direction provided in the proposed Guideline.

Sincerely,



Kealy Dedman, P.Eng., MPA  
Commissioner of Public Works



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# Region of Peel Comments on the Ministry of the Environment, Conservation and Parks Proposed Land Use Compatibility Guideline (ERO 019-2785)

## Part A: Overview and Policy Context

### Alignment with Other Regulations and Updating the Guidelines

The proposed Draft Land Use Compatibility Guideline should align with other provincial regulations. Any gaps or overlapping areas should be identified and addressed to help ensure that the measures put in place by the Province remain effective in supporting land use compatibility.

Policies and direction in the Guideline should be updated based on a regular review of available information and research. This research and analysis will help to inform the recommended procedures and ensure future actions are revised based on best available evidence. It is recommended that the Province consider including a notification system to inform, notify and update appropriate stakeholders of any changes.

Through the proposed Guideline document, municipalities are encouraged to incorporate the land use compatibility policies and principles into local planning documents. Many municipalities are currently in the process of undertaking a comprehensive review of their official plan. However, the Guideline document is presently a draft document. The Province should ensure its timing to finalize this draft Guideline document allows for municipal implementation through municipal comprehensive reviews.

### ***Recommendation Summary***

- ***The proposed Land Use Compatibility Guideline should align with other relevant provincial regulations and be updated based on a regular review of the best available evidence.***
- ***The Ministry should finalize the Guideline in a timely manner to allow for municipal implementation to be considered and addressed through current municipal comprehensive review conformity exercises.***

### Comments Related to Definitions

Regional staff is supportive of preventing and minimizing impacts to sensitive land uses. The definition of “sensitive land uses” provided in the draft Guideline lists some, but not all of the sensitive land uses which are documented in other provincial policies. It would be beneficial for the Guideline to expand on the definition of “sensitive land use” to be consistent with the Provincial Policy Statement (PPS). Consistency would help to ensure

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peelregion.ca

that readers are aware of all sensitive land uses. Consider enhancing the current sensitive land use definition by including the following examples:

- Residential area
- School/Private School
- Child Care Centre
- Hospitals
- Senior's Facility (e.g. retirement homes)
- Lodging Home or Home for Special Care
- Recreational Centres

Further, clarification is also needed on how construction activities are included in the definition of Major Facilities and then addressed in the assessments under the Draft Land Use Compatibility Guideline.

The definition of Major Facilities, as provided on page 6 of the Guideline, is taken from the PPS and recognizes transportation infrastructure and corridors. Therefore, the proposed Guideline should address specified sensitive land uses that may be proposed within the Area of Influence (AOI) for high traffic areas. Not allowing for opportunities to study mitigation options when sensitive uses are proposed near high traffic areas is a gap from a land use planning and public health considerations. Comprehensive reviews have been conducted in health research relating to traffic related air pollutants (TRAPs) and health impacts including *The Health Effects Institute (HEI) Special Report 17: Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects and Traffic-Related Air Pollution and Health: A Canadian Perspective on Scientific Evidence and Potential Exposure-Mitigation Strategies*. Regional staff recommend the Guideline addresses criteria for when compatibility studies may be appropriate for sensitive land uses adjacent to high capacity transportation infrastructure that are considered Major Facilities under the PPS, while recognizing that locating people and activity near transportation infrastructures is desirable to achieve a number of public policy objectives such as reducing sprawl, promoting active lifestyles and healthy development, reducing greenhouse gas emissions and the efficient use of infrastructure.

Finally, in order to ensure that all of the definitions remain aligned to current needs, it is recommended that the Province develop a process for monitoring existing and updating new sensitive land use areas and provide a clear notification and communication channel.

### **Recommendation Summary**

- ***The definitions for “sensitive land use” and “major facilities” should be reviewed and expanded to align with and clarify the intended direction in the PPS.***
- ***The reference to “transportation infrastructure and corridors” in the definition of “major facilities” should be clarified and the Guideline should assess when***

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***criteria for compatibility studies may be appropriate for sensitive land uses adjacent to high capacity transportation infrastructure.***

### Comments related to Noise, Dust, Odour and Other Contaminants

Incompatible land uses can cause adverse effects on sensitive land uses from noise, dust, odour and vibration from nearby major facilities. Air toxicants were previously listed in the D-series guidelines along with noise, dust, odour and vibration. What is the rationale for removing air toxicants? Also, vibration is not consistently included in the proposed Guideline.

Has consideration been given to when noise, odour, dust and other contaminants would be present, especially if there is a substantial impact during sleeping hours or when most people would be using their property outside? If not, we recommend that this is examined and included. Also, have the specific qualities of noise, odour, dust and other contaminants that may be the most disruptive and annoying been considered? If not, we recommend that this is examined and included.

### ***Recommendation Summary***

- ***The Ministry should ensure that the direction regarding compatibility studies relating to air quality, noise, dust, odour and vibration is comprehensive, consistent and sufficiently clear in the proposed Guideline. Air toxicants should be listed along with noise, dust, odour and vibration.***

### Comments Related to Planning Legislation and Policy Context

The Growth Plan requires municipalities to accommodate forecasted growth in compact and complete communities that provide an appropriate mix of jobs and housing options. In existing urban areas where municipal planning involves balancing multiple existing and proposed land uses, flexibility in applying provincial guidance to allow for transition and local context, while still emphasizing separation as a preferred mitigation approach, is required. In some contexts, implementing excessive separation distances may not be practical and achievable. For example, planning in older neighbourhoods undergoing transition where existing housing, and intensification opportunities are already existing adjacent to industrial uses. For these situations, the Ministry should consider providing examples of best practices where transition has been achieved with flexibility, using tools currently available to municipalities. Currently the draft Guideline may be difficult to apply in Major Transit Station Areas.

### ***Recommendation Summary***

- ***The Ministry should consider additional clarification in the Guideline to enable flexibility in applying separation distances in strategic growth areas undergoing intensification adjacent to industrial areas, including providing***

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### ***examples of best practices where transition has been achieved using tools available to municipalities.***

#### Comments Related to Additional Tools and Best Available Evidence

Regional staff are aware that the draft Guideline proposes updated Areas of Influence (AOI) and Minimum Separation Distances (MSDs) that are based on 10 years of incident (complaint) data for noise, dust and odour. However, additional details on how the updated distances were derived would be helpful as the AOI and MSDs should be based on data, be evidence driven and transparent. For example, information regarding how many different industries, the type of communities and type of complaints that have been considered, and the results of root sources of complaint investigations should be provided. It is suggested that more details on the analysis undertaken by the Ministry be provided to demonstrate evidence-based direction.

Regional staff recommends ensuring a process is in place to review the most current and best available evidence to assess AOI and MSDs to ensure protection of public health. The Province should consider updating the Guideline to reference tools such as a Health Impact Assessment (HIA) and Human Health Risk Assessment (HHRA) and provide examples of how a HIA and/or HHRA can provide useful information to inform land use conflicts and recommendations for AOI and MSDs.

#### ***Recommendation Summary***

- ***The Ministry should adopt and implement a process to regularly review, assess and update AOI and MSDs based on the most current and best available evidence and consider updating the Guideline to reference tools such as a Health Impact Assessment (HIA) and Human Health Risk Assessment (HHRA).***

#### Applicability of the Guideline to Existing Uses and Facilities

While the proposed Guideline provides relatively clear guidance to municipalities for new or expanded developments that have not yet been approved, it is unclear how these new guidelines will apply to approved development or expansion, existing (established) developments and existing facilities where the proposed AOI and MSD recommendations are not currently being met. It is recommended that the Ministry provide clarification regarding the implications of the proposed new Guideline for existing and approved developments, existing facilities or approved upgrades and expansions to existing facilities. It is recommended that the Ministry include a “grandfathered” clause to allow municipalities to maintain the criteria of current guidelines instead of the proposed Guideline, when in place.

#### ***Recommendation Summary***

- ***The Ministry should clarify the Guideline requirements for existing approved development or expansion and existing facilities where proposed AOI and MSD***

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*recommendations are not being met and include a “grandfathered” clause to allow municipalities to maintain the criteria of the current guidelines in these cases when the new Guideline comes into effect.*

### Part B: Assessing Land Use Compatibility

#### Area of Influence and Minimum Separation Distance

In determining the AOI and MSD, the proposed Guideline requires the proponent to use the property line, instead of the outline or the edge of existing facilities or developments. It is important that the Ministry confirms that the Ministry or other planning authority will allow measurement of AOI and MSD from the major facility’s building or equipment that is the actual source of potential adverse effects rather than the property line if a buffer area can be maintained and future expansions of the facility are not expected.

In light of establishing increased AOI and MSDs, it would be reasonable to ask whether the Ministry had considered the price of land, particularly in the Greater Toronto Area, when establishing the required AOI or MSD. If additional buffer lands are required, it is important to determine who will bear the cost of acquiring this property. Finally, how is an adverse effect defined/determined in developing the AOI’s/MSD’s?

#### Recommendation Summary

- ***The Ministry should confirm that the measurement of AOI and MSD from a major facility’s building or equipment that is the actual source of potential adverse effects rather than the property line is allowed if a buffer area can be maintained and future expansions of the facility are not expected.***

#### Classification of Major Facilities

The Ministry has identified AOI and MSD for numerous major facilities and indicated an approach for determining an appropriate class related AOI and MSD for facilities not identified in the Proposed Guideline. It is unclear if it is ultimately the developer’s or the municipality’s responsibility to determine the AOI and MSD for facilities not identified in the Guideline, and direction on what compatibility studies are necessary. It is suggested that the Ministry clarifies its expectations and confirms if the Ministry will be providing direction early in the process when there is uncertainty regarding the type and requirement for a compatibility a study.

#### Recommendation Summary

- ***The Ministry should clarify who is responsible for determining the classification, AOI and MSDs of major facilities not listed in the Guideline and confirm if the Ministry will be providing direction early in the process regarding the type and requirement for a compatibility study.***

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### Land Use Compatibility Study

Currently, the proposed compatibility study requirement mandates the proponent of a sensitive land use to complete a needs assessment when a new sensitive land use is being proposed within the AOI of a major facility when mitigation measures are required to ensure no adverse effects and within any MSD regardless of whether mitigation is required. To complete and review the needs assessment study, additional clarification is needed regarding specific criteria:

- who conducts the demonstration of need assessment (e.g. individuals who are qualified or registered as professional planners)?
- who reviews the content for acceptability?

Further, the Province will need to ensure that the criteria and the methodology for a compatibility study will result in actions that protect human health and prevent and minimize nuisances by establishing sufficient buffer zones for AOIs and MSDs.

With respect to municipal facilities, it is recommended that the Ministry clarifies at what stage in the planning process the compatibility studies should be completed, whether the study should be undertaken as part of a Class Environmental Assessment or during facility expansion design.

Finally, the draft Guideline state that the “planning authority can also, at their discretion, undertake or require broader studies...such as regional or cumulative impact modelling”. It is recommended that cumulative impacts modelling of all sources of pollutants in an area be included in a proponent’s compatibility study and not be left to the discretion of the planning authority, or the Guideline provide criteria or guidance to indicate when cumulative impacts modelling might be appropriate (e.g. sensitive land uses in proximity to multiple major air emission point sources). It is also recommended that the compatibility study require the proponent to avoid, minimize and mitigate any other relevant adverse effects that may exist (e.g. other air contaminants, toxins, traffic) as opposed to leaving it at the discretion of the planning authority. Multiple sources of pollutants and other relevant adverse effects impact the boundaries for AOI/MSDs which can impact sensitive land use areas.

### ***Recommendation Summary***

- ***The Guideline should clarify who would be considered qualified to prepare demonstration of need studies and who would review the content of such studies for acceptability.***
- ***With respect to municipal facilities, the Ministry should clarify at what stage in the planning process the compatibility studies should be completed, and whether the study should be undertaken as part of a Class Environmental Assessment or during facility expansion design.***



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### Mitigation

The Guideline should be clear that the list of mitigation measures is by no means exhaustive but are examples of what could be considered. The proponent should be looking at best practices and determine what the best mitigation measures are, based on the unique circumstances of the situation.

### ***Recommendation Summary***

- ***The Ministry should clarify that the Guideline provides examples of mitigation measures and does not provide an exhaustive list of mitigation that could be considered.***

### Sector Specific Considerations Included in the Guidelines

#### Employment Areas

The proposed Guideline notes the PPS, 2020 policies that provide direction to planning authorities to ensure that major facilities and sensitive land uses are appropriately planned to avoid, minimize and mitigate adverse effects. However, municipalities must also balance these policies with policy direction that promote creating complete communities including planning for employment lands and Major Transit Station Areas where increased density of residents and jobs are proposed.

#### Aggregate Resources

Regional staff acknowledge that the AOI and MSD requirements in the draft Guideline document are not applicable when evaluating land use applications for new or expanding aggregate operations proposed near sensitive land uses. It is noted that the Ministry of Natural Resources and Forestry has requirements to assess potential impact of aggregate operations on nearby land uses and that recommended AOI and MSDs for aggregate operations can vary considerably depending on the scale of operation, the type of impacts and sensitivity of adjacent lands. However, prior to the issuance of a licence to extract aggregate resources, municipalities must ensure appropriate zoning and official plan designations are in place. To inform the zoning and official plan policies, municipalities can request that the proponent prepare appropriate studies related to compatibility and impacts. Regional staff have heard from residents that the studies required under the Aggregate Resources Act (ARA) do not adequately address matters related to socio-economic impacts. Since impacts from aggregate operations are addressed in both Land Use Compatibility Guideline and the ARA, guidance may be needed in both processes to ensure that consistent approaches and standards are applied and/or clarification is provided on how socio-economic impacts are addressed through related technical studies (e.g. air quality, noise, vibration and water impact assessments).

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The Ministry should, jointly with the Ministry of Natural Resources and Forestry, develop model terms of reference for preclude and hinder studies required by PPS Policies 2.5.2.4 and 2.5.2.5. These studies include components that are subject to the PPS policy direction regarding land use compatibility in Section 1.2.6 including the Ministry's Land Use Compatibility Guideline and apply to proposed sensitive land uses adjacent to existing licenced operations and known deposits with the potential for future operations to be established. Study requirements are different in these two contexts and are likely to vary considerably in relation to the type and scale of the sensitive land use. Providing model terms of reference examples for preclude and hinder studies with the ability to appropriately scope study requirements would help support municipal implementation of the policy requirements.

### Cannabis

Cannabis production and processing facilities can have significant adverse impacts on sensitive land uses, particularly with respect to odour and light. This is recognized in the proposed Land Use Compatibility Guideline, which places these facilities in settlement areas in Class 5, the class with the largest AOI and MDS distances.

However, the proposed Guideline is not applicable to cannabis production facilities outside settlement areas in prime agricultural and rural areas. Land use compatibility issues respecting such facilities have been a recent challenge for host municipalities as they are not adequately addressed by the tools discussed in Appendix K of the proposed Guideline. The Ministry of Agriculture, Food and Rural Affairs should be encouraged to develop appropriate, science-based guidelines for such facilities in agricultural areas in consultation with municipalities and other stakeholders and clarify the appropriate process to ensure that adverse effects are managed without undue burden to the agricultural sector (e.g. through the Farming and Food Production and Protection Act, Municipal Act and/or Planning Act tools). In addition to providing guidance for cannabis production facilities in prime agricultural and rural areas the Ministry of the Environment, Conservation and Parks should clarify whether the proposed Guideline is applicable to agriculture-related industrial uses in prime agricultural areas and rural lands that involve cannabis processing. The Ministry proposes that that the Guideline will apply to "all cannabis processing facilities". Clarification whether this extends to cannabis processing facilities that are an agriculture-related industrial use would be helpful. The Ministry should also consider extending the guidance beyond cannabis to address other agricultural industries.

### ***Recommendation Summary***

- ***Suggested recommendations are provided to the Ministry to improve sector specific guidance for employment areas, aggregate extraction and cannabis processing and consider developing complementary tools outside of the Guideline for sectors that are not subject to the Guideline.***