



July 2, 2021

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RE: Walker Aggregates Inc. Comments to ERO Posting 019-2785: Land Use Compatibility Guideline

Re: Proposed Land Use Compatibility Guideline (ERO 019-2785)

Dear Mr. Coelho:

Walker appreciates the Province's initiative in updating the D-Series Guidelines with an aim to align with more recent changes to the Provincial Policy Statement and, in particular, Policy 1.2.6.2. It is understood that these changes aim to provide greater protection to industrial uses from the encroachment of sensitive land uses as early in the planning process as possible.

We have consulted with our expert consultants (planners, acoustic and air quality engineers) on the proposed Land Use Guidelines in preparing the following comments as they relate to Walker's continued ability to maintain and expand its operations in a manner that minimizes land use conflict. To protect all interests, the approach should be effective in minimizing land use compatibility while being cost-effective and streamlined.

OVERALL COMMENTS

1. Mineral Aggregate Operations

Mineral aggregate operations (as defined by the PPS) require additional long term protection given Policy 2.5.2.1 of the PPS and the need to locate where resources are situated. With this in mind, Walker supports that the Guidelines exempts mineral aggregate operations from the applicability of the AOI and MSD in the Guidelines. It is acknowledged that appropriate studies will continue to be required as part of any Planning Act and/or Aggregate Resource Act licence application that are necessary to address other PPS and Provincial Plan policies.



Within pit and quarry operations, certain ‘associated facilities’ are needed to process a ‘mineral aggregate resource’ in order for it to be usable as a public resource. The definition of ‘mineral aggregate operation’ found in the PPS 2020 includes facilities that are involved in the ‘beneficiation and processing of mineral aggregate resources and derived products such as asphalt and concrete, or the production of secondary related products’. As determined by the LPAT, “the locational association between extraction and production of related products means that facilities like cement plants will invariably be in areas that have known deposits of mineral aggregate resources”.

Issue: The exemption given to ‘aggregate operations’ described in the Guidelines and on Table 1 does not include ‘asphalt manufacturing, cement manufacturing, concrete (ready-mix) and the recycling of aggregate material.

Our Ask: While ‘mineral aggregate operations’ are exempt, ‘associated facilities’ that processes a ‘mineral aggregate resource and produces related products should be included in that exemption in order to be consistent with PPS 2.5.2.4 and 2.5.2.5 and the definition of ‘mineral aggregate operation’ in the PPS. At a minimum, this exemption should be provided where such facilities are located within a mineral aggregate operation.

2. **AOI and MSD**

If AOI and MSD are to continue being applied as drafted to landfill and aggregate-related facilities (i.e. cement manufacturing, concrete batching), Walker has significant concerns as follows.

Issue: The wording of the Guidelines are very black and white and, if taken literally, can be wrongfully applied. The MSD presented are not areas where adverse impacts are highly likely to occur in all cases and if proper mitigation is in place. One size does not fit all. There are many examples of uses being compatible inside the prescribed minimum. By making this statement in a provincial-endorsed document, it wrongfully implies that there will be adverse effects on public health when uses exist within the prescribed MSD of each other.

Ask: The Guidelines should contain strong, clear language that sets out they are to be treated as ‘best practices’ and allow for appropriate transition to allow for new or expansions of existing major facilities. The Guidelines should be clear that the “minimum separation distance’ is not a minimum and can be further ‘defined’ through more detailed and science-based study.

Issue: “Avoidance” is only met if a sensitive use is outside all applicable AOIs in a given area. Given the increased AOI (or ‘case by case’ for landfills), there will be few (if any) locations available to ‘avoid’ sensitive land uses in their entirety when introducing or expanding a major facility.

The reality is objectors are likely to interpret the ‘avoidance’ test to the extreme. For example, it is expected that objectors will suggest (and have) that the major facility should not be a certain location because it is not meeting the first text which is to ‘avoid’ a sensitive land use. Again, if taken literally as worded (“if avoidance is not possible”), this can prove to be problematic and wrongfully challenged if the expectation for meeting this test is not better described in the Guideline.

Ask: The Guideline should contain guidance or examples to demonstrate how the test of ‘avoidance is not possible’ can be achieved in a reasonable manner that takes into account other provincial policy that encourages close-to-market resources, intensification, compact forms of development, employment, and reducing greenhouse gas emissions.

3. Major facility including ‘transportation corridors’

The definition of ‘major facility’ in the Guideline is derived from the PPS and includes transportation corridors such as roadways and railways.

Issue: In the context of the Guideline, it does not make sense that the AOI and MSD would apply to such public uses needed for the movement of both goods and people and separation of sensitive land uses cannot be avoided.

Ask: Transportation and infrastructure should be exempted from the applicability of the prescribed AOI and MSDs.

4. Landfills – Broadened Definition of Sensitive Land Use (Section 7.5)

The Guidelines broaden the definition of ‘sensitive land uses’ for the purpose of landfills currently in operation to include:

- A permanent structure used in animal husbandry;
- agricultural land for pasturing livestock or growing crops; or
- a permanent structure where a person is present on a full-time basis; but not including, generally, uses such as food or motor vehicle service facilities adjacent to a highway, utility operations, scrap yards, heavy industrial uses, gravel pits, quarries, mining or forestry

activities (note: some of these examples would be considered major facilities). These uses tend to be outdoors; or

- cemeteries.

Issue: These uses are commonly found in rural areas and often in proximity to existing operational landfills. By including these in the definition of sensitive land uses, the need to demonstrate 'avoidance' and the requirement for certain 'compatibility studies' particularly unjust. Landfills are subject to rigorous study through the EA review and approval process that demonstrate appropriate setbacks and mitigation. A prohibition of such uses in the MSD is not reasonable and would deem the majority of not all locations in the GGH unsuitable for a landfill if these uses are considered sensitive land uses.

Ask: The definition of sensitive land use not be broadened as suggested in Section 7.5 for landfills.

Issue: The AOI for landfills is to be determined on a case by case basis. Yet it is unclear how the AOI is to be determined and by whom.

Ask: Further clarification on how the AOI for landfills is to be determined should be provided in Appendix E.

Conclusion

The Province's efforts to protect industrial land uses, including mineral aggregate operations, from continual encroachment of sensitive land uses is appreciated and supported.

However, the Guidelines also cannot be too rigid that they do not allow for the siting of such uses in areas where sensitive land uses exist. In doing so, industries are also limited in their ability to find sites close to market.

On this basis, Walker recommends that the Province consider holding additional consultation with key stakeholders to provide the practical expertise needed to accurately assess the impact of the proposed guidelines.



We thank you for the opportunity to provide comments.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Kehl.', with a horizontal line drawn through the middle of the signature.

KEVIN KEHL

On behalf of

KEN LUCYSHYN
EXECUTIVE VICE PRESIDENT
AGGREGATES & CONSTRUCTION DIVISION

cc. Hon. Doug Ford Premiers Office
 Hon. David Piccini Environment, Conservation and Parks
 Hon. Steve Clark Municipal Affairs and Housing