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**Subject: Ministry of Environment Conservation and Parks Draft Land Use Compatibility Guidelines March 2021
Environment Registry of Ontario Number: 019-2785**

Dear Mr. Coelho,

On May 4th, 2021 the Province of Ontario released the draft Land Use Compatibility Guidelines (the “Guidelines”) on the Environmental Registry of Ontario (ERO Number: 019-2785). These Guidelines are proposed to replace various D-series guidelines for Land Use Compatibility, including the D-6 Land Use Compatibility Guideline that is the basis for implementing land use compatibility studies in Ontario.

We provide this submission on behalf of the Canadian National Railway (CN).

CN Rail is federally regulated by the Canada Transportation Act (CTA) and is required to adhere to the requirements of the Railway Safety Act (RSA). The CTA requires railway operators to only make noise and vibration as is reasonable. It is important to understand that there is no specific decibel limit for CN operations contained in federal guidelines related to the operation of rail facilities, such as an intermodal yard. The Canadian Transportation Agency (Agency) is the federal body that regulates noise complaints related to the rail industry. Those federal guidelines clearly state that while the Agency may take provincial and municipal noise and vibration guidelines into account in its deliberations, the Agency is not bound by those guidelines.

As the proposed Guidelines note, sensitive land uses in the vicinity of Major Facilities such as freight railyards are subject to these new Guidelines. CN takes an active role in reviewing development applications in proximity to its facilities pursuant to the Ontario *Planning Act* and its Regulations. As such, CN has experience in reviewing and interpreting the current guidelines, applying them on a regular basis and in association with the new Provincial Policy Statement, 2020 (PPS) policies. We are of the view that this experience will be beneficial to the MECP in finalizing the Guidelines and are prepared to meet with the MECP to discuss those experiences.

As a broad-based concern, there is a lack of understanding by stakeholders under the *Planning Act* about the unique requirements of federally regulated facilities that do not require Environmental Compliance Approvals (ECAs) issued by the MECP. The current D-6 Guidelines were lacking in this area, and the proposed guidelines, while a step in the right direction, do not fully address this issue. The Land Use Compatibility Guidelines in general propose many changes which are beneficial, such as referencing the Federation of Canadian Municipalities and Railway Association



of Canada Guidelines for New Development in Proximity to Railway Operations (FCM-RAC Guidelines). However, this letter will discuss areas where additional clarity is required.

We have prepared a detailed review of the draft guidelines included in the attached Appendix A, which includes suggested language changes to the document. This letter provides a summary of the concerns which have been divided into two groups. The first group are key comments that CN has with respect to the guidelines, and the second group are important comments that we feel will add further clarity to the guidelines that the MECP should review and consider as well.

Key Comments

- 1 Safety:** Derailments are an adverse effect. Crash walls are an appropriate buffer for development within 30 metres of the rail line.

The proposed guideline states that adverse effects should only be assessed from day-to-day operations. The adverse effects from train derailments are considered to be from day-to-day operations, and this needs to be clearly stated in the guidelines. Crash walls should be considered for development within 30 metres of the rail line.

- 2 Federal Jurisdiction:** NPC-300 Class 4 Designation is not necessarily considered as an appropriate mitigation standard for federally regulated facilities per CN Noise experts. As such, mitigation should be to federal standards which are generally equivalent to Class 1 noise mitigation per NPC-300.

The proposed Guideline should provide a clear statement that Class 4 Designations in NPC-300 do not provide assurances of addressing mitigation for federally regulated rail facilities as they are separately regulated. As such Class 1 should be considered the default for assessing Land Use Compatibility for Noise from these uses and not Class 4 unless agreed to by the Major Facility operator. As noted, CN is not subject to source noise controls similar to ECA regulated facilities.

- 3 Federal Jurisdiction:** Worst case scenario/Planned Major Facilities is not clearly defined, we've used the term "ultimate operations." The Guidelines should also consider federal jurisdiction in determining the ultimate operations.

The Guidelines do not define a "worst-case scenario." A clear statement regarding how "worst case scenario" is defined should be provided in the Guideline. The guidelines does define "planned" major facility, though the use of this definition is not consistent in the guideline. We have used the term the ultimate operations of the facility referring to the maximum potential of the site in regard to long term uses. As well, it is important to highlight the importance of considering federal jurisdiction as not all uses are subject to the Zoning By-law and Official Plan, such as federal uses (in this case CN).

- 4 Planning Matters:** For the alternatives test, the site should not be both designated and zoned to be considered as a reasonable alternative, as this will limit the ultimate objective of the guidelines.

The Guideline should provide clarification on the need for alternatives to be both designated and zoned to be considered an alternative. In absence of this direction, it would result in the guideline not meeting its ultimate objectives. This is because most municipalities have not updated zoning to match their Official Plan and other relevant policy regulations/documents. Another reason for a municipality to not update the zoning is that they focus on allowing the current use permissions on site and may only permit a limited amount of additional uses pending further study through a zoning by-law amendment. As a result, the applicant could propose a 15-storey apartment building within an MSD and state that there are no other 15-storey apartment buildings zoned elsewhere in the community, and therefore no reasonable alternatives. However, there may be policy direction elsewhere in the municipality to encourage high-density residential development, but the sites have not been zoned to allow the development. A clear statement should be provided in the Guideline that alternatives should be based upon the designation of the land and not both the designation and zoning. In lieu, the Guidelines could also state that the same type of development application could be considered as appropriate to occur on the alternative site if reasonable.

- 5 Planning Matters: Holding Zone provisions are not the appropriate place for compatibility studies.

To the fullest extent possible, land use compatibility issues should be reconciled at the Official Plan and Zoning stage (and for further clarity, not through a holding provision in the zoning by-law). The Guideline should clearly state that a holding provision is not appropriate for major studies and is only suitable once compatibility is confirmed for all adverse effects to ensure implementation. When it comes to municipal infrastructure such as water, sanitary, roads (traffic), municipalities are reluctant to approve a rezoning without a study that demonstrates that it is feasible for that infrastructure to accommodate that development. It is important that the Guidelines stress that the same rules apply to land use compatibility. As an example, a hold should not be used to address odour mitigation if feasibility of odour mitigation has not been determined. At a minimum, preliminary studies for all adverse effects are required prior to Official Plan or Zoning approval.

Additional Comments

- 6 Rail Facilities need to be included in Table 1.

The proposed Guidelines do not provide a specific reference to Freight Rail Facilities. As such, the classification of the facilities per these guidelines is not clear. Note that we have seen multiple instances where applicants deemphasize the potential operations of the facility to reduce the classification despite there being no municipal or provincial control on matters such as hours of operation and freight volume in the facility. The FCM-RAC Guidelines for freight rail yards reference an MSD of 300 m and an AOI of 1,000 m, which is consistent with the Class 3 provisions in the D-Series Guidelines, but does not directly match the proposed MSD/AOIs in the draft guidelines. We note that in these proposed guidelines, the MECF is proposing to increase these MSDs for large-scale operations. For the sake of consistency with the changed approach to large industrial operators, rail facilities should be treated in a similar manner.

- 7 Past examples of a development are not a precedent for a similar approval in the future, especially with the more recent changes to the PPS policies for land use compatibility.



It is important that the guidelines clearly state that historical precedents are not applicable when assessing land use compatibility matters relative to the Guidelines, particularly given the proposed expanded MSDs. The Guideline must also clarify whether intervening sensitive land uses create a justification for the introduction of a new sensitive use that is further away from the Major Facility.

8 Alternatives regardless of MTSA if abutting sensitive land use.

MTSAs that are constrained by Major Facilities may not be appropriate to meet all the density targets outlined in the A Place to Grow: Growth plan for the Greater Golden Horseshoe (Growth Plan) due to those constraints. As such, a clear statement should be provided in the Guidelines to clarify that MTSA density targets should be set and used in conjunction with addressing land use compatibility.

9 Not every development in a strategic growth area must include a sensitive land use.

The Guidelines should provide direction that high density transit supportive non-sensitive land uses can also be used. The Guidelines need to direct development that is directly abutting or in close proximity to higher class facilities to encourage that kind of development as a transitional land use.

10 In consideration of alternatives, the Guidelines need to give deference to tests that are more supportive of non-residential growth.

The current guideline does not make it clear that a demonstration of need should consider other land uses and the demographic/supply needs for employment/office/institutional/retail land uses. The Guidelines should give consideration to tests that are more supportive of non-residential growth when considering alternatives.

11 Accessory Dwellings in employment areas, (caretakers' units) should be prohibited and should not be considered as an appropriate rationale for to justify additional sensitive land uses.

Accessory dwelling units (caretakers' units) were discouraged in the previous D-6 Guidelines. CN has seen the permissions for these units as an argument to justify expanded and large-scale sensitive land uses. A statement that clearly states that accessory dwellings have been removed from uses that are allowed in employments areas and are not considered as an appropriate rationale for more sensitive land uses, should be included in the Guidelines.

12 Limit or prohibit the intensification of new and existing sensitive uses in close proximity to a major facility, particularly higher classification facilities.

Under section 2.1.3 of the proposed Guideline, the policy does not make it clear that there are certain locations where a sensitive land uses may be too close to a major facility and should be strongly discouraged, particularly higher classification facilities. Furthermore, this section should clearly reference and make clear that the entirety of the PPS policy test in Section 1.2.6 must be

satisfied. The Guideline should provide a clear statement that new sensitive land uses, regardless of policy context, are strongly discouraged adjacent to or within close proximity of higher classification major facilities.

13 Clear statement of applicable guidelines.

A clear statement is required that only Guidelines outlined by the regulatory authority or by the MECP are appropriate to utilize.

14 The closer the development is to the Major Facility, the more alternatives should be assessed.

The Guideline should provide a clear statement that for every 25% reduction in the MSD from a higher classification (i.e. Class 3 or higher) major facility, an additional alternative site must be considered. For example, if the MSD is 500 metres, and the development is proposed within 250 metres an additional 2 sites would need to be reviewed as a minimum. This would ensure that there is a higher threshold for consideration near alternative sites. As currently proposed, there is no difference in the level of effort between a development that is 498 metres away from a Major Facility and a development that is 2 metres away from a Major Facility.

15 Eliminate as of right zoning that is incompatible with Major Facilities and update Official Plans where land use designations are incompatible with Major Facilities, unless land use compatibility has been assessed.

Guidelines should clearly state that incompatible as-of-right zoning and Official Plan policies should be eliminated. In order to update the zoning by-law and Official Plan, a land use compatibility study should be completed. If the result is that it is incompatible, then the land must be re-zoned and re-designated appropriately. Municipalities are generally reluctant to create legal non-conforming land uses; however, this must be considered where appropriate by the municipality.

16 Class 4 in the site-specific Official Plan Amendment and/or Zoning By-law Amendment.

The Guideline should provide clarification with respect to the NPC-300 Class 4 designation in Official Plan Amendments and/or Zoning By-law Amendments. Major facilities may have no notice or knowledge that a Class 4 designation has been considered, determined, or advised. The Guidelines should provide clarification regarding Class 4 designations which should be included through approval documents, not through council resolution.

17 Developments that predate the Guidelines and PPS are not an appropriate comparable for new developments that must meet the new Guidelines and PPS. Previous approvals within an old AOI/MSD is not a rationale or basis for new developments in the same vicinity.

The Guideline should provide a clear statement that developments which predate the implementation of the updated Guidelines and PPS (2020) are not an appropriate comparable for the new development which must adhere to the updated regulations. Previous approvals within an old AOI/MSD are not appropriate rationale or basis for new developments within that new AOI/MSD.



18 What is a strategic growth area?

The Guideline should provide a clear definition of what is a strategic growth area. Furthermore, the Guidelines need to provide direction that Strategic Growth Areas are higher level growth areas (such as the Downtown area, Major Transit Station Areas, and areas with significant infrastructure investment), and not every underutilized site that could be redeveloped. Particularly outside of strategic growth areas, stronger consideration needs to be given to non-sensitive land uses as part of intensification. A balance is needed between major facilities and sensitive land uses. The Guidelines should clarify how to differentiate a strategic growth area versus a general node or corridor. One way this could be differentiated is at the upper tier level of a given municipality.

We thank you in advance for your review and consideration of these comments on behalf of CN Rail. We are available for further discussion as the province moves to finalize the guidelines.

Yours sincerely,

A handwritten signature in black ink that reads "C. B. John-Baptiste".

Chad B. John-Baptiste, MCIP, RPP
Director, Planning - Ontario
Planning, Landscape Architecture and Urban Design

Cc: Eric Harvey, CN Rail
Katarzyna Sliwa, Dentons

Attachments:

Appendix A – Detailed Comments Table



APPENDIX A – DETAILED COMMENT TABLE

Section/Page Number	Comment	Suggested Revision	Suggested Wording (Original Text in Black, proposed changes in Red or strikeout).
Disclaimer (Page ii, First Paragraph)	Reference to technical documents.	It is not clear that the Federation of Canadian Municipalities and Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations (FCM-RAC Guidelines) are a technical document. Suggest a clear reference to the documents in Appendix K.	Terms in italics throughout this document are defined terms and a glossary can be found in Appendix G. Additional Reference documents that are used to provide further support and direction are outlined in Appendix K.
Section 1.1 Overview (Page 2, 3 rd Paragraph)	The first sentence of the 3 rd paragraph focuses solely on the noise, dust and odour guidelines for completing compatibility studies. As such it is not clear if the documents in Appendix K should also be consulted as part of completing a land use compatibility study.	Provide a clear statement that the documents in Appendix K should also be reviewed and assessed as part of a Land Use Compatibility Study.	The Guideline acts in concert with provincial noise, dust and odour guidelines, standards and procedures, and refers to these technical guidelines for further direction on undertaking compatibility studies, assessments and modelling. The Guideline provides context on how land use compatibility is achieved through Ontario’s land use planning process and the Environmental Protection Act (EPA) and regulations. It should also be used to inform Environmental Assessment (EA) processes carried out under the Environmental Assessment Act (EAA) and for compliance considerations. Additional guidance material that support this document are outlined in Appendix K, this material needs to be considered in conjunction with this Guideline.



<p>Section 1.1 Overview (Page 2, 5th Paragraph)</p>	<p>It is not clear whether this guideline should be consulted as part of Official Plan Reviews/Municipal Comprehensive Reviews</p>	<p>Provide a clear statement that as part of Official Plan Reviews and Municipal Comprehensive Reviews municipalities need to either a) complete a land use compatibility assessment per the guidelines or b) make a clear statement that such an assessment was not completed and do not designate lands for a sensitive land use in vicinity of a major facility until it has been completed.</p>	<p>The Guideline will also be applied when municipalities are incorporating land use compatibility policies and principles into various land use planning tools under the Planning Act and other legislation. This includes as part of preparing Official Plan Reviews, Municipal Comprehensive Reviews and Zoning By-law updates.</p>
<p>Section 1.1 Overview (Page 3, 1st Paragraph, 2nd bullet) and Appendix G – Major Facility (pg 101)</p>	<p>It is not clear that the reference to planned major facilities includes consideration to a reasonable future expansion of an existing major facility or the ultimate operation of the facility if the facility is not operating at full capacity.</p>	<p>Provide a clear statement that a “planned” major facility includes assessment of as-of-right zoning of an existing facility. In addition, in the case of facilities of federal jurisdiction that are not subject to zoning, consideration needs to be given to the reasonable expansion of a major facilities operations and the ultimate operation for such facilities.</p>	<p>Major Facilities(y): facilities which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities (PPS). Planned Major Facilities includes an assessment of the Official Plan, as-of-right zoning and existing ECAs. For Major Facilities that are not provincially regulated and/or subject to zoning, Planned Major Facilities means the ultimate future operations of the major facility relative to its regulatory framework.</p>

<p>Section 1.1 Overview (Page 3, Paragraphs 2 to 5)</p>	<p>It is not clear that the Appendices are part of the guideline, furthermore it is not clear that land use compatibility studies need to incorporate guidance from other technical studies referenced in Appendix K. As an example, the FCM-RAC Guidelines for Rail should not be viewed as a “helpful reference” but as a guideline that should be adhered to in similar manner as the Land Use Compatibility Guidelines. The Canadian Transportation Agency has issued decisions that point to this document in that manner.</p>	<p>A clear statement that Parts A through C and the Appendices are part of the guideline. Furthermore, a clear statement that to complete a land use compatibility study that the technical documents in Appendix K also need to be incorporated, as applicable.</p>	<p>The Appendices provide additional detail on relevant policies, completing assessments supporting compatibility studies, specific sectors, and planning for land use compatibility for landfills and dumps. The material in these Appendices are required to be reviewed and considered as part of implementing this guideline. Separate from this sector specific guidance, they also include a glossary, abbreviations, case studies and helpful references.</p>
<p>Section 1.2 General Approach to Planning for Land Use Compatibility (Page 4, 1st Paragraph)</p>	<p>The guidelines make reference to public health and safety.</p>	<p>A clear statement is required that unless specifically stated by the MECP that a risk-based approach is not appropriate for assessing adverse effects.</p>	<p>See proposed change to Section 4.2.3</p>
<p>Section 1.2 General Approach to Planning for Land Use Compatibility (Page 4, 2nd Paragraph)</p>	<p>The guidelines contain direction for addressing impacts early in the land use planning process. However, the guidelines are not clear as to how to address lands that are already designated in Official Plans or zoned for sensitive land uses that currently conflict with the guidelines. As an example, CN has seen the rationale for the introduction of larger scale sensitive land uses where lands are zoned for a smaller sensitive land use (i.e. a single caretaker dwelling) that have not been and are not anticipated to be developed for a sensitive land use.</p>	<p>A clear statement regarding how to approach lands that are already designated and/or zoned for sensitive land uses that are potentially in conflict with existing major facilities is needed. Approaches could include direction to redesignate or rezone lands to remove (or at the very least to not expand) sensitive land use permissions not consistent with the guidelines particularly where such uses are not reasonably likely to occur.</p>	<p>Consideration of these potential impacts early in the land use planning process, before new land uses are approved, provides opportunities to prevent conflicts. This Guideline contains direction for planning authorities to address land use compatibility through official plan policies and procedures, planning tools and proponent-driven planning applications. In addition, it is important that Planning Authorities look to update their planning tools to ensure that they comply with these guidelines, including removing inappropriate land use permissions relative to the guidelines.</p>

<p>Section 1.3 Guiding Hierarchy for Land Use Compatibility Planning (Page 4, 4th Paragraph)</p>	<p>The guidance hierarchy is helpful as an overarching objective. However, it does not make it clear that there are circumstances where a sensitive land use maybe too close to certain major facilities. Particularly where you have higher Class facilities (i.e. Class 3 and up) and sensitive land uses directly abutting the facility. The railways have seen several examples of where sensitive uses are proposed directly adjacent to freight railyards. The land use and planning process must sufficiently protect the industry on the one side and public on the other side from such conflicting uses.</p>	<p>A clear statement that for higher class major facilities that a sensitive land use should not be located directly abutting each other even in strategic growth areas and that consideration should be given to alternative land uses.</p>	<p>Separation of incompatible land uses is the preferred approach to avoiding land use compatibility issues. In many situations, including in relation to proposals for greenfield development and proposals outside of settlement areas, it is expected that separation can be achieved. Doing this would be consistent with achieving policy 1.1.5.6 of the PPS, which indicates that opportunities should be retained to locate new or expanding land uses that require separation from other uses. When avoidance (i.e. separation) alone is not possible, minimizing and mitigating potential impacts may provide a basis for a proposal. If minimization and mitigation of impacts is not viable, the proposed incompatible land use should not be enabled, and related planning or development applications should not be approved (regardless of whether the development is located within a strategic growth area). Planning authorities, proponents (e.g. developers of sensitive land uses and major facility owners) and the surrounding community should work together to achieve land use compatibility.</p>
<p>Section 1.3 Guiding Hierarchy for Land Use Compatibility Planning (Page 5, Figure 1, Section 1 – 3rd bullet)</p>	<p>Appropriate transition areas between major facilities and sensitive land uses can even occur within Strategic Growth Areas to appropriately address avoidance. This is not clearly stated in the guidelines</p>	<p>A clear statement that even within strategic growth areas that transition areas with land uses that act as a buffer between the major facility and sensitive land use is appropriate.</p>	<p>Designate appropriate transition areas between major facilities and sensitive land uses (such as an area where heavy industrial is buffered by lighter industrial, and subsequently may be buffered by commercial or office uses including within strategic growth areas).</p>
<p>Section 1.3 Guiding Hierarchy for Land Use Compatibility Planning (Page 5, Figure 1)</p>	<p>Figure 1 is inconsistent with respect to defined terms in the guidelines, as some terms are italicized, and some are not.</p>	<p>Update Figure 1 to ensure all the defined terms such as adverse effects, separation distance and compatibility study are italicized.</p>	

<p>Section 1.3 Guiding Hierarchy for Land Use Compatibility Planning (Page 5, Figure 1, Section 3 – 2nd bullet)</p>	<p>The second bullet regarding the separation distance being maximized should also clearly state that this is also a requirement in strategic growth areas such as MTSAs. This does not conflict with the process to allow sensitive uses within the MSD, but reiterates such distances even within strategic growth areas should be maximized.</p>	<p>Provide a clear statement that separation distances should be maximized even within strategic growth areas.</p>	<p>Even with proposed mitigation, the separation distance should be maximized to minimize impacts, and should not be less than the MSD. Within strategic growth areas, where a reduced MSD is being considered, efforts to maximize the MSD within the context of the strategic growth area need to be considered.</p>
<p>Section 1.5.2 Applicability to Major Facilities (Page 9, 1st paragraph)</p>	<p>Overall this is a positive paragraph in relation to matters of federal jurisdiction and how they relate to the provincial land use approvals process. However, a missing component is the recognition that for certain federally regulated major facilities that they have their own guidelines that relate to land use compatibility. As an example, rail facilities, regulated under Federal legislation such as the Railway Safety Act and are assessed against the Canadian Transportation Agency Guidelines for Railway Noise. These guidelines make it clear that while they will consider provincial guidelines, they are not bound by them. Recognition of different approaches to noise and vibration mitigation is important.</p>	<p>A clear statement noting how federal facilities maybe subject to separate guidelines that need to be considered as part of a land use compatibility assessment. In the case of Rail see (1) Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration and also see (2) Railway Noise Measurement and Reporting Methodology.</p>	<p>With respect to federally-regulated facilities, such as airports, rail facilities, marine facilities, and oil and gas pipelines, this Guideline does not apply to locating these major facilities. Similarly, this Guideline does not apply to development on federal crown lands that are not subject to the Planning Act. However, planning authorities are required to apply this Guideline in relation to sensitive land uses proposed near these facilities that are subject to the Planning Act. Careful consideration must be given to the regulatory framework and guidelines that these facilities operate under to ensure that the PPS objective of protecting their long-term operations as a Major Facility in the province is met.</p>



<p>Section 1.5.3 Application under the Planning Act (Page 9, 3rd paragraph) and Appendix G – Major Facility (pg 101)</p>	<p>The definition of the word “planned” does not give consideration to land uses that are federally regulated and therefore not subject to Municipal Official Plans and Zoning By-laws such as federally regulated freight rail yards.</p> <p>CN has recently experienced examples where the planned operation of the facility was the subject of dispute by the proponent of a sensitive land use.</p>	<p>A clear statement that national infrastructure must be protected, and federally regulated facilities need to be assessed based upon the ultimate potential operations of the proposed facility in its current context and not just the current operations as it exists today.</p>	<p>“Planned” major facilities or sensitive land uses means that the land use is already designated in the local official plan (OP) and zoned in the local zoning by-law. Planned Major Facilities includes an assessment of the Official Plan, as-of-right zoning and existing ECAs. For Major Facilities that are not provincially regulated and/or subject to zoning, Planned Major Facilities means the ultimate future operations of the major facility relative to its regulatory framework.</p> <p>Appendix G - Definition</p> <p>Major Facilities(y): facilities which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities (PPS). Planned Major Facilities includes an assessment of the as-of-right zoning and existing ECAs. For Major Facilities that are not provincially regulated and/or subject to zoning, Planned Major Facilities means the ultimate future operations of the major facility relative to its regulatory framework.</p>
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<p>Section 1.5.3 Application under the Planning Act (Page 9, 3rd and 5th paragraph)</p>	<p>While the guideline infers that regardless of the designation or zoning for the subject site in order to meet provincial policy regarding land use compatibility this guideline applies, some added clarity could be considered. As an example, a site that is designated and/or zoned for a mix of uses that includes sensitive land uses and non-sensitive land uses must still meet the guideline regardless of when that designation/zoning occurred.</p>	<p>A clear statement and an example clarifying that were a site has either a mixed use designation or a mixed use zoning that when a planning approval is required a land use compatibility study needs to be completed. In addition a clear statement that an appropriate mitigation approach would be to not implement the sensitive land use despite the land having as-of-right zoning for a sensitive land use.</p>	<p>The Guideline also applies in situations where the use of the land is not changing, but the nature and/or intensity of the land use is, and an application under the Planning Act is required. Some examples are below:</p> <ol style="list-style-type: none"> 1), a six-storey residential building being replaced by a twenty-storey residential building within the same parcel can trigger this Guideline, if an approval under the Planning Act is required. 2) It also applies in situations where there is a new use proposed for an existing building and an application under the Planning Act is required. For example, a new residential use may be proposed for a building that is currently used for commercial purposes, which would lead to a situation of potential incompatibility if the building is located within an industrial and commercial employment area. 3) It also applies in situations where a site has mixed use zoning that allows for sensitive and non-sensitive land uses (i.e. commercial and residential) and an application is required under the Planning Act. For example, a new residential use may not be appropriate due to impacts on the major facility and the as-of-right commercial use should be pursued.
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<p>Section 1.5.4 Application under other Legislation (Page 10)</p>	<p>As noted elsewhere in the guidelines, federal jurisdiction also needs to be considered but it is not referenced here. As an example, railways are regulated by federal legislation and have broad discretion to modify and/or increase the scale of their operations without additional approval. Furthermore, the test for impacts is different than under provincial standards. In addition CN is mandated by legislation to transport freight, including dangerous goods</p>	<p>A clear statement regarding federal legislation that is applicable such as the Canada Transportation Act and the Railway Safety Act. Suggest a reference to Appendix K recognizing expanded discussion on rail and other federal jurisdiction as appropriate.</p>	<p>New Paragraph: As noted elsewhere in this guideline, not all major facilities are provincially regulated. Federally regulated facilities operate under a federal regulatory framework and associated guidelines. The Guideline applies to proposed sensitive land uses that are within the AOI/MSD of federally regulated facilities. Contact should be made with the operator of the Major Facility and review of all the applicable governing legislation and guidelines when considering land use compatibility.</p>
<p>Section 1.6.1 Planning Authorities (Page 11, 2nd Paragraph)</p>	<p>The Guidelines are not clear that the entirety of the test in Section 1.2.6.2 of the PPS must be met for a development to be approved (i.e. this PPS policy uses “and” which is ignored at times). As such, one could argue that while there are reasonable alternatives available, the overall application is consistent with the PPS.</p>	<p>A clear statement that all the policies of Section 1.2.6.2 must be satisfied for development to be approved.</p>	<p>Planning authorities must not approve development proposals where there are irreconcilable incompatibilities (i.e. adverse effects with no feasible required mitigation measures). Land use planning decisions that result in incompatibility may create ongoing issues for all parties, including municipalities, to address noise and odour complaints and other impacts. For further clarity, all policy requirements of Section 1.2.6.2 of the PPS must be satisfied for a development to be approved.</p>
<p>Section 1.6.1 Planning Authorities (Page 11, 3rd Paragraph) and Appendix G</p>	<p>The term feasible is an important aspect of the guidelines and is not clearly defined</p>	<p>A clear statement regarding how feasibility is determined in a land use planning context.</p>	<p>. . . (i.e. adverse effects with no feasible [as defined] required mitigation measures) . . .</p> <p>New Definition in Glossary: Feasible: Capable of being done or possible to do easily or conveniently, including an economic consideration in the context of the development proposal. It is not only possible, but realistic and practical. Capable of being used or dealt with successfully</p>

<p>Section 1.6.1 Planning Authorities (Page 11, 5th Paragraph and Table 4)</p>	<p>While the proposed guidelines provide direction regarding how to incorporate major facilities into Official Plans. This was similar to the D-series Guidelines, yet was not implemented by many municipalities. As an example, CN has been involved in hearings where regional and local Official Plans did not clearly identify the freight rail yard facility.</p>	<p>A clear statement that Official Plans and Zoning By-laws must be updated to prohibit sensitive land uses in the MSD as a default position.</p> <p>A clear statement that the default position in an Official Plan and Zoning By-law is that a sensitive land use should be prohibited directly abutting major facilities in addition to policies that speak to prohibiting sensitive land uses if they cannot be mitigated.</p>	<p>Planning authorities also undertake planning exercises which must address land use compatibility, such as comprehensive reviews of OPs, development of secondary plans and reviews of zoning by-laws. To address land use compatibility, OP policies and land use designations, requirements for supporting documentation for development applications, and zoning by-laws must be up to date and in accordance with the Guideline. As an example, within the MSD OPs and Zoning By-laws should prohibit sensitive land uses. See Table 4 for more details and instruction on how planning documents can incorporate the Guideline.</p>
<p>Section 1.6.2 Proponents of Major Facilities and Sensitive Land Uses (Page 12, Paragraph 4)</p>	<p>This paragraph references the importance of pre-consultation and references the need to explore alternatives if necessary. However, this section is not clear that assessing alternatives is only required for the sensitive land use.</p>	<p>A clear statement that assessing alternatives is only required for the sensitive land use.</p>	<p>Pre-consultation with planning authorities is highly encouraged when planning for a new development, to identify potential constraints with respect to potential impacts to major facilities and sensitive land uses, explore alternative locations if necessary when sensitive land uses are proposed, and ensure all necessary studies are completed to inform planning decisions. Proponents can request pre-consultation and municipalities are required to agree to pre-consultation upon request under the Planning Act.</p>

<p>Section 1.6.3 Existing Sensitive Land Uses and Major Facility Owners/Operators (Page 13, Paragraph 3)</p>	<p>As part of sharing information regarding the major facility, clear direction needs to be provided regarding what information is needed to be shared.</p>	<p>A clear statement that such information should consider the ultimate operation of the facility if the facility is not currently operating at full capacity. In addition, such a statement should note that this is in addition to considering the as-of-right zoning/permitted ultimate operations of the existing facility.</p>	<p>Major facilities are encouraged to share information that may lead to the completion of land use compatibility studies and other reports that may be needed, provided appropriate privacy considerations are met. Ensuring compatibility studies are based on the best and current information will help to ensure potential compatibility issues are avoided in the future. The information the Major Facility should provide includes the ultimate operation of the facility, including planned expansions and/or operation changes within the as-of-right zoning, current ECA approvals, and other regulations. Where facilities do not provide this information, proponents of the sensitive land use should make conservative estimates.</p>
<p>Section 1.7.2 Provincial Policy Statement (PPS)</p>	<p>This section of the document outlines the PPS policies and requirements relative to land use compatibility. However, while generally understood, it is not clearly stated that all 4 subsections of section 1.2.6.2 must be satisfied in order for a sensitive land use to be approved near a Major Facility (i.e. the word “and” is clearly used in this policy). We state this point as the previous PPS policy focussed solely on mitigation and many professionals and some Planning Authorities still view mitigation as the solely policy hurdle.</p>	<p>A clear statement that the PPS policies have been changed and strengthened in addition to a clear statement that reinforces that all 4 subsections of 1.2.6.2 must be treated equally and that failure to meet one means that development should not proceed.</p>	<p>PPS policies 1.2.6.1 and 1.2.6.2 have been strengthened and 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. For further clarity, all 4 Subsections of 1.2.6.2 must be met to allow a sensitive land use to proceed within the AOI of a Major Facility.</p>

<p>Section 1.8 Environmental Legislation and Permissions (Page 15)</p>	<p>This section makes no reference to federal legislation and permissions including permissions that are existing for federally regulated land uses. As an example, the majority of CNs operations in freight railyards are federally regulated and not provincially regulated.</p>	<p>A clear statement regarding federal permissions related to land use compatibility.</p>	<p>The following sections provide background on other provincial legislation and permissions related to land use compatibility. More information on environmental permissions can be found on the Ministry’s website at https://www.ontario.ca/page/environmental-permissions. For federally regulated industries, please review the appropriate federal legislation and guidelines (see Appendix K).</p>
<p>Section 2.1.1 Area of Influence (page 20)</p>	<p>The separation distance used should be sufficient to permit the functioning of the two potentially incompatible land uses without an adverse effect to the sensitive land use or potential impacts to major facilities.</p>	<p>It should be noted that separation distance alone may not be sufficient. In addition to separation distance, all applicable technical guidelines, such as NPC-300 need to be met.</p>	<p>The separation distance used should be sufficient to permit the functioning of the two potentially incompatible land uses without an adverse effect to the sensitive land use or potential impacts to major facilities. Separation distance alone may not be sufficient. In addition to separation distance, all applicable technical guidelines, such as NPC-300, need to be met.</p>
<p>Section 2.1.2 Planning Authority-Determined Alternate AOIs (Page 21, 4th paragraph)</p>	<p>This section allows for municipalities to develop alternative AOIs. The statement at the end of the section that the alternative AOI must never be smaller than the MSD is important. We note that it should be clear that this MSD requirement also applies in policy areas where intensification is proposed. In addition, there is no reference to direct communication with the operators of the major facility as part of developing alternative AOIs.</p>	<p>A clear statement that the alternate AOI must never be smaller than the MSD even in areas where the intensification of sensitive land uses is targeted. A clear statement that major facilities need to be directly contacted during the determination of alternative AOIs.</p>	<p>. . . . The alternate AOI must never be smaller than the MSD in the Guideline including in strategic growth areas (see Section 2.1.3)</p>

<p>Section 2.1.3 Minimum Separation Distances (Page 22)</p>	<p>This section does not make it clear that there are certain points where regardless of policy context there are certain locations where a sensitive land may be too close to a major facility and should be strongly discouraged, particularly higher classification facilities. Furthermore, this section does not make it clear that the entirety of the PPS policy test in Section 1.2.6 must be satisfied in order for development to be approved.</p>	<p>A clear statement that new sensitive land uses, regardless of policy context, are strongly discouraged adjacent to or within close proximity of higher classification major facilities.</p>	<p>New Paragraph: As a general principle, a new sensitive land use directly adjacent to or within close proximity of a Major Facility is strongly discouraged including within strategic growth areas. Consideration should turn to non-sensitive land uses such as a mix of office and commercial uses as appropriate.</p>
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<p>Section 2.2 How to classify a Major Facility with an Assigned AOI and MSD (Page 22 and Table 1)</p>	<p>It is noted that freight rail facilities are not specifically listed with an AOI and MSD despite the work completed as part of the FCM-RAC Guidelines. The FCM-RAC Guidelines for freight rail yards reference an MSD of 300 m and an AOI of 1,000 m, which is consistent with the Class 3 provisions in the D-Series Guidelines, but does not directly match the proposed MSD/AOIs. We note that in these proposed guidelines, the MECP is proposing to increase these MSDs for large-scale operations. For the sake of consistency with the changed approach to large industrial operators, rail facilities should be treated in a similar manner.</p> <p>It also noted that in CNs experience, due to the occasional intermittent operation of some freight facilities (i.e. only when trains are operating) in using the previous D-series guidelines, proponents have argued that freight rail facilities are considered to be a lower classification facility. This is despite the fact that there are few limitations on how freight rail yards can operate and as such the operation can change with no or limited approval. For the same reasons, there are certain facilities (i.e. MacMillan Yard in Vaughan) where greater setbacks would be appropriate from aspects of the site operations.</p> <p>In addition, the public does not recognize that commuter rail facilities, such as Union Station are different then freight rail facilities. Furthermore, not everyone recognizes that freight rail yards are stationary sources, not transportation sources.</p>	<p>A clear statement that a freight rail yard is considered as at a minimum a Class 3 facility, and larger scale facilities should be treated in similar manner to other larger industrial operations per the proposed guidelines.</p>	<p><u>New Line in Table 1</u></p> <p>Select Major Facility: Freight Rail Facilities</p> <p>Description of Major Facility: Freight Rail Yard, Intermodal Yard, Shunting Yard</p> <p>AOI & Class: Case-By-Case. Minimum Class 3</p> <p>Minimum Separation Distance: Case-By-Case. Minimum 300 m</p>
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<p>Section 2.3 How to Classify a Major Facility with No Facility-Specific AOI and MSD (Subsection 1, Page 25)</p>	<p>In consideration of classifying a Major Facility, discussions with the planning authority may not appropriately capture the uses permitted or operations of a facility. As an example, federally regulated facilities are not subject to local zoning-by-laws.</p>	<p>A clear statement that discussions need to occur for federally regulated facilities with the appropriate authorities and facility operator.</p>	<p>. . . . If a sensitive land use is being proposed or planned, particularly relative to a planned employment area, the planning authority should be consulted to advise on specific types of uses permitted under local zoning-by-laws and future development plans. Where zoning by-laws are not applicable to the Major Facility, contact the facility operator . . .</p> <p>. . .</p>
<p>Section 2.3 How to Classify a Major Facility with No Facility-Specific AOI and MSD (Subsection 2, Page 26)</p>	<p>At the end of subsection 2, there is a note that adverse effects should only be assessed from day-to-day operations. This reference is concerning to CN as there is a risk that it can be misinterpreted with respect to derailments. Regular train travel as part of day-to-day operations has a risk of derailment. CN has seen recent examples where proponents have argued that for new developments within the area of impact from a derailment <u>no crash wall</u> should be constructed.</p>	<p>A clear statement that this note does not apply when considering train derailments.</p>	<p>Note, the level of adverse effects anticipated should only be assessed from day-to-day operations, not from emergency situations or spills. The adverse effects from train derailments are considered to be from day-to-day operations.</p>

<p>Section 2.6 Compatibility Studies (page 31, 5th paragraph)</p>	<p>While this section does reference the need to reach out to Major Facility operators and the need to make conservative estimates regarding facility operation. It does not clearly state why that is necessary. It is our opinion that the objective of such assumptions and communication efforts is to determine the ultimate operations of the facility to appropriately assess impacts. This is particularly the case where the PPS specifically references the long-term protection of employment areas.</p>	<p>A clear statement that one of the objectives of the Compatibility Study is to assess the ultimate and/or long term operational plans of the major facility to ensure that those operations can be mitigated and not simply focus on the current operations.</p>	<p>Proponents should also carry out pre-consultation with the planning authority to discuss the application and compatibility study requirements, including potential impacts to be considered and potential information sources. Proponents must also share information and contact major facilities or sensitive land uses (depending on the proposal) based on the AOI to inform the compatibility study. Contacting Major Facilities is important to understand the long-term operational plans of the facility to ensure that the PPS policies such as 1.3.2.1, that seek to protect and preserve the employment area for current and future needs, are considered. Information sharing, engagement and consultation is discussed in Appendix C.</p>
<p>Section 2.7 General Documentation in Compatibility Studies (Page 32, Section iii)</p>	<p>While it is important to review relevant OP and zoning by-laws for properties, certain uses and operations are not subject to provincial land use controls. Examples include federally regulated freight rail yards.</p>	<p>A clear statement that in addition to reviewing provincial land use information, federally regulated facilities need to be separately assessed to indicate the full range of permitted uses.</p>	<p>Relevant excerpts from the OP and/or zoning by-law for properties in the study area, including vacant property designations or zoning, to indicate the full range of permitted uses and enable a complete assessment of potential impacts. Note that not all facilities (i.e. federally regulated) are subject to provincial and municipal regulations. As such additional review of federally regulated uses is needed.</p>
<p>Section 2.7 General Documentation in Compatibility Studies (Page 32, Section ii)</p>	<p>The definition of the term “planned” as it relates to major facilities is not clear. This is particularly important where the PPS contemplates the long-term protection of employment facilities. CN interprets this to be the ultimate potential operation of the facility.</p>	<p>A clear statement that “planned” major facilities include the reasonable expansion of such a facility and the long-term operations of the facility,</p>	<p>See previous comments re. the definition of “planned” major facilities</p>

<p>Section 2.7 General Documentation in Compatibility Studies (Page 33 and 34, Section vi)</p>	<p>1st bullet: The consideration of other adverse effects beyond noise, dust and odour have not been considered despite the definition of adverse effects being broader. CN has heard argument that derailments were not considered an adverse effect that needed to be mitigated.</p> <p>2nd bullet: The definition of possible operational impacts is not clear. CN has experienced that impacts on their operations from potential future complaints, where the resolution of the complaints would limit the operation of the facility are not appropriately considered.</p>	<p>A clear statement regarding what is considered as adverse effects and impacts can be broader than noise, dust and odour as they are relative to the definition of adverse effects and the major facility.</p> <p>A clear statement that possible operational impacts can include potential restrictions on existing and planned future operations along with added costs.</p>	<p>1st bullet: how the potential adverse effects may impact sensitive land uses within its AOI informed by required technical assessments that are relevant to the Major Facility and assess all adverse effects as defined (Appendix B provides specific guidance to assess noise, dust and odour impacts; Appendix K considers other Major Facilities); and</p> <p>2nd bullet: possible operational impacts (e.g. ability to expand physically and/or operationally, change in operations within the existing approvals) on existing or planned major facilities, where applicable</p>
<p>Section 2.7 General Documentation in Compatibility Studies (Page 33, Section ix, 3rd bullet)</p>	<p>The conclusion section includes a reference that the land use compatibility study should include a separation distance without mitigation measures as well as the separation distance with mitigation measures. This is important and there needs to be a clear statement that this assessment needs to take place regardless of policy context.</p>	<p>A clear statement that this assessment needs to be completed for each adverse effect or impact (i.e. Noise, Dust, Odour) and regardless of policy context.</p>	<p>A proposed separation distance from the proposed use to the major facilities or sensitive land uses within the study area, whichever is applicable, and within which adverse effects or impacts would not be expected. This should be provided both without mitigation measures and, if any are necessary, with proposed mitigation measures implemented. This should be provided regardless of the land use planning policy context such as whether or not the Major Facility is within a strategic growth area.</p>

<p>Section 2.8 Demonstration of Need (Page 34, Section 1)</p>	<p>This section of the demonstration of need test gives deference to residential land uses and does not make it clear that a demonstration of need should consider other land uses and the demographic/supply needs for employment/office/institutional/retail land uses. As an example, the province is targeting significant employment growth including office growth, and many sites near higher classification facilities even in strategic growth areas can accommodate employment, office or retail growth as a buffer to the major facility. CN has been involved LPAT hearings where the argument was that in a strategic growth area every site must have a sensitive land use incorporated. A stand-alone development with a non-sensitive land use or a mix of non-sensitive land uses (for example an office building with retail) is appropriate within strategic growth areas, especially if directly abutting or in close proximity of the major facility. The land use compatibility guideline needs to make that statement.</p> <p>The final point is that strategic growth areas is not clearly defined. As currently worded, every underutilized development site could be considered as a strategic growth area. A balance needs to be considered in the implementation of these guidelines, including recognizing that some sites that have redevelopment potential may not be appropriate for growth of sensitive land uses.</p>	<p>A clear statement and added criteria that relate to assessing employment, office, retail and non-sensitive institutional land uses in Section 1 of the Demonstration of Need. Examples could include reference to reviewing employment, major office and retail land supply. Generally discouraging the redesignation of employment designation lands within strategic areas for sensitive land uses, particularly directly abutting or in close proximity of higher classification major facilities (i.e. Class 3 and higher). A clear statement that within strategic growth areas it is not unreasonable to have a parcel develop with stand alone or mixture of non-sensitive land uses (i.e. office, retail).</p> <p>In addition, a clear statement regarding employment conversions and avoiding employment conversions directly abutting major facilities even in strategic growth areas.</p>	<p>The planning authority must review the demonstration of need provided by the proponent and must be satisfied that the report is complete and with the analysis and conclusions presented. This includes an assessment of non-sensitive land uses and a fulsome justification why a non-sensitive land use needs to be located within the MSD. In respect of the demonstration of need, and in addition to the other compatibility tests associated with approving a proposal, the planning authority must only permit the proposal if they are satisfied that there is an identified need and sound planning rationale for the proposed use in that location, and that alternative locations or areas for the proposed use have been evaluated, that a non-sensitive use on the proposed site has been evaluated and there are no reasonable alternative locations or areas or non-sensitive land uses. It is noted that employment conversions or redesignations to a non-sensitive land use directly abutting a major facility is discouraged even in strategic growth areas as the preference is to provide a buffer of more appropriate land uses.</p> <p>1(a) Do policies and objectives in the planning authority’s applicable planning documents (such as OPs) and relevant provincial policies and plans (e.g. PPS, A Place to Grow) support locating the use in the proposed location? For example, consider policies/objectives related to complete communities, economic development, housing diversification, employment growth and community amenities</p>
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<p>Section 2.8 Demonstration of Need (Page 35, Section 2)</p>	<p>The reference to identifying other locations in the municipality can be clarified. By requiring sites that are designated <i>and zoned</i> for a certain use as the only alternative eliminates alternatives where a site is designated for the use but not zoned. As a general principle, if an applicant is prepared to go through one planning process at the site in question, it should be reasonable to go through that same process at the alternative site.</p> <p>As an example, if considering a sensitive land use proposal near a major facility but within an MTSA. The proposal may require a rezoning for the proposed site, but per this guideline does not require a rezoning be considered as a reasonable option for the alternative site. As such, a circumstance could exist where a developer was proposing a 10 storey apartment building but could argue that there are no other 10 storey apartment buildings zoned in the community when in fact there are multiple alternatives where lands are designated for the use but simply not zoned.</p>	<p>A clear statement that alternatives should only be based upon the designation of the land and not the zoning.</p> <p>In lieu of that, a clear statement that alternatives should consider the same level of application required as the development proposal subject to the land use compatibility study in addition to sites that are zoned. As an example, if the developer is proposing to rezone, then alternatives that require a rezoning are appropriate. If the developer is only considering a minor variance, then alternatives that require a minor variance are appropriate alternatives to consider etc.</p>	<p>Identify other locations in the municipality that have been designated and zoned specifically for this use and explain why they have not been chosen for the proposed use. For clarity, a reasonable alternative site maybe designated in the Official Plan but not zoned.</p> <p>Or</p> <p>The consideration of alternative locations for the development should be based on the same level or type of development application(s) as required for the development of the subject lands. As an example, if the applicant is proposing to rezone the site to allow for the sensitive land use, alternatives that require rezoning are appropriate. Similarly, for other types of development applications including for an Official Plan Amendment.</p>
<p>Section 2.8 Demonstration of Need (Page 35, Section 3)</p>	<p>This section outlines the amount of alternative locations to consider as part of the needs and alternatives test. However, it is noted that the level of effort does not change whether a site is only a few meters within an AOI/MSD or if a site is directly abutting a Major Facility. The test remains the same even though the impacts are clearly greater, and the assessment takes on more importance.</p>	<p>A clear statement that for every 25% reduction in the MSD from a higher classification (i.e. Class 3 or higher) major facility an additional alternative site must be considered. As an example, if the MSD is 500 metres, and the development is proposed within 250 m an additional 2 sites would need to be reviewed as a minimum. This would ensure that there is a higher threshold for consideration near alternative sites.</p>	

<p>Section 2.8 Demonstration of Need (Page 35, Section 4)</p>	<p>This section is an important component as the assessment of a compatible use should also be undertaken. However, the test for not selecting the alternative is not clear cut. This is important because as an example, office development, retail development and non-sensitive institutional development are all supported and encouraged within strategic growth areas by provincial policy. Selecting a sensitive use within the MSD over other uses needs to have strong justification.</p>	<p>A clear statement that the tests in Section 1 a) through e) also apply to assessing the potential use</p>	
<p>Section 2.8 Demonstration of Need (Page 35, Note)</p>	<p>The note with respect to ownership is important component of the guideline and needs to remain in the guideline and be strengthened. We have been involved in circumstances where the approval authority has questioned whether ownership should be a factor in the alternatives test.</p>	<p>A clear statement that ownership is not factor is applicable as part of planning processes initiated by the municipality and those of a private applicant in all circumstances. Furthermore, a statement that the rationale for ownership not being a factor is to ensure that broader planning policies and land use objectives are considered to protect the employment use in the majority of circumstances.</p>	<p>Note: unless the proposal relates to an expansion of an existing use, current ownership of property is not a factor that should be considered within the demonstration of need. This applies to all planning processes initiated by the municipality or a private applicant. The rationale is to ensure that land use planning policies and objectives are considered on a community wide basis to protect the major facility, and the public, to the greatest extent possible.</p>

<p>Section 3 Mitigation (Page 37, Para 1)</p>	<p>This section discusses the different types of mitigation. However, it does not make it clear that in consideration of policy 1.2.6.2 of the PPS, that this relates to subsections c and d. The concern is that applicants will simply default to “if mitigation can occur then the sensitive land use meets the provincial policy land use compatibility policy test.”</p>	<p>A clear statement that when introducing sensitive land uses that policy 1.2.6.2 a and b needs to be considered and that mitigation referenced here is considered for 1.2.6.2 c and d.</p>	<p>Avoidance, through separation of land uses, is the preferred approach to prevent land use compatibility issues and must be used wherever possible to avoid land use compatibility impacts. In many situations, including most greenfield development and outside settlement area situations, it is expected that separation can be achieved. As per policy 1.2.6.1 of the PPS, where avoidance is not possible, and potential impacts are minimized as much as possible through separation, mitigation measures for adverse effects will be needed in order for a proposed development to go forward. Furthermore, as per policy 1.2.6.2, in addition to addressing subsections a and b, mitigation measures need to be reviewed per subsections c and d. Mitigation measures are methods that can be used to prevent adverse effects arising from a major facility after separation has been maximized.</p>
<p>Section 3 Mitigation (Page 37, Para 4)</p>	<p>It is noted that there are other jurisdictional requirements that may also require consideration, an example includes federal requirements for certain facilities</p>		<p>It is the proponent’s responsibility to demonstrate the effectiveness of any proposed mitigation measure to the satisfaction of the planning authority. Planning authorities should also ensure that any mitigation measures put in place are in compliance with provincial requirements and/or other jurisdictional requirements (i.e. federal).</p>

<p>Section 3.3 At-Receptor Mitigation (page 39)</p>	<p>There is confusion here regarding mitigation that is permitted to address stationary sources vs transportation sources.</p>	<p>Reference to “triple glazed window” needs to be deleted.</p>	<p>fixed/inoperable windows are only permitted for commercial/institutional receptors as defined in NPC-300</p> <p>However, at-receptor mitigation is recognized by the Ministry as mitigation for noise only in the ECA application review process if the area is designated as Class 4” under NPC-300. It should be noted that upgraded architectural components such as windows and exterior walls are not permitted at-receptor mitigation to mitigate stationary sources.</p>
<p>Section 3.4 Buffers (Page 37, Para 4)</p>	<p>It is appropriate to clarify that crash walls are a reasonable form of buffers.</p>		<p>Examples of buffers include: • fences and walls (including crash walls);</p>

<p>Section 3.6 Effectiveness and Limitations of Mitigation Measures (Page 40)</p>	<p>It is not appropriate for the mitigation to be limited to only the “current” major facility. It must also be appropriate to the future or ultimate operations of the major facility on the subject site. Limiting mitigation to only the “current” operations of the major facility effectively limits potential expansion of the facility within its as-of-right zoning or for uses not subject to zoning (i.e. federally regulated freight rail yards) its operational potential.</p> <p>As an example, the current operations of the facility does not reflect its ultimate operations based on the facility design, taking into account zoning (where applicable) and other operational/jurisdictional requirements. As a simple example, when municipalities require noise studies for major roadways, it is based on the ultimate operation of the road (i.e. 6 lanes of traffic) even if the road is currently smaller.</p>	<p>A clear statement that effectiveness and limitations are specific to the ultimate operations of the current major facility. Furthermore a clear statement that the intent is to ensure that the major facility can continue to operate/expand within its as-of-right zoning and/or operational potential/constraints.</p>	<p>Mitigation measures are specific to the ultimate potential (i.e. as-of-right zoning and/or operation potential) of the current major facility and sensitive land use, and are to be based on the facility’s current and ultimate scale and design, and the duration, frequency and the type of discharges/impacts.</p> <p>To be effective, the mitigation measure should be appropriately designed, constructed and maintained, bearing in mind the overall intended purpose. The measure should permit the normal functioning of the two incompatible land uses without conflict based on the current operations and the ultimate operations of the major facility per its current approvals or jurisdictional requirements.</p>
<p>Section 3.7 Requirements for Mitigation (Para 3)</p>	<p>While the guidelines correctly note that a new ECA for a major facility cannot be assumed. In a similar manner for uses that are not subject to an ECA, such as federally regulated uses, that such facilities will modify their operations beyond their own jurisdictional requirements.</p>	<p>A clear statement regarding mitigation measure requirements when an ECA is not required for the major facility.</p>	<p>. . . Note that the use of a subsequent ECA as a mechanism for mitigation would only apply in relation to a proposal for a major facility and to require at-source mitigation implemented by a major facility subject to an ECA. A new or amended ECA cannot be assumed in relation to a planning approval for a new sensitive land use. Where a major facility does not require an ECA to operate (i.e. federally regulated facilities), mitigation measures need to be based on the ultimate potential operation of the facility in discussion with the Major Facility.</p>

<p>Section 3.8 Compliance (Page 42 and 43)</p>	<p>The compliance provision outlines the MECPs role in addressing complains and compliance with respect to Major Facilities under its jurisdiction. The section notes that a potential outcome where the Major Facility is operating appropriately is that a sensitive land use may have to exist with minor impacts from the facility. What this section does not clearly state is that such an outcome is not preferred. As such, the guideline leaves it open that this maybe an appropriate outcome and as such Planning Authorities may choose to accept minor impacts as a result. There is particular concern that this may lead to approvals that perpetuate diversity and equity concerns within the land use planning process by creating areas of communities that are stigmatized not as a result of the major facility operating inappropriately but as a result of the Planning Authority approving the sensitive land use.</p>	<p>A clear statement that while co-existing with minor impacts maybe the end result of a compliance process that it is not preferred. This reiterates the importance of the land use compatibility tests, including the avoidance and alternatives tests.</p>	<p>. . . This may result in a situation where the sensitive land use has to co-exist with minor impacts from the major facility over the long-term and subsequent complaints about adverse effects (e.g. noise, dust and odour) may be directed to the municipality. While this maybe the end result, the intent of this guideline is to avoid compliance issues from the outset as adverse effects have the potential to stigmatize communities. As a result, this reiterates the importance of the land use compatibility policies in the PPS, including the fulsome consideration of the alternatives test.</p>
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<p>Section 4.1 Planning Tools (Page 45, 2nd para)</p>	<p>This section as a general point provides a good overview of ensuring that land use compatibility is considered and implemented during the appropriate stage of the land use planning process, and particularly early in the planning process. However, there is a concern regarding the following:</p> <ol style="list-style-type: none"> 1. That at the municipally initiated Official Plan and Zoning By-Law Review stage that the avoidance and needs/alternatives test must still be implemented. This is extremely important as many landowners often argue that they have the as-of-right permission for the sensitive land use when compatibility was not properly assessed. 2. That many proponents will attempt, and Planning Authorities will allow, to defer key land use compatibility assessments to either later in the planning process or interpret the zoning stage to allow compatibility to be assessed via a holding provision, without determining feasibility during the zoning approval stage 	<p>Clear statements throughout this section that address the importance of</p> <ol style="list-style-type: none"> a) Planning Authorities considering land use compatibility early in the process, including the policy tests in 1.2.6.2. b) That all 4 subsections of PPS policy 1.2.6.2 must be satisfied in order to allow development to proceed c) That feasibility needs to be assessed early in the planning process and not differed to later stage approval processes such as holding provisions in zoning by-laws. 	<p>To the fullest extent possible, land use compatibility issues should be reconciled at the OP and zoning stage (and for further clarity not through a holding provision in the zoning bylaw). It is expected, generally, that there is opportunity to avoid incompatible uses when planning for future industrial employment areas and surrounding non-employment uses. Where Planning Authorities propose in Official Plan or Zoning By-law Reviews to allow sensitive land uses within AOIs, it must be demonstrated that Section 1.2.6.2 of the PPS has been satisfied. While conditions related to land use compatibility and mitigation can be integrated as part of the approval process for site-specific planning tools (such as plans of subdivision or site plans), decisions on these types of applications are usually one of the last steps of the planning process, before a building permit may be given. Accordingly, Official Plan Amendments and Zoning By-law Amendments which are done earlier in the land use planning process, should be used as much as possible to ensure potential adverse effects are avoided and minimized. This is particularly the case for site specific applications which can include Official Plan policies and/or Zoning parameters that limit where and how a sensitive land use can be implemented as part of the application and not be deferred to holding provisions in the zoning by-law, site plans, plans of subdivision or other later stage planning approval processes.</p>
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<p>Section 4.1 Planning Tools – Table 4 – OP (Page 47, 1st bullet)</p>	<p>As previously noted, the revised PPS policies require more than simply addressing mitigation in order for a sensitive land use to proceed near a Major Facility.</p>	<p>A clear statement is needed that permitting sensitive land uses near Major Facilities needs to meet the PPS policies and the proposed Land Use Compatibility Guideline</p>	<p>Prohibiting sensitive land uses adjacent to existing major facilities in accordance with PPS policy requiring avoidance. Per PPS Sections 1.2.6.1 and 1.2.6.2, sensitive land uses should only be permitted within the AOI/MSD if Land Use Compatibility has been assessed per this guideline. if adverse effects from these major facilities cannot be mitigated.</p>
<p>Section 4.1 Planning Tools – Table 4 – OP (Page 47, 3rd bullet)</p>	<p>There is an opportunity to provide more emphasis regarding the land use direction directly abutting the Major Facility.</p>	<p>A clear statement that reinforces that the closer a sensitive land use is to a major facility, the greater the potential impacts.</p>	<p>Strongly discouraging proposals for incompatible land uses within an MSD, particularly uses directly abutting to Major Facilities.</p>
<p>Section 4.1 Planning Tools – Table 4 – OP (Page 48, 3rd bullet)</p>	<p>There is an opportunity to update Official Plans at the time of Official Plan Reviews to address Land Use Compatibility.</p>	<p>A clear statement that Official Plans need to be updated to address land use compatibility challenges</p>	<p>OP reviews should examine current and future industrial and residential land use designations, needs and compatibility issues and OP should be amended as needed.</p>
<p>Section 4.1 Planning Tools – Table 4 – OPAs (Page 48, 2nd bullet)</p>	<p>The introduction of a sensitive land use may not only limit the permitted uses in an employment area, it could also limit the operations of such a facility</p>	<p>A clearer statement regarding the types of permitted uses</p>	<p>Sensitive land use that may limit the type of permitted uses and/or as-of-right or future operations in industrial/employment areas should not be considered</p>
<p>Section 4.1 Planning Tools – Table 4 – OPAs (Page 48, 4th bullet – 2nd para.)</p>	<p>It is noted that the guidelines already allow a process for sensitive uses to be located within MSDs and AOIs, as such further clarification should be that these guidelines need to be followed as part of updating or developing and Secondary Plans.</p>	<p>A clear statement that sensitive uses should only be permitted per these guidelines when there is potential for land use compatibility issues.</p>	<p>For secondary plans, locate uses with greater potential for compatibility issues with existing or planned uses at the edges of a proposed development area, if possible and where not possible, such uses should only be permitted per the requirements of these guidelines.</p>
<p>Section 4.1 Planning Tools – Table 4 – Zoning (Page 49, 1st bullet)</p>	<p>All decisions under the Planning Act must be consistent with the PPS.</p>	<p>A clear statement that Zoning needs to consider the PPS.</p>	<p>Keep zoning by-laws up-to-date to avoid conflicts with the PPS and OP policy direction</p>

<p>Section 4.1 Planning Tools – Table 4 – Zoning (Page 49, 5th bullet)</p>	<p>As noted in the guidelines, the zoning by-law amendment process allows for a fulsome consideration of impacts of the proposed development. However, that should only occur if the PPS requirements have been satisfied. The first principle for the development of a sensitive land use should not be mitigation. Furthermore, if mitigation is proposed, the zoning by-law amendment process should be used to create zone standards that ensure that land use compatibility is addressed to the greatest extent possible. As such, all parties are aware of the public process should those standards be modified.</p> <p>In the same vein, holding provisions should only be used once the feasibility of the development has been confirmed and not as the default to determine feasibility after the development has been approved. CN has been involved in developments where the applicant proposes that fundamental aspects of land use compatibility are proposed to be differed after the zoning by-law amendment is approved.</p>	<p>A clear statement that reinforces the importance of the PPS policies that require more than mitigation. A clear statement that appropriate zoning standards should be introduced at the zoning by-law amendment stage and that a holding provision should not be the default for those standards or replace those standards.</p>	<p>If the proposed development meets the PPS land use compatibility requirements. Use zoning by-law amendments as an opportunity to confirm land use compatibility with proposed, existing and planned land uses in the area. The feasibility of the development and zoning standards that ensure such feasibility should be incorporated to the greatest extent possible (i.e. prohibit balconies, zone for mitigation measures, construction material). Holding provisions should not be utilized as a zone standard to ensure land use compatibility as part of a Zoning By-law Amendment application.</p>
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<p>Section 4.1 Planning Tools – Table 4 – Holding By-laws (Page 50, 1st bullet)</p>	<p>CN has seen multiple examples where feasibility is proposed to be differed to the holding provision as part of a Zoning By-law Amendment to introduce a sensitive land use. It is important that as a general principal that it is clear that a holding provision is not the default to address land use compatibility particularly when there is a site-specific application.</p> <p>In addition, a holding provision allows for the municipality to ensure that an agreement with the Major Facility is in place prior to development proceeding</p>	<p>A clear statement that holding provisions should be used once the feasibility has been determined, and a clarification on when agreements can be utilized through zoning.</p>	<p>Use Holding By-Laws to place a hold on development until compatibility studies and mitigation (as may be needed) are completed only once the feasibility of the proposed use has been confirmed and to the extent possible that appropriate zone standards have been incorporated into the site-specific zoning amendment.</p> <p>Once the feasibility has been confirmed and appropriately implemented in the zoning by-law amendment, a holding provision can be used to ensure the appropriate agreements are in place.</p>
<p>Section 4.1 Planning Tools – Table 4 – Site Plan Control (Page 50 – New Bullet)</p>	<p>Site Plan Control is not a public process and as such 3rd parties such as the Major Facility may have limited or no involvement in the implementation of land use compatibility requirements at that stage. Therefore, while it is appropriate to implement land use compatibility through site plan control, whenever you have a public process as part of a development application land use compatibility should be assessed and where appropriate standards through either Official Plan policy or Zoning By-law provisions should be incorporated.</p>	<p>A clear statement regarding how land use compatibility should be implemented relative to other planning processes.</p>	<p>New Bullet: When other public Planning Act processes are required the feasibility and appropriate implementation of Land Use Compatibility matters should not be differed to the Site Plan stage.</p>
<p>Section 4.1 Planning Tools – Table 4 – Consents (Page 52 – New Bullet)</p>	<p>As Consent applications are essentially small draft plans of subdivision with many of the same requirements, the Guidelines should provide this reference.</p>	<p>A clear statement that the Plan of Subdivision provisions also apply.</p>	<p>New Introduction Bullet: As consent applications are similar to Draft Plans of Subdivision, in addition to the Draft Plan of Subdivision provisions we also note the following:</p>

<p>Section 4.2.1 Complete Planning Application Requirements (Page 54, 2nd para.)</p>	<p>As the default position of the guidelines is that sensitive land uses should not be permitted within the MSD pending a full land use compatibility assessment including the demonstration of need, further clarification is appropriate.</p>	<p>A clear statement that within an MSD, simply addressing mitigation does not mean the development meets the PPS tests.</p>	<p>Planning authorities must identify compatibility studies (and a demonstration of need, where applicable, required in relation to a proposed sensitive land use, see section 2.8) to be submitted as part of a complete land use application for the development of new sensitive land uses or new/expanding major facilities within an AOI. Within the MSD, studies are even more important, and mitigation would be expected in many cases, if it can be demonstrated that the development meets the other PPS requirements.</p>
<p>Section 4.2.2 Transitional Land Uses (Page 55, 2nd para. Last sentence)</p>	<p>Transitional Land Uses are an important consideration when assessing Land Use Compatibility. Even within MTSAs, there are appropriate approaches that should be considered.</p>	<p>A clear statement that commercial or office uses as stand alone uses can occur within an MTSA.</p>	<p>. . . If there is intention to use commercial or office uses as a transitional land use, as an example within MTSAs, a qualified individual should be hired to determine if such uses can be considered a transitional land use.</p>
<p>Section 4.2.3 Considerations for Infill and Intensification Scenarios (Page 55, New bullet)</p>	<p>While the Growth Plan has density targets for various MTSAs, it also allows for a reduction in those density targets by request to the Province.</p>	<p>A clear statement that when considering MTSA density targets, that a land use compatibility study must be completed to demonstrate how the density target can be achieved while protecting the Major Facility.</p>	<p>New Bullet: For MTSAs or other Strategic Growth areas that are within the MSD of a Major Facility, a Land Use Compatibility Study must be completed to determine whether the targeted density is feasible to be implemented while mitigating impact on the Major Facility.</p>

<p>Section 4.2.3. Considerations for Infill and Intensification Scenarios (Page 55, 3rd bullet)</p>	<p>The guidelines do not define “worst-case scenario.”</p> <p>In addition, not all uses are subject to the zoning by-laws, such as federally regulated industries. As such, simply referring to the zoning by-law and the permitted uses does not capture the regulatory framework around these uses.</p>	<p>A clear statement regarding how “worst case scenario” is defined. Note that we have referred to the ultimate operations of the facility in this table.</p>	<p>The zoning is use-specific (i.e. only the existing or proposed industrial or sensitive land use is permitted), or planning considerations are based on the “worst case scenario” based on permitted uses in the industrial zoning by-law. Where the industrial use is not subject to the zoning by-law, consider the ultimate operation of the facility in discussion with the Major Facility. For the purpose of assessing the adverse effect of the “worst-case scenario” on the sensitive land use no other guidelines are applicable unless specified by the MECP (see Appendix K) or the appropriate regulating authority for the industrial land use (i.e. Transport Canada).</p>
<p>Section 4.2.3. Considerations for Infill and Intensification Scenarios (Page 56, 3rd bullet)</p>	<p>In consideration of infill development near Major Facilities, alternative non-sensitive land uses are a reasonable option that should be considered even within MTSAs.</p>	<p>A clear statement that reinforces the consideration for non-sensitive land uses within transition areas even within MTSAs</p>	<p>Planning is done for transitional land uses per PPS policy 1.3.2.3 adjacent to employment areas. Lighter industrial uses or other non-sensitive land uses (i.e. Office, Retail) would ideally be in proximity to heavy industrial uses, instead of sensitive land uses, including within MTSAs.</p>
<p>Section 4.2.3. Considerations for Infill and Intensification Scenarios (Page 56, 4th bullet)</p>	<p>The consideration of cumulative effects should also include the consideration of the long term operations of the major facility.</p>	<p>A clear statement that considering the cumulative effects includes considering the increased operations of the existing facility.</p>	<p>The cumulative effects of development are considered. For example, considering the potential implications of approving an additional industrial use near existing sensitive land uses may have a cumulative impact on the existing sensitive land uses. Another example would be considering the long-term growth potential of the existing industrial facility within its as-of-right zoning or regulatory permissions.</p>

<p>Section 4.3.2 Warning Clauses (Page 57 and 58)</p>	<p>Warning Clauses can also be used as a condition of approval of a Site Plan Application. Not all developments require subdivision of condominium approval (i.e. rentals)</p>		<p>Reference Site Plan applications as appropriate.</p>
<p>Appendix B – Compatibility Studies Addressing Noise, Dust and Odour – Class 4 Designations (Page 67 and 68)</p>	<p>Class 4 Designated Areas in NPC-300 are based, in part, on a mutually beneficial relationship in that the noise source can rely upon Class 4 designation as part of its ECA approvals. Uses that are not subject to ECA review process do not derive the same benefit. As such, Class 4 mitigation does not reduce the potential for complaints and the potential that the federally regulated land use will be required to modify its operations as a result of Class 4 designated sensitive land use. Federal Noise Guidelines by the Canadian Transportation Agency make it clear that while they will consider municipal and provincial noise requirements, they are not bound by them in rendering decisions.</p> <p>In addition, where a site-specific Official Plan Amendment or Zoning By-law Amendment is proposed, and as part of the implementing by-law, a clear reference should be made to the Class 4 designation.</p>	<p>A clear statement that Class 4 Designations does not provide assurances of addressing mitigation for federally regulated land uses. As such Class 1 should be considered the default for assessing Land Use Compatibility for Noise from these uses in discussion with the Major Facility operator.</p>	<p>New Paragraph: Note that the Class 4 designation does not provide the same assurance that noise concerns can be addressed appropriately for federally regulated land uses. As such, Class 1 should be considered the default unless confirmed in discussion with the Major Facility operator.</p> <p>2nd New Paragraph: Where a site-specific Official Plan Amendment or Zoning By-law Amendment is proposed, a clear reference to the Class 4 designation should be included in the implementing by-law and no longer through a separate Council resolution.</p>
<p>Appendix B – Compatibility Studies Addressing Noise, Dust and Odour – B.4 Sources of Information (Page 72 and 73)</p>	<p>Note that not all facilities follow or are required to follow provincial mandated approval processes and regulations.</p>	<p>A clear statement regarding how the regulatory framework may vary for a specific Major Facility.</p>	<p>The Major Facility may have conducted an EA, have ECAs or be registered to the EASR. Note that not all Major Facilities are regulated by these processes, such as federally regulated facilities. It is important to identify and understand the appropriate regulatory framework and the ultimate permissions for all facilities in question.</p>

<p>Appendix K – Information on Sectors Not Included in this Guideline (pg. 121)</p>	<p>As noted by the guidelines, they do not apply to certain Major Facilities. However, what is not clearly stated is that the operation of the Major Facility may be affected differently by an encroaching sensitive land use in comparison to other industries. This may have a negative impact on the facility, the proposed sensitive land use, or both.</p>	<p>A clear statement noting federal jurisdiction and how that regulatory framework must be considered.</p>	<p>New Paragraph: It is noted that some of the facilities listed here are subject to federally regulated processes. It is important to understand the regulatory framework for these operations to determine the best approach to address land use compatibility. As an example, the Canadian Transportation Agency (CTA) guidelines for Rail Noise advise that while the CTA will consider municipal and provincial requirements, they are not bound by them in rendering decisions. As such, Land Use Compatibility must be considered in the regulatory context of the industry in question. See the federal guidelines related to rail for more information being the Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration and also Railway Noise Measurement and Reporting Methodology.</p>
<p>Appendix K – Information on Sectors Not Included in this Guideline (pg. 123, 2nd para.)</p>	<p>Not all applicants consult the FCM-RAC Guidelines. However, recent CTA decisions have made it clear that the CTA is expecting the development community, municipalities and other agencies to consult these guidelines. The CTA has advised homeowners and developers in a recent decision that they may accept more adverse effects if the guidelines were not consulted.</p>	<p>A clear statement on the importance of consulting the FCM-RAC Guidelines.</p>	<p>When considering new development near railways, the Federation of Canadian Municipalities and the Railway Association of Canada’s Guideline for New Development in Proximity to Railway Operations should must be consulted. This Guideline provides information on common issues, mitigation, barriers and review processes for new development and infilling near railways.</p>