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Sent via email and online ERO comment submission

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Dear Sanjay Coelho:

Re: ERO NOTICE #019-2785 – Land Use Compatibility Guideline

Ecojustice is a national charitable environmental law organization with an extensive history of holding government accountable for land planning regulation and action in Ontario. Ecojustice goes to court and uses the full force of the law to protect what Ontarians value most — the air we breathe, the water we drink, and a safe climate. Recent relevant examples of Ecojustice’s work include fighting to protect the Duffin’s Creek wetland¹ and challenging the Ontario government’s passing of Bill 197² in which the government failed to consult the public, denying the public’s rights under the *Environmental Bill of Rights*.

Please be advised that Ecojustice supports and repeats the submissions and recommendations on the above-noted matter filed by Canadian Environmental Law Association (CELA) by letter dated June 29, 2021.³ The summary of their recommendations is as follows:

- 1) AOIs and MSDs are increased for Class 1 and Class 2 major facilities which are described as having “smaller” or “moderate” adverse effects to address the inequities created by MECP risk-based approach to compliance when complaints involve “low-risk” impacts.
- 2) MECP re-evaluate its risk-based approach to compliance and include “low-risk” impacts among the types of incidents it will respond to.
- 3) The Guideline require a cumulative effects assessment for all existing facilities as well as new and expanding facilities.

¹ <https://ecojustice.ca/case/fighting-to-protect-important-wetlands-duffins-creek/>

² <https://ecojustice.ca/case/challenging-the-ford-governments-failure-to-consult-on-bill-197/>

³ https://cela.ca/wp-content/uploads/2021/06/CELA_Submission_Land_Use_Compatibility_Guideline.pdf

- 4) The Guideline provide detailed guidance on how cumulative effects assessments are to be integrated within the broader planning regime.
- 5) MECP apply an equity lens in crafting the Guideline.

Ecojustice notes the special importance of CELA's recommendation #5, as environmental racism and classism have long been and continue to be major problems in Ontario. The Guideline proposal as it stands perpetuates these problems, rather than dismantling them. Modifying the proposal to protect and support vulnerable communities is essential.

Ecojustice will only make two brief additional comments on the Guideline proposal.

The Guideline's general approach contradicts the Guideline's definitions

Ecojustice has concerns around the assumptions underlying the proposal's stated understandings of i) land use compatibility and ii) land use compatibility's effects. Section 1.2 lays out the General Approach to Planning for Land Use Compatibility. It states that "Land use compatibility is achieved when major facilities and sensitive land uses can coexist and thrive for the long-term within a community". It also states that "Planning communities effectively to ensure compatibility amongst land uses enables industry and businesses to continue to operate and grow, while enabling the surrounding community to continue about their daily life and activities without experiencing adverse effects from emissions and other impacts from major facilities".

The fundamental assumption is that continuous development and growth of major facilities can occur without any cost to people or the environment, but this is not possible. Looking at the proposal's definitions of "major facilities", "adverse effects", and "sensitive land uses" in Section 1.4 and Appendix G makes clear the Ministry knows this is not possible. Major facilities are:

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.

Adverse effects are:

one or more of: a) impairment of the quality of the natural environment for any use that can be made of it; b) injury or damage to property or plant or animal life; c) harm or material discomfort to any person; d) an adverse effect on the health of any person; e) impairment of the safety of any person; f) rendering any property or plant or animal life unfit for human use; g) loss of enjoyment of normal use of property; and h) interference with normal conduct of business.

Finally, sensitive land uses are:

buildings, amenity areas or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.

The proposal's definition of sensitive land uses inherently acknowledges that major facilities have adverse effects on these areas. It inherently acknowledges that continuous development and growth of major facilities will come with costs to environmental and human well-being.

That the policy includes no cumulative and comprehensive assessments of industrial growth's adverse effects on environmental and human wellbeing further increases the problems stemming from this contradiction. Understanding how major facilities and sensitive land uses can coexist and thrive for the long-term within a community clearly requires an understanding of the cumulative adverse effects of major facilities.

Ecojustice recommends changing the wording of Section 1.2 so that the general approach values human and environmental well-being over industry growth:

Land use compatibility is achieved when humans and the environment can coexist and thrive for the long-term within a community through planning that recognizes the needs of both. Industrial land uses need to be planned and managed properly to avoid adversely impacting human and environmental well-being. Planning communities effectively to ensure compatibility amongst land uses enables humans and the environment to thrive.

The guiding hierarchy is unclear and siloed

Section 1.3 lays out the guiding hierarchy for land use compatibility planning. It offers three steps: 1) avoid incompatible land uses; then where avoidance is not possible 2) assess impacts, and 3) minimize and mitigate impacts. The proposal says in Figure 1 that "where avoidance and minimization/mitigation of impacts is not possible, do not permit the proposed incompatible land use". The proposal also says in section 1.3 that "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".

Section 1.4 and Appendix G define "Minimize and Mitigate" as:

under this Guideline, minimizing potential adverse effects on sensitive land uses and potential impacts to major facilities is achieved by maximizing the separation distance between land uses that are incompatible, and mitigation refers to the additional measures necessary to prevent an adverse effect or impact.

Figure 1 also offers comment on minimizing and mitigating impacts:

- If the separation distance is not possible, the compatibility study must identify mitigation measures to ensure no adverse effects will remain post-mitigation.

- Even with proposed mitigation, the separation distance should be maximized to minimize impacts, and should not be less than the MSD.
- Once implemented, monitor and maintain required mitigation measures over time to avoid future compatibility issues.

Ecojustice recommends the policy take a clear stance on minimization and mitigation that prohibits permitting and approval for any projects with adverse effects, analysed through a cumulative lens. Section 1.3 should read “If minimization and mitigation of impacts is not viable, the proposed incompatible land use must not be enabled, and related planning or development applications must not be approved” [underlined to show changes]. The understanding of minimization and mitigation must be cumulative in the context of all land planning decisions. Failing to avoid, minimize, and mitigate cumulative impacts leads to underestimating the consequences of major facilities and externalizes those consequences to the environment and Ontarians. Ecojustice recommends adding one line at the end of the definition of “Minimize and Mitigate” that reads: “This concept requires a cumulative and comprehensive assessment of adverse effects”.

Ecojustice recommends the policy also integrate a cumulative lens into its understanding of avoidance. Section 1.4 and Appendix G define “Avoidance” as:

for the purposes of this Guideline, “avoidance” is achieved if a sensitive land use and a major facility are sufficiently separated to prevent any adverse effects on the sensitive land use, without the need of mitigation measures. Locating sensitive land uses outside of the AOI of a major facility would achieve this outcome, as would locating beyond the separation distance assessed through a compatibility study as necessary to avoid an adverse effect without mitigation.

Sufficient separation of major facilities to prevent adverse effects directly within a sensitive land use area does not mean there will not be adverse effects on a human or environmental well-being from a major facility. For example, a major facility may destroy animal habitat, pushing animals into sensitive land use areas, which in turn could cause adverse effects on those sensitive land use areas. Avoidance must integrate a cumulative understanding and evaluate how potential environmental harm outside of the sensitive land use could eventually cause adverse effects within the sensitive land use.

Ecojustice recommends changing the definition of “Avoidance” to the following:

for the purposes of this Guideline, “avoidance” is achieved if the location of a major facility will have no adverse effects on a sensitive land use, without the need of mitigation measures. Avoidance requires a cumulative and comprehensive assessment of adverse effects.

Ecojustice also recommends adding one line at the end of the definition of “Adverse Effects” that reads: “Adverse Effects are to be analyzed and understood through a cumulative and comprehensive lens”.

We appreciate you reading our recommendations, and look forward to ongoing discussion to improve this guideline.

Sincerely,



Andrew Luba
Ecojustice