



2023-08-03

The Honourable Steve Clark, Minister of Municipal Affairs and Housing  
Provincial Land Use Plans Branch  
777 Bay Street, 13<sup>th</sup> Floor  
Toronto, ON  
M7A 2J3

Via email: [growthplanning@ontario.ca](mailto:growthplanning@ontario.ca)

**Re: Review of Proposed Policies Adapted from A Place to Grow and Provincial Policy Statement to form a New Provincial Planning Policy Instrument – ERO Number 019-6813**

Dear Minister Clark,

WSP has been retained and is acting on behalf of Canadian National Railway Company (“**CN Rail**” or “**CN**”). We are pleased to have the opportunity to participate in and provide comments on the Review of Proposed Policies Adapted from A Place to Grow (“**Growth Plan**”) and Provincial Policy Statement (“**PPS**”) to form a New Provincial Planning Policy Instrument.

In 2022, the Ministry of Municipal Affairs and Housing (“**MMAH**” or the “**Ministry**”) initiated a Review of A Place to Grow and Provincial Policy Statement (the “**Review**”) to gather input on approaches for leveraging the housing supportive policies of both policy documents, removing barriers, and continuing to protect the environment through a streamlined Province-wide land use planning framework. This review sought feedback on six key themes: residential land supply, attainable housing supply, and mix; growth management; environment and natural resources; community infrastructure; and streamlined planning framework.

On December 21, 2022, WSP on behalf of CN Rail provided comments on the Review through ERO Posting Number 019-6177, as appended to this letter. This letter provided CN’s comments with respect to ensuring that specific policies within the current PPS and the Growth Plan that require new development adjacent or in proximity to rail facilities are compatible with and supportive of, the long-term purposes of the rail facilities and corridors are retained. In addition, policies requiring new development adjacent or in proximity to rail

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facilities to be designed to avoid, mitigate or minimize negative impacts on and from the rail facilities and corridors should also be kept in any future policy framework. In particular, CN has concerns about the Review's suggestion to streamline and simplify the conversion of employment land to residential or mixed-use on lands adjacent to or in proximity to rail facilities, as this will increase instances of land use compatibility conflicts. CN's concerns revolved around the need to ensure that land use compatibility is assessed early on and on a continuing basis during the land use planning process. As CN is under federal jurisdiction, there is no direct means for Provincial regulation to restrict the railway's operations. As such, essentially all land use compatibility mitigation approaches must be addressed by the adjacent development subject to Provincial regulation. Furthermore, CN's comments suggested the addition of Provincial Policy which would require municipalities to add policies in the Official Plans and Comprehensive Zoning By-laws which clarify that new developments would be required to meet the current PPS requirements for the long-term protection of Rail Facilities and land use compatibility with respect to major facilities. CN supports the goals of reducing duplication and clarifying policy overlaps between the two policy documents.

It is our understanding that comments on the proposed new Provincial Planning Statement are currently being received until August 4, 2023. We respectfully request that the Ministry take into consideration the below comments in reviewing and developing the new Provincial Planning Statement.

We recognize and understand the key outcomes of the **Review of Proposed Policies Adapted from A Place to Grow and Provincial Policy Statement to form a New Provincial Planning Policy Instrument** are to develop streamlined and housing-focused, land use planning policies in the proposed Provincial Planning Statement that would replace the current PPS and Growth Plan.

We recognize and understand there is growing Provincial emphasis on promoting the movement of people and goods by rail and incorporating greater integration of multimodal transportation and goods movement into land use and transportation system planning. Our comments focus on policies and/or infrastructure initiatives as they related to existing and/or future CN Rail facilities, operations, and infrastructure. Specifically, the current PPS requires that new development on adjacent lands be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to prevent, avoid, mitigate, or minimize negative impacts on and from the corridor.

It is our opinion, supported by the current PPS and the Ministry of Environment, Conservation and Parks' (MECP) D-6 Compatibility between Industrial Facilities Guidelines (D-6 Guidelines), that planning for land uses in the vicinity of rail facilities be undertaken in such a way that the economic function and long-term operation of rail systems are protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered, and/or separated from rail facilities.

Additional Provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in the D-6 Guidelines. It is our opinion that rail yards are considered a major facility per the PPS and would be classified by the D-6 Guidelines as Class III Industrial Facilities because of their scale, adverse effects from the facility, and continuous operation. Moreover, the D-6 Guidelines recommend that no incompatible development (emphasis added) should occur within 300 metres of a Class III facility. This 300-metre separation distance for rail yards is also reflected in the 2013 Guidelines for New Development in Proximity to Railway Operation, prepared for The Federation of Canadian Municipalities and The Railway Association of Canada (FCM-RAC). Further to the Provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 1 kilometre of a Class III facility. In 2016, the Province of Ontario, through the Ministry of Transportation, issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities.

CN has observed, either through development applications or with municipalities, an increasing number of development applications that propose sensitive land uses in close proximity to freight rail facilities without the full understanding of the impacts and implications on rail, and the new restrictions that it creates, or how those future residents will be negatively impacted.

As CN lands and operations are federally regulated through the Canadian Transportation Agency (the “**Agency**”), they are not subject to Provincial, Regional, or Municipal planning requirements. The Agency can ignore the complaints of residents, as discussed in the MacMillan Rail Yard case, case No. OLT-21-001787 and OLT-22-002164, dated March 15, 2023. As stated in this decision, sensitive land uses located adjacent to rail noise is “bad planning” because either the residents suffer when their complaints are dismissed, or the railway suffers when ordered to change its operations. The current PPS begins with the requirement of avoidance, and only if avoidance is not possible, should the remaining tests ensue.

For example, the Agency Decision No. 21-R-2015, responded to resident-issued complaints concerning vibrations arising from BNSF Railway Company operations. Residents alleged that the vibrations generated by BNSF’s coal trains caused adverse impacts such as damage to their houses, sleep disturbance, impacts on health and lifestyle, and shaking and rattling inside their homes. In this decision, the Agency concluded that the existing vibration levels caused substantial interference (i.e. adverse effects). However, the Agency, in balancing the vibration concern in the context of Section 95.1 of the *Canada Transportation Act* (“**CTA**”), must give considerable weight to BNSF’s level of service obligations and operational requirements. Accordingly, the Agency found that the vibrations at the location were reasonable and dismissed the application.

### **About CN Rail, Railway Noise, and other Adverse Effects**

CN Rail is a federally regulated railway company and is governed by various federal legislation, including the CTA and the *Railway Safety Act* (RSA), among others. CN Rail is a major transporter of commodities across North America, in 2022 CN shipped over 5.6



million rail car loads of goods. The CTA requires federally regulated railway companies to only make such noise and vibration as is reasonable. The test of reasonableness under the CTA takes into consideration the railway company's operational requirements and its level of service obligation under the Act, as well as the area where the construction or operation takes place.

The Agency is the federal body that assesses the reasonableness of noise associated with the construction or operation of a federal railway company. In its decisions, the Agency has concluded that municipalities have a responsibility to assess compatibility issues before approving housing developments in proximity to railway rights-of-way. The Agency also commented that where a municipality approves the development, it has a responsibility to ensure that the necessary mitigation measures are implemented. One example of such a decision that responds to resident-issued complaints concerning noise and vibration along a rail right-of-way, is Decision No. 69-R-2014, dated February 27, 2014, where the Agency noted the lack of implementation of the FCM-RAC Guidelines by the Municipality to justify dismissing the complaint.

It is important to understand that there is no specific decibel limit for CN operations contained in federal guidelines related to the construction or operation of rail facilities. 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.

Note that certain noises from a freight rail yard are stationary noise sources per the Province's MECP Noise Guideline (NPC-300). In addition, the NPC-300 Class 4 area classification does not benefit federally regulated land uses, as they are not subject to provincial regulation (see above) and as such should not be considered the default approach for noise mitigation.

Rail Proximity Guidelines are available at the following link:

<https://www.proximityissues.ca/>

Guidelines for the Resolution of Complaints Over Railway Noise are available at the following link:

<https://otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration/>

### **Comments and Concerns**

We have reviewed the proposed Provincial Planning Statement policies, as updated on June 16, 2023. Our comments focus on the land use compatibility policies, namely the importance of the needs and alternatives test in Provincial policy. We note the following comments and concerns for consideration.

**1. Land use compatibility policies are severely weakened in the proposed Provincial Planning Statement.**

Section 3.5 of the proposed Provincial Planning Statement provides policies relating to land use compatibility. The proposed policy 3.5.2 removes the majority of the current tests under policy 1.2.6.2 of the PPS and has only retained the test which requires the consideration of the potential impacts to industrial, manufacturing, or other major facilities. The removal of the 3 tests in 1.2.6.2.a-c greatly weakens the strength of the current PPS land use compatibility policies that are in place. This includes the tests which consider if there is an identified need, alternatives, and minimization and mitigation of adverse effects on the proposed sensitive land uses.

There are several implications of these changes:

1. First, without the current PPS policy 1.2.6.2.c, the impacts of adverse effects such as noise and vibration (as an example), on the sensitive land use are no longer a test to address land use compatibility. Therefore a sensitive land use could be impacted by adverse effects, such as decibel levels well above ambient levels, and could arguably still be considered to meet Provincial policy as the impacts are on the sensitive land use and not the industry. In our opinion, this would be an inappropriate land use planning decision, as it is no longer clear that adverse effects on the proposed sensitive land use must be minimized and mitigated. For example, this is particularly the case for rail where noise complaints can be dismissed even when there are demonstrated adverse effects on homeowners.
2. In addition, in municipalities where the locations for major facilities are finite and there are opportunities in either strategic growth areas or in the community broadly to develop sensitive land uses as implied in the current PPS policy 1.2.6.2.b, there is no consideration for balancing a priority to develop those areas first versus in areas directly adjacent to major facilities, such as freight rail yards. It has been CN's experience that lands that are more easily available for redevelopment are not considered for development in advance of the introduction of sensitive land uses near major facilities.
3. Furthermore, it has been CN's experience that municipalities do not take into account industrial or employment growth, including the growth in goods movement, during land use planning exercises. Therefore, many municipalities assume that the rail network will not experience any growth, which will result in increased adverse effects, when in fact the Provincial and National economy continues to grow and rely more and more upon the rail network.

Therefore, maintaining the current PPS tests of 1.2.6.2. a-c to address not only the impact on industry, but the impact on sensitive land uses (i.e. home owners), as well as prioritizing growth in areas that are not impacted by adverse effects should be a Provincial Priority. Land use compatibility is a critical matter to ensure the long-term function of industry and a reasonable quality of life for residents and other users of sensitive land uses.

**Our preference would be to revise proposed policy 3.5.2 to include all 4 previous land use compatibility tests as outlined in the current PPS policy 1.2.6.2.** If the Province has concerns regarding adding back the needs and alternatives test at a broader scale, we suggest a focused approach where the test applies, at the very least, to large and fast-growing municipalities. This is because large and fast-growing municipalities are experiencing not just residential growth, but also employment growth, including the increase in scale and intensity of major facilities. This increased growth in major facilities combined with increased pressure to locate near major facilities to facilitate growth, requires early upfront and thoughtful land use planning approaches that reflect the combined Provincial priorities of affordable housing and growing the economy. In applying these tests to large and fast-growing municipalities, the Province can accommodate growth in a manner that does not impact existing industries while still supporting housing affordability.

**2. The adverse effects on industry versus on residents is different, but this is not demonstrated in the proposed land use compatibility policies and should be considered as well.**

In our opinion, the proposed land use compatibility policies, namely the removal of the adverse effects on the sensitive land use, ought to be reconsidered. It is critical that the impact on residents and other sensitive land uses be considered as well when contemplating sensitive land uses adjacent or in proximity to rail facilities and operations. The Agency can make decisions that allow railway operations to continue despite complaints and even the demonstration of adverse effects from residents.

**3. Clarity is needed on what constitutes as avoidance and/or prevention.**

While we recognize that the term “avoidance” is not defined in the current PPS or proposed Provincial Planning Statement; it is our opinion that the needs and alternatives test helps municipalities define avoidance and as such, is essential to include. In the absence of current PPS policy 1.2.6.2.a-b, avoidance cannot be defined.

We recognize that the needs and alternatives test is preventative in nature. However, we are of the opinion that it is important to demonstrate that avoidance is not possible, and the needs and alternatives test is a means to determine avoidance is truly not possible by determining that there is nowhere else in the

community to develop. CN has seen examples where communities and applicants have simply stated that “we need to grow here” to justify that avoidance is not possible, without doing an analysis that looks at alternative growth scenarios that do not impact or avoid potential adverse effects on major facilities. This leaves clear alternative community design approaches not being considered, as developing near industry can be perceived as being less challenging to obtain approvals due to there being fewer existing residents in the area.

We understand that smaller municipalities may not anticipate significant growth in the future, and therefore the needs and alternatives test in place through the current PPS may be less practical for them. In addition, for smaller urban areas, avoidance may be impractical. For these reasons, we suggest an option, should the Province be concerned about the broader implementation, of the needs and alternatives test that focuses more so on larger municipalities. In doing so, smaller municipalities can focus on mitigation, whereas large and fast-growing municipalities can continue to operate and grow in a manner that addresses their unique challenges and opportunities while taking a preventive approach to protecting industry.

In addition, there is no clear distinction between “avoid/avoidance” and “prevent”, as both terms are used in the proposed Provincial Planning Statement, and whether avoidance equates to prevention, or vice versa. The proposed Provincial Planning Statement should clearly outline how avoidance and/or prevention can be proven. It is CN’s opinion that adverse effects should, first and foremost, be prevented if possible. The inclusion of the needs and alternatives test is important because it triggers prevention prior to mitigating and minimizing.

Furthermore, proposed policy 2.8.1.3 would allow employment land outside of employment areas to permit a diverse mix of uses, taking into account the transition of uses to prevent adverse effects, including sensitive land uses such as residential and institutional uses. We do not have an issue with the intent of this policy, but point out that the transition of uses is often not addressed by municipalities, as is required. In CN’s experience, municipalities frequently fail to consider transition and the potential adverse effects. The issue is not that the permission of sensitive land uses can occur, but rather that municipalities fail to consider transition when preparing the Official Plan or Official Plan Amendments and sensitive land uses are often permitted in advance of any land use compatibility study being conducted. CN supports the notion of preventing adverse effects, and not just minimizing and mitigating them. Additionally, municipalities fail to craft policies and land use designations that clearly indicate that sensitive land uses are permitted only subject to land use compatibility being addressed. We are of the opinion that municipalities must consider land use compatibility in their Official Plans or through Official Plan Amendments. As such the proposed policy should include this direction for municipalities.

With respect to proposed policy 2.8.1.4, we are of the opinion that Official Plans and Zoning By-laws must clearly permit other land uses which are not sensitive land uses, to allow for options to address land use compatibility, should there be conflicts that do not allow sensitive land uses to be implemented.

- 4. The Provincial Planning Statement should acknowledge that the industry is growing as well. It is important to take into consideration that we cannot predict how this growth will occur as it is customer specific and subject to market conditions.**

The rail industry is expected to continue experiencing growth. This growth cannot currently be predicted, including the expansion of operations for current rail yards and facilities. This is because the rail industry can not refuse cargo per statute and must be able to quickly respond to any new customers anywhere in the Province. Section 3.4 of the proposed Provincial Planning Statement does speak to the long-term operation of federal facilities. However, the section does not speak to the importance of considering the rules and regulations under which these facilities operate as part of considering land use planning policies and community development. This leaves a potential gap in Provincial policy.

- 5. Proposed policy changes based on concerns.**

Based on the concerns noted above, we propose the following specific policy language recommendations:

- I. Proposed Changes to Policy 2.8.1.3**

Revise policy 3.5.1 to insert the following:

2.8.1.3 On lands for employment outside of employment areas, and taking into account the transition of uses to prevent adverse effects, a diverse mix of land uses, including residential, employment, public service facilities and other institutional uses shall be permitted to support the achievement of complete communities. **Sensitive land uses shall only be permitted subject to policy 3.5.**

- II. Proposed Changes to Policy 3.4.1**

Create a new policy 3.4.1.c to read as follows:

**3.4.1.c) In the case of federally regulated facilities, their long-term operation shall include consideration of their federal jurisdiction and the national economy.**

- III. Proposed Changes to Policy 3.5.1**



Revise policy 3.5.1 to insert the following:

- 3.5.1 *Major facilities and sensitive land uses* shall be planned and developed to ~~avoid, or if avoidance is not possible, minimize and mitigate any potential~~ prevent *adverse effects*. If prevention is not possible, per 3.5.2 below, then *major facilities and sensitive land uses* shall be planned and developed to minimize and mitigate any potential *adverse effects* from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of *major facilities* in accordance with provincial guidelines, standards and procedures.

#### IV. Proposed Changes to Policy 3.5.2

##### **Option #1: Implement the current land use compatibility policies.**

We recommend that proposed policy 3.5.2 be revised to implement the current land use compatibility policies in the 2020 PPS, specifically the 4 tests under policy 1.2.6.2. We recommend that policy 3.5.2 be revised to the following:

- 3.5.2 ~~“Where avoidance is not possible~~ In order to demonstrate that prevention is not possible, in accordance with policy 3.5.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other *major facilities* that are vulnerable to encroachment by ensuring that proposed adjacent *sensitive land uses* are only permitted if ~~potential impacts to industrial, manufacturing or other major facilities are minimized and mitigated in accordance with provincial guidelines, standards and procedures~~ the following are demonstrated in accordance with provincial guidelines, standards and procedures:
- a) there is an identified need for the proposed use;
  - b) alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
  - c) adverse effects to the proposed sensitive land use are minimized and mitigated; and
  - d) potential impacts to industrial, manufacturing or other uses are minimized and mitigated.

##### **Option #2: Implement the current needs and alternatives test to only apply to large and fast-growing municipalities.**

Should the Province be concerned regarding the above-noted tests being broadly applied, we recommend that policy 3.5.2 be revised as follows:



Revise policy 3.5.2 to insert the following:

- 3.5.2 ~~“Where avoidance is not possible~~ In order to demonstrate that prevention is not possible, in accordance with policy 3.5.1, for municipalities that are not large and fast-growing municipalities, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other *major facilities* that are vulnerable to encroachment by ensuring that proposed adjacent *sensitive land uses* are only permitted if potential impacts to industrial, manufacturing or other *major facilities*; and on the *sensitive land use*, are minimized and mitigated in accordance with provincial guidelines, standards and procedures.”

Create a new policy 3.5.3 to read as follows:

- 3.5.3 “In large and fast-growing municipalities, where prevention is not possible in accordance with policy 3.5.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and *development* of proposed adjacent *sensitive land uses* are only permitted if the following are demonstrated in accordance with provincial guidelines, standards, and procedures:
- a) there is an identified need for the proposed use;
  - b) alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
  - c) adverse effects to the proposed sensitive land use are minimized and mitigated; and
  - d) potential impacts to industrial, manufacturing or other uses are minimized and mitigated.”

## 6. Definitions for Major Facilities, Major Goods Movement Facilities and Corridors, Rail Facilities, and Sensitive Land Uses.

The definitions noted above are not being modified in the proposed Provincial Planning Statement. We support the definitions and request that these terms, as currently defined, be kept.

## 7. Inclusion of Chapter 3 and Chapter 5 policies.

CN supports the inclusion of the following policies within the proposed Provincial Planning Statement, as they contribute to the long-term protection of rail facilities and operations and protection of public health and safety. In addition to the proposed modifications referenced above, we request that the following policies



be kept in the proposed Provincial Planning Statement: 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.2, 3.3, and 5.1.1.

With respect to policy 3.3.3, clarity is needed, as discussed above, with respect to the term “prevent” in policy 2.8.1.3 and the terms “avoid” and “avoidance” in policy 3.3.3.

The inclusion of policy 5.1.1 is particularly important because it acknowledges that development should be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety, and not create new or aggravate existing hazards. CN trains are often obligated to carry dangerous or hazardous goods, such as chemicals or gas, which pose a hazard to public health and safety in the event of accidental spills or leaks. This policy provides key direction on the issue of directing development away from hazards, such as rail yards and operations.

### **Conclusion**

We would like to thank you again for the opportunity to participate in the Review of Proposed Policies Adapted from A Place to Grow and Provincial Policy Statement to form a New Provincial Planning Policy Instrument. We look forward to continuing to work with the Province throughout this process to ensure that this important industry is protected in the land use framework in Ontario. Please forward all future documents to [proximity@cn.ca](mailto:proximity@cn.ca) and the undersigned.

Thank your time and we look forward to receiving further information on this initiative. If there are any questions, we are happy to discuss this matter further.

Yours very truly,

**WSP CANADA INC.**

Chad B. John-Baptiste, MCIP, RPP  
Director, Planning – Ontario

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Eric Harvey – CN Rail  
Katarzyna Sliwa – Dentons Canada LLP

Encl. Letter to the Honourable Steve Clark, Ministry of Municipal Affairs and Housing dated December 21, 2022



2022-12-21

The Honourable Steve Clark, Minister of Municipal Affairs and Housing

Provincial Land Use Plans Branch  
13<sup>th</sup> Floor, 777 Bay Street  
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Via email: [growthplanning@ontario.ca](mailto:growthplanning@ontario.ca)

**Re: Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177**

Dear Minister Clark,

WSP has been retained and is acting on behalf of the Canadian National Railway Company (CN Rail or CN). We are pleased to have this opportunity to provide comments on the Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177.

We recognize and understand the key outcomes of the **Review of A Place to Grow and Provincial Policy Statement** (the Review) are to develop a streamlined policy framework that is less complex, and more flexible that provides growth management tools to facilitate the provision of more housing units, while ensuring a range of mix of housing options, for all Ontarians. We support the goals of reducing duplication and clarifying policy overlaps between the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe.

#### **About CN Rail, Railway Noise and Other Adverse Effects**

CN Rail is a federally regulated railway company and is governed by various federal legislation, including the *Canada Transportation Act* (CTA or Act) and the *Railway Safety Act* (RSA), amongst others. The CTA requires federally regulated railway companies to only make such noise and vibration as is reasonable. The test of reasonableness under the CTA takes into consideration the railway company's operational requirements and its level of service obligation under the Act, as well as the area where the construction or operation takes place.

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The Canadian Transportation Agency (Agency) is the federal body that assesses the reasonableness of noise associated with the construction or operation of a federal railway company. In its decisions, the Agency has concluded that municipalities have a responsibility to assess compatibility issues before approving housing developments in proximity to railway rights-of-way. The Agency also commented that where a municipality approves the development, it has a responsibility to ensure that the necessary mitigation measures are implemented. One example of such a decision that responds to a resident-issued complaints concerning noise and vibration along a rail right-of-way, is Decision No. 69-R-2014, dated February 27, 2014, where the Agency noted the lack of implementation of the FCM-RAC Guidelines by the Municipality to justify dismissing the complaint.

It is important to understand that there is no specific decibel limit for CN operations contained in federal guidelines related to the construction or operation of rail facilities. The Agency guidelines are issued under the Act. 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*** in its rulings.

Note that certain noises from a freight rail yard are stationary noise sources as defined in the Province's MECP Noise Guideline (NPC-300). In addition, the NPC-300 Class 4 area classification does not benefit federally regulated land uses or residents in development subject to Class 4, as rail facilities are not subject to provincial regulation that protect Provincial facilities from the increase decibel limits permitted by Class 4 (see above). As such, NPC-300 should not be considered the default approach for noise mitigation near rail facilities.

Rail Proximity Guidelines are available at the following link:

<https://www.proximityissues.ca/>

Guidelines for the Resolution of Complaints Over Railway Noise are available at the following link:

<https://otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration/>

### **Canadian National Railway, 2020 Sustainability Report**

Freight rail has demonstrated that it can play a role in Enabling the Transition to a Low-Carbon Future. Some extracts from CN Rail's 2020 Sustainability Report are as follows:

- More Fuel Efficient: Trains, on average are 3 to 4 times more fuel efficient than trucks.
- Longer Hauls: 480 miles is the distance one train can move a ton of freight on one gallon of fuel. (Approx. 200 kilometres/litre)

- Avoids Congestion: One freight train can replace over 300 big trucks.

### **Connecting the GGH: A Transportation Plan for the Greater Golden Horseshoe (February 2022)**

We also recognize that there is growing Provincial emphasis on promoting the movement of people and goods by rail and incorporating greater integration of multimodal transportation and goods movement into land use and transportation system planning. As an example, “*Connecting the GGH: A Transportation Plan for the Greater Golden Horseshoe (February 2022)*” issued by the Ministry of Transportation includes “Efficiently Moving Goods” as one of the four inter-related themes. That same document further outlines a Strategic Goods Movement Network (SGMN) and states the following in Section 4.4:

“Utilize consistent design, engineering, operations, maintenance, and rehabilitation standards across the SGMN corridors, and **protect the corridors from adverse new development that undermines goods movement uses. This will build on best practices and well-established guidelines** such as the “*Freight-Supportive Guidelines*” and the Railway Association of Canada’s “*Guidelines for New Development in Proximity to Railway Operations*”. (Emphasis added)

The same document includes Map 6 which outlines the “Current, planned and conceptual Strategic Goods Movement Network elements”. The Map includes several existing and planned CN infrastructure as part of the SGMN, including but not limited to the MacMillan Yard in Vaughan, the Brampton Intermodal Terminal and the future Milton Logistics Hub, along with several CN railway lines that service these facilities and the rest of the Greater Golden Horseshoe (GGH). Finally, while this document is GGH focused, it is our opinion that the principles established within this document, as it relates to the movement of goods, are equally applicable across the Province of Ontario.

CN also appreciates the importance of housing and the Province’s commitment to providing affordable housing through the More Homes for Everyone Plan. CN understands that there is an established and growing emphasis on providing and creating more affordability in the housing market. CN is concerned with compatibility issues as between rail and residential uses, and in ensuring that proper mitigation of noise, vibration and safety is addressed. Developers across Ontario have an obligation to protect future purchasers and homeowners when it comes to compatibility, and issues related to noise, vibration and safety, and should ensure that purchasers have access to a safe and enjoyable living environment. Mitigation measures must be properly implemented and compatibility between sensitive uses and the rail operations must be addressed.

### **Comments**

Our comments focus on policies and/or infrastructure initiatives as they relate to existing and/or future CN Rail facilities, operations and infrastructure. We want to ensure that the specific policies within the Provincial Policy Statement, 2020 (PPS) and the Growth Plan

that requires that new development on adjacent/proximal lands are compatible with and supportive of, the long-term purposes of the corridor/rail facility and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor are kept in any future policy framework.

Planning for land uses in the vicinity of *rail facilities* must be undertaken in such a way that the economic function and long-term operation of rail systems are protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. The Review speaks to streamlining and simplifying policies to allow for the potential conversion of employment lands to residential and/or mixed uses. Some employment lands are adjacent to or in the vicinity of rail facilities and it is our position that such locations are not appropriate for sensitive land uses, such as residential uses.

Streamlining and facilitating the conversion of employment land to residential or mixed-use with denser intensification will create increased instances of land use compatibility conflicts. We note that the Provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in the Ministry of the Environment, Conservation and Parks (MECP) D-6 Compatibility between Industrial Facilities Guidelines (D-6 Guidelines). It is our opinion that rail yards are considered a major facility per the PPS and would be classified by the D-6 Guidelines as Class III Industrial Facilities because of their scale, adverse effects from the facility, and continuous operation.

We recommend that the policy in Section 1.2.6 of the PPS be kept as it ensures major facilities and sensitive land uses be planned and developed to **avoid** (emphasis added) and where avoidance is not possible, to minimize and mitigate potential adverse effects from odour, noise and other contaminants. Sensitive uses should only be located in proximity to the major facility when the need for the use is established and when there are no reasonable alternative locations for the proposed use.

The D-6 Guidelines support and add further policy direction that **only compatible development** (emphasis added) should occur within 300 metres of a Class III facility. This 300-metre separation distance for rail yards is also reflected in the 2013 Guidelines for New Development in Proximity to Railway Operation, prepared for The Federation of Canadian Municipalities and The Railway Association of Canada (FCM-RAC). Further to the Provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 1 kilometre of a Class III facility. In 2016 the Province of Ontario, through the Ministry of Transportation, issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities. In addition, we note that in May 2021, the Province issued an update to the MECP D-Series Guidelines that was subsequently rescinded. It is our opinion that the MECP D-Series Guidelines need to be updated to reflect new policy direction.

We recommend that as part of the Review, the Province considers including policy direction that ensures that municipalities incorporate policies relating to developments adjacent or in proximity to rail rights-of-way in their Official Plans and comprehensive Zoning By-laws. We also recommend the following high-level comments for consideration in the Review:

**1. Require municipalities to include a General Acknowledgement policy in policy documents.**

The Review provides policy language that requires municipalities to acknowledge the importance of the rail infrastructure and recognizes its critical role in long-term economic growth and the efficient and effective movement of goods and people. Municipalities should be required to ensure the continued viability and ultimate capacity of the rail corridors and rail yards are protected and shall identify and support strategic infrastructure improvements, such as targeted grade separations.

**2. Keep the PPS 2020 and Growth Plan Freight Supportive, Land Use Compatibility and Transportation Infrastructure Policies and enhance them further based on recent experience**

We request that Section 1.2.6 and other related policies, such as but not limited to Section 1.1.3.2 (g), 1.6.7, 1.6.8, 1.6.9 and 1.8.1(d) remain within the PPS. Similarly, Sections 2.2.5.7(c), 2.2.5.8, 3.2.4 and 3.2.5 of the Growth Plan should remain. Furthermore, we provide the following recommendations:

- PPS Section 1.2.6.2 (a): The “needs” test is not well defined and is left to interpretation. Some have suggested that simply “needing” homes or other sensitive uses in the municipality is enough to satisfy this policy test. While at a macro level this is true, that should not mean at a micro level, as it relates to land use compatibility, that simply “needing” a use is enough to justify introducing a land use that can have adverse effects on the industry. The “needs” test should be revised to state “there is an identified need for the proposed use, ***in the context of land use compatibility...***”
- PPS Section 1.2.6.2 (b): The alternatives test has been interpreted multiple ways in the land use planning community. Some have suggested that alternatives are only within an undefined area of the community, others have suggested that it must only be within the adverse effects impact radius of the major facility. Clarity is needed here. We suggest that the test be revised to state that “alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations ***within the municipality.***”

**3. Keep the definitions for Major Facilities, Major Goods Movement Facilities and Corridors, Rail Facilities and Sensitive Land Uses.**

We request that the following definitions found in the PPS be kept, and to include a policy direction for municipalities to include such definitions in their local policy documents:



**Major facilities:** means 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.

**Rail facilities:** means rail corridors, rail sidings, train stations, inter-modal facilities, rail yards and associated uses, including designated lands for future rail facilities.

**Sensitive land uses:** means 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.

**Major goods movement facilities and corridors:** means transportation facilities and corridors associated with the inter- and intra-provincial movement of goods. Examples include: inter-modal facilities, ports, airports, rail facilities, truck terminals, freight corridors, freight facilities, and haul routes and primary transportation corridors used for the movement of goods. Approaches that are freight supportive may be recommended in guidelines developed by the Province or based on municipal approaches that achieve the same objectives.

**4. Add a Provincial Policy that requires rail facilities and influence areas to be shown on municipal policy document schedules.**

We also recommend that Provincial policy require municipalities to include identifying rail facilities and the areas of influence (300 metres for a rail line, 1 kilometre for a rail yard) in a schedule. Identifying the boundaries will reduce the uncertainty for planning and developing sensitive land uses, and help identify and avoid land use conflicts for those areas.

**5. Add Provincial Policy that requires municipalities to add policies in their Official Plans and comprehensive Zoning By-laws that clarify that new developments would be required to meet the PPS requirements for the long-term protection of Rail Facilities.**

The policies proposed below are recommended to be included in the PPS to address requirements for developments and infrastructure in proximity to rail facilities:

- a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways;
- b) Development in proximity to rail facilities shall be developed in accordance with the Guidelines for New Development in Proximity to Railway Operations (2013), prepared by the Federation of Canadian Municipalities and the Railway Association of Canada;
- c) Ensuring that noise, vibration and safety issues are addressed for all developments adjacent and in proximity to rail facilities;
- d) Sensitive land uses will not be encouraged adjacent to, or in proximity to rail facilities;
- e) All proposed residential or other sensitive use developments within 300 metres of a railway right-of-way will be required to undertake noise studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified. All available options, including alternative site layouts and/or attenuation measures, will be thoroughly investigated and implemented to ensure appropriate sound levels are achieved;
- f) All proposed developments within 75 metres of a railway right-of-way will be required to undertake vibration studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from vibration that were identified;
- g) All proposed building setbacks shall be in accordance with the Federation of Canadian Municipalities and Railway Association of Canada Guidelines. As a general guideline, buildings shall be set back 30 metres, with an appropriate berm abutting the railway right-of-way. Reduced setbacks can be considered in certain circumstances dependant on the proposed use and in conjunction with additional studies and alternative safety measures, to the satisfaction of the Municipality, in consultation with the appropriate railway operator;
- h) All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms, crash walls and security fencing are provided, to the satisfaction of the Municipality, in consultation with the appropriate railway operator. Where applicable, the Municipality will ensure that sightline

requirements of Transport Canada and the railway operators are addressed; and

- i) Implementation and maintenance of any required rail noise, vibration, and safety impact mitigation measures, along with any required notices on title such as warning clauses and/or environmental easements, will be secured through appropriate legal mechanisms, to the satisfaction of the Municipality and the appropriate railway operator.

**6. Add Provincial Policy that requires municipalities to include policies in their Official Plans and comprehensive Zoning By-law to clarify that new developments would be required to meet the Provincial Policy Statement requirements for land use compatibility with respect to major facilities.**

We recommend that the current PPS policies are kept. We also recommend that a policy that directs municipalities to conform with the PPS policies in their policy documents, and also requires that sensitive land uses be developed in a way that avoids or mitigates the adverse effects of odour, noise, and other contaminants. We recommend the following statements be added:

- a) “*Major facilities and sensitive land uses* shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures and the Ministry of the Environment, Conservation and Parks guidelines, as amended (PPS 1.2.6.1).”
- b) “Where avoidance is not possible in accordance with the policy above, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:
  - a. there is an identified need for the proposed use ***in the context of land use compatibility;***
  - b. alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations ***in the municipality;***

- c. adverse effects to the proposed sensitive land use are minimized and mitigated; and
  - d. potential impacts to industrial, manufacturing or other uses are minimized and mitigated (PPS 1.2.6.2).”
- c) Requiring that the planning and development of a sensitive land use near or adjacent to a major facility be done in accordance with the PPS and provincial guidelines, standards and procedures. CN Rail considers Freight Rail Yards to be a Class III Industrial Use as per the MECP’s D-6 Guidelines.
- d) New or expanded residential development or other sensitive land uses will not be permitted within 300 metres of a rail yard. An Official Plan Amendment shall be required to introduce or expand a sensitive land use within 300 metres of a freight rail yard. Study requirements for other land uses within 300 metres are to be completed in accordance with the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC) Guidelines and the MECP D-6 Guidelines.
- e) All residential development or other sensitive land uses located between 300 metres and 1000 metres of a rail yard will be required to undertake land use compatibility studies, to the satisfaction of the Municipality and the appropriate railway operator, to support the feasibility of development and, if needed, shall undertake appropriate measures to mitigate any adverse effects that were identified.



## **Conclusion**

We would like to thank you again for the opportunity to participate in the Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177. We look forward to continuing to work with the Province throughout this process to ensure that this important industry is protected in the land use framework in Ontario. Please forward all future documents to [proximity@cn.ca](mailto:proximity@cn.ca) and the undersigned.

Thank your time and we look forward to receiving further information on this initiative. If there are any questions, we are happy to discuss this matter further.

Yours very truly.

**WSP CANADA INC.**

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

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

Copy: Katarzyna Sliwa, Dentons  
Eric Harvey, CN Rail  
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