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August 5, 2021

Ministry of the Environment Conservation and Parks
Environmental Policy Branch
40 St. Clair Avenue West, Floor 10,
Toronto, Ontario, M4V 1M2

Attn: Sanjay Coelho

Re: Proposed Land Use Compatibility Guideline - Cambium's Questions and Comments – ERO Number 019-2785

Dear Sanjay Coelho,

Cambium Inc. has reviewed the proposed DRAFT Land Use Compatibility Guideline (the Guideline) dated March 2021 as posted on the Environmental Registry. We believe that the Guideline represents a great improvement on the previous guidance, and clarifies many areas that were previously less clear.

With that said, the posting requested that the details were reviewed and comments be provided if necessary. Cambium's Compliance Management Group has many staff specialized in air pollution and noise control. We have attempted to consolidate our comments as a Company into this letter for ease of use by the Ministry of the Environment Conservation and Parks (the Ministry).

Based on the review from multiple Cambium staff we have the following comments as well as some questions we would like to raise. The itemized list is provided below:

1. Cambium has noted that the current document provides areas of influence (AOI) and minimum separation distances (MSD) without noting what specific contaminant of concern defines that AOI or MSD. We would suggest that it may be more useful in the final document to outline the expected limiting factor for a given industry. For example, if the AOI for rendering plants is based mainly on odour complaints, that could be conveyed through this standard. Also in considering noise, generally speaking the highest area of concern in primary noise screening is 1,000 metres, which is significantly less than some of the AOI's provided in the draft guideline.
2. It is our opinion that Figure 1 within the document does not reflect the text of the Guideline and is too rigid of a depiction of the supporting, more detailed text. Figure 1 does not include details regarding demonstration of need and contradicts other thorough portions of the Guideline. Figure 1 gives the impression that this guideline precludes development in many cases, whereas the report text clearly states that additional work would be required to support a development within the setback distances.

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3. Figure 2 notes that sensitive land uses within the MSD are not allowed. This is not consistent with other portions of the Guideline which include additional studies such as demonstration of need, and technical reports to support a sensitive land use located within a MSD.
4. The Guideline provides no clear definition of the term “major facility”. Also, the details within the draft guideline currently do not distinguish what is considered a major facility or critically what is not a major facility. Further to this point, Table 4 of the Guideline clearly states that Municipal Official Plans must have “clear definitions of…major facilities” but the Guideline itself does not provide a definition for municipalities to use. The Provincial Policy Statement provides a vague definition but it would be useful if the Ministry could provide their interpretation of what is deemed a major facility, and more critically what would not.
5. The Guideline does not outline what would constitute a minor facility that would not be of concern which would likely not require detailed assessment. Table 2 states that Class 1 would include “various EASR Activities”. Is our interpretation correct that businesses that do not require EASR would not be considered a concern by this guideline? Specifically, facilities exempt from requiring an ECA or EASR may be considered “minor” facilities in this context?
6. If an EASR is not required, is there a need for a full compatibility assessment? It is noted by Cambium that NPC-300 specifically states noise should be considered regardless of the exemptions in Regulation 524/98. However, it would seem reasonable that a low impact industry such as an office building or restaurant, which is exempt from approvals under Section 9 should not necessarily trigger air pollution and odour assessments?
7. The setback distances for ready mix concrete facilities are currently proposed to be less than Class 1 as per the draft guideline. In Cambium’s experience, ready mix facilities frequently have offsite impacts of noise, and potential for fugitive dust which would not be in line with the definitions of Class 1 in the Guideline. Cambium would assume that existing ready mix facilities would want a more expansive area of protection from sensitive developments around their operations.
8. Based on the Guideline and the direction, in Cambium’s opinion it seems that a demonstration of need should be considered in some cases prior to the completion of other expensive technical compatibility studies. It is likely fiscally responsible for a proponent in the event that demonstration of need is not satisfied. Cambium would suggest that the decision tree for land use compatibility could be modified to account for this.
9. In Cambium’s opinion, Table 3 would benefit from more objective wording. For example scale of production states “small” “medium” and “large” which is unclear what it is relative to. We expect it should be possible to have some objective measures that better designate the classifications.
10. With regard to proposed sensitive uses near vacant industrial lots, much of the guidance relies on agreements between the sensitive use, industry and the planning authority. If there is not yet an industry to make agreements with, does this imply that a proposed sensitive use must install mitigation measures? Will sensitives uses be expected to pay for future mitigation measures if the eventual

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industrial development is required to install more noise controls than considered based on worst case zoning assumptions?

11. The previous D-Series guidelines noted that a proposed sensitive use had to prove compatibility with industry that was already operating in compliance with all standards regulations and guidelines. This draft guideline does not address the scenario where an industry may be operating without proper approvals or studies completed. In Cambium's opinion the Guideline should address facilities that are not registered or have no record of their ECA or EASR. For example many older industries, may have never completed any studies or approvals. What guidance will be provided related to cost in those cases? Also, will any guidance be provided on how to handle non-compliant industries in a planning context?
12. Guidance in Section 1.6.1 states that the Planning Authority must not approve a development if mitigation is not feasible. There are some cases in technical guidance where incompatibilities can be dealt with without specific mitigation, such as class 4 designations and/or warning clauses. Does this condition supersede the technical guidance?
13. Within Section 1.6.1 it is outlined that Municipal Official plans, and zoning bylaws must be in compliance with the Guideline. Does this mean that Municipalities in the Province must update their Official Plans and Zoning upon the finalization of this guide? What will be the timeline provided to allow Municipalities to amend their official plans and zoning bylaws?
14. Section 2.1.2 of the Guideline indicates that municipalities may develop their own AOIs if they complete technical studies. What studies are required to support an AOI for a municipality? For example, if an industry has documents related to ECAs/EASRs including ESDM, AAR and odour, would those studies support a different AOI?
15. With respect to an aggregate industry, we expect that the triggers in this guideline should be in line with Ministry of Natural Resources and Forestry (MNRF) setbacks? MNRF license requirements require dust suppression if equipment is within 300 metres of sensitive receptors, and noise studies if there are sensitive receptors within 500 metres. The Guideline notes an AOI of 1,000 metres. This means that proposed developments within 1,000 metres may be required to complete noise studies for aggregate license that have not been required to complete noise studies via their licensing requirements. Will guidance be provided for who might pay for detailed noise studies in that case?
16. The Guideline specifically includes plastic manufacturing and provides an MSD of 100 metres which is the lowest setback outlined in the Guideline. Can information be provided for how such a large breadth of industries would obtain a smaller MSD?
17. Additional guidance is expected regarding the cannabis industry. Cannabis is considered an industry as per the draft guideline if it operates indoors within a settlement area. However, if it is considered an industry in this guideline, why is it exempt from environmental approvals?
18. Please provide additional clarification on the need to notify all occupants within the AOI of a proposed industry. What level and detail of communication is necessary to engage with occupants within this area? In some cases this could be thousands of people, for instance a 2 km radius could cover an entire Town, or large part of a small city. Does the Ministry consider regular public meetings

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that are required as part of the planning process in most Municipalities to be satisfactory notification and consultation?

19. Section 3 suggests a detailed assessment of mitigation should include an assessment of known and effective mitigation measures from similar facilities. In Cambium's opinion it will be difficult to incorporate or utilize known mitigation measures or conduct a scan of mitigation measures at similar sites without a public database of useful mitigation measures. Will the MECP be making such a database available to the public?
20. Section 3.2 suggests the specific mitigation measure of "broadband reverse alarms" as operational mitigation. Cambium would like to note that these equipment alarms are specifically required by health and safety regulations, and are exempt from requirement of assessment under NPC-300. Broadband alarms are often suggested by noise practitioners as a way to reduce nuisance and complaints but they are not considered noise sources by the technical guidelines.
21. Within the section on Requirements for Mitigation in Section 3.7, the guide discusses legal agreements that may be drafted between proponents, and sources. Within this section it is stated that agreements should be adaptable to future change such as where business operations change and there is a need for new mitigation measures. Is the Ministry suggesting that nearby home owners might be responsible for mitigation of future expansions of a nearby industry? Cambium does not expect that this is a practical suggestion if so.
22. In section 3.4, there is a suggested approach for on-site buffers being required for zoning limitations for compatibility studies; however, buffers are discouraged from being used when measuring MSD and AOI distances. Clarification is needed on the use of on-site buffers. The Guideline is suggesting them as a solution, but also indicating they should not be used within the calculations of impacted surrounding areas.
23. What studies would be required to prove an area or land use is in fact transitional? The current definition of Class 1 does not seem to exclude any commercial or industrial uses at all.
24. Within the section titled "A Note on Class 4 Designations" in Appendix B, the Guideline states that the agreements for noise mitigation developed as part of the land use planning process will be submitted to the Ministry for assessment and reviewed when the stationary source owner applies for approvals. Please confirm that the Ministry intends to retroactively review and comment on agreements that were developed during the planning process? It would seem more appropriate that if the Ministry wishes to conduct such a review, that it be done during the planning process. What will be the procedure if the Ministry does not agree with a legal agreement that was agreed to between the Planning Authority, and the relevant parties? What would the Ministry expect to review and assess in the agreements that created designation related to Class 4?
25. Within the section titled "Dust and Other Air Emissions" in Appendix B.2, it is stated that an approved ECA would indicate a facility is compliant at the property line, but states there may be nuisance dust and therefore development should not be allowed within the MSD unless completely unavoidable. The MSD's provided in this guideline far exceed most normal concerns for impacts due to fugitive dust emissions. Furthermore, in this section, Fugitive Dust Control Plan's are mentioned but no guidance is given on whether that should impact the

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consideration of development within the MSD. Dust control plans are considered acceptable by the Ministry to protect existing receptors from adverse effect for normal environmental approvals; however, within the Guideline the efficacy of fugitive dust control plans is to be ignored?

26. Within the section titled “Dust and Other Air Emissions” in Appendix B.2, it is noted that if there are metals in the dust, a facility cannot develop within the AOI. If it is not possible to locate outside of the AOI, the proponent must obtain a copy of the ECA to demonstrate that no adverse effects are expected. This seems to contradict the issue outlined in our comment above. It is stated that an ECA is acceptable to prove no adverse effect for facilities with metals in their dust, but not acceptable for facilities with no metals?
27. Section B.4 indicates that documents from any Ministry Approval may be out of date, and that proponents must determine whether there is a need to update assessments. What is necessary or required if an ECA/EASR is considered to be out of date? What is considered out-of-date? In the event that reports are out of date, who is expected cover the costs for a facility to update their ECA/EASR to support a new development in the area? Is a proponent responsible for full costs of updates if an industry has not maintained up to date reports?
28. The Guideline in general seems to suggest that regardless of existing land uses technical reports must be completed. Within most technical reports it has been generally seen by practitioners as acceptable to assume that sensitive uses located closer to an industry, would suggest compatibility will be maintained for a proposed sensitive use. Please confirm if this approach no longer valid. For example, under NPC-300, typically the “worst case receptors” are assessed, and often many receptors beyond that, within an AOI, would be ignored.
29. NPC-300 currently references D-6 guidance. Will this be updated to reference this guideline once it is finalized?
30. Please advise on what the procedure should be if the draft guideline is finalized while a project is currently in progress? No transitional details are included at all.
31. The Guideline does not address costs related to studies and reports required. Is a developer responsible to pay for studies for a non-compliant industry? Is a developer required to pay for studies for an illegally operating industry? If an industry’s reports are out of date, is a developer required to pay all costs to update their reports to determine if they are compliant? If mitigation is required but it is demonstrated that there is pre-existing incompatibility, is the developer required to pay for the entirety of the mitigation costs? If the mitigation costs would have been lower if the existing industry had its proper approvals and studies in place prior to this development, how should costs be split between developers and industry?
32. Cambium finds little use in the case studies provided in this guideline. All of the case studies reflect the ideal application of the Guideline, we would suggest case studies should address real world compatibility issues including difficult cases, such as:
    a. Proposed new home adjacent to historically unapproved industry – explain who pays for what, who is responsible if the unapproved industry is not compliant.

b. Proposed new home adjacent to an Industry that has been identified by the Ministry as operating without ECA, but has not yet completed studies or obtained approvals.
c. Proposed new subdivision 1.8 km away from existing class 5 industry with multiple residential uses within the 1.8 km setback – explain what is required for technical studies if there is already 1.8 km worth of homes between the industry and the new residential use.
d. Proposed severance adjacent to existing homes adjacent to a licensed gravel pit, the pit was licensed in the 1990s with homes adjacent to the pit at that time, but had no noise study. The pit may have been impacting the existing homes with adverse noise impacts for 30 years. What studies are necessary, how does a proponent deal with the existing incompatibilities while assessing this new residence. Who is responsible for costs of the studies and mitigation identified? Is the proponent required to report the obvious exceedances of Ministry Noise criteria?
e. Proposed development is required to complete air pollution assessment of an existing industry, but the proponent finds that there are technical errors in the data provided by that industry, and therefore the air pollution assessments completed by the industry are in error. Is this proponent required to report this exceedance to the Ministry? How should the proponent proceed? Who is responsible for costs related to updating the reports?

As stated above, Cambium understands that an update to the dated guidelines related to land use planning is needed, and that the draft Guideline will be useful. However, we do expect that many items could benefit from clarification.

Cambium looks forward to the updates to the draft guideline.

Best regards,

Cambium Inc.

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