



August 4, 2021

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**RE: ERO 019-2785**

Dear Mr. Coelho

The following is the submission from Gravel Watch Ontario (GWO; [gravelwatch.org](http://gravelwatch.org)) in response to the request for comments on the Proposed Land Use Compatibility Guideline, Ministry of Environment, Conservation and Parks (March 2021) ERO 019-2785.

**About Gravel Watch Ontario**

Gravel Watch Ontario is a province-wide coalition of citizen groups and individuals that acts in the interests of residents and communities to protect the health, safety, quality of life of Ontarians and the natural environment in matters that relate to aggregate resources.

GWO recognizes the obligation to protect agricultural lands, water resources and the natural environment, all of which are essential for building a climate-resilient Ontario for future generations. GWO works with and on behalf of our members and communities throughout the province to advocate that policies regulating aggregate extraction not result in permanent loss of farmland or rural landscape amenities and do not damage the integrity of the water resources supplied by the rural landscape. Gravel Watch Ontario has commented on government planning and aggregate policies for over 15 years.

We understand that ERO notice 019-2785 links to four separate compliance initiatives. GWO's submission focuses on aggregate resources as it pertains to these draft Land Use Compatibility Guidelines. In general, GWO found the information regarding aggregate to be scattered throughout various sections of the document, often unclear or contradictory, making it particularly onerous on the reviewer to sift through and sort out the intent and nature of land use compatibility as it relates to aggregate operations. The ensuing discussion has *italicized and indented* the instructions identified in the Guideline with GWO's comments following thereafter for ease of reference.

## 1. INTRODUCTION & CONTEXT

### 1.1 Overview

#### GWO Concern/Issue – Preferential Treatment of Aggregate Class 3 Major Facilities over Sensitive Land Uses

*The objective of the current EPA D-6 Guideline is to “prevent or minimize the encroachment of sensitive land use upon industrial land and **vice versa**, as these two types of land uses are normally incompatible due to possible adverse effects on sensitive land use created by industrial operations.”*

*The overview of the Land Use Compatibility Guideline states that “the Guideline is to be applied to achieve and maintain land use compatibility between major facilities and sensitive land uses when a planning approval under the Planning Act is needed in the following circumstances:*

- *A new or expanding sensitive land use is proposed near an existing or planned major facility, **or***
- *A new or expanding major facility is proposed near an existing or planned sensitive land use.”*

Although the Compatibility Guideline requires equal application by both a major facility and a sensitive land use, they are not treated equally throughout the document. For example, Section 2.8 of the Guideline, demonstration of need is to be carried out by proponents of sensitive land uses only. In Appendix D, the Area of Influence (AOI) and the Minimum Distance Separation (MDS) for are not applicable to land use decisions for new or expanding aggregate operations.

The Guideline also identifies aggregates as a sector which has had a history of ongoing and frequent complaints. Situating aggregate operations near sensitive land uses under exempted and exclusive rules does not achieve compatibility.

#### GWO Recommendation #1

- Apply the Guideline in the same manner for new or expanding aggregate operations as for sensitive land uses.

### 1.2 General Approach to Planning for Land Use Compatibility

#### GWO Concern/Issue -- Co-existence and Compatibility Not Conceptually Related

*“Land Use compatibility is achieved when major facilities and sensitive land uses can co-exist and thrive for the long-term within a community through planning that recognizes the locational needs of both.”*

The terms compatibility and co-existence are not conceptually the same. Compatibility denotes relations that are well-suited, friendly and harmonious. Co-existence, on the other hand, denotes tolerance and forbearance. Inferring these terms are correlated sets the stage for further conflict, lengthy appeals and increased costs for all parties.

In Section 3.8, the concept of co-existence as meaning tolerance is confirmed.

*“.....after a major facility has obtained its necessary planning approvals to be located in an area that may be close to a sensitive land use (e.g. a residential development), or vice versa..... the tools available to the Ministry (MECP) to deal with contaminants from the facility as well as technical solutions may be limited..... which 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 affects (noise, dust and odour) may be directed to the municipality”.*

Minor impacts are not defined but the sensitive land use is expected to tolerate the resulting adverse effects for the long term. Long term consequences can result in societal costs associated with health and safety or environmental degradation. It’s an unfair practice to expect the public to tolerate long term consequences.

Use of the term co-existence does not align with federal international agreements regarding sustainable development and climate change which strive for a balance between the various sectors of society. This balance is also reflected in Ontario’s environment, climate change and planning frameworks.

**GWO Recommendation #2:**

- Maintain the conceptual distinction between compatibility and co-existence.
- Distinguish between minor and major impacts.
- Ensure the MECP Guideline aligns with national and international agreements as well as the provinces’ social, environmental and climate change responsibilities.

**1.3 Guiding Hierarchy for Land Use Compatibility Planning**

**GWO Concerns/Issues – The PPS not being read in its’ entirety.**

*“Separation of incompatible land uses is the preferred approach to avoiding land use compatibility issues. The Guideline state that this approach is consistent with PPS 1.1.5.6”*

The PPS speaks to the incompatibility of sensitive residential land use with existing aggregate operations. GWO believes that the reverse is also true as per Case Law - Capital Paving v Wellington (County) 2010 Carswell Ont. Paragraph 6....

*“it is fair to say the PPS speaks to incompatibility of sensitive residential use with earlier operations, and the reverse is also true, that a proposed pit may be incompatible with prior residential use”.*

Although the Guideline in Section 1.7.1 generally supports fulfillment of provincial interests identified in the PPS, missing throughout the document is identification to the pertinent PPS clauses which direct consideration for development to (1) consider social and environmental impacts, and (2) only permit development once potential impacts have been addressed.

**GWO Recommendation #3:**

- Apply the same requirement for new or expanding major facilities near established and planned sensitive land uses as for sensitive land uses being proposed near major facilities.
- Consistently apply all relevant PPS clauses.

**GWO Concern/Issue – Ambiguous Terminology and Lack of Meaningful Public Involvement**

*“When avoidance (i.e. separation) alone is not possible, minimizing and mitigating potential impacts may provide a basis for a proposal. If minimization is not viable, the proposed incompatible land use should not be enabled, and related planning or development applications should not be approved”*

GWO supports this Guideline. The term ‘should’, however, is indefinite and subject to interpretation and ambiguity.

**GWO Recommendation #4:**

- Change the word ‘should’ to ‘shall’ to provide clear direction to ensure incompatible uses are not enabled nor approved.

*“Planning authorities, proponents and the surrounding communities ‘should work together’ to achieve land use compatibility”.*

Working together is a viable approach to achieving compatibility. ‘Should work together’ implies relationship building, collaboration and compromise. Appendix C, however, outlines best practices for relationship building as merely communicating with members of the public. Communication relates to the informing stage of planning engagement conventions as depicted on Step 3 of the Arnstein’s Ladder of Public Participation (<https://www.citizenshandbook.org/arnsteinsladder.html>.) ‘Informing’ is generally a one-way communication strategy that rarely results in even minor adjustments. Informing does not denote, nor reflect the concept of ‘working together’. Society’s legal and institutional framework that sanctions planning decisions has increasingly recognized the benefit of various engagement measures for practical deliberations that include various perspectives and encourages dialogue to promote understanding among stakeholders’ values and interests. The role of the public to bring forth community values is critical. It is also critical to consider the concept of ‘working together’ as relationship building and collaboration in regards to the Duty to Consult with Indigenous Peoples.

**GWO Recommendation #5:**

- Change ‘should work together’ to ‘shall work together’.
- Enable collaboration to achieve the desired outcome of compatibility.
- Clearly identify the government’s responsibility for the Duty to Consult with Indigenous Peoples and ensure it is implemented at the outset of development when changes in land use are being considered.

## 1.6 Roles and Responsibilities

### 1.6.1 Planning Authorities

*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.*

**GWO supports the above guideline.**

#### **GWO Concern/Issue – Increased responsibility on the planning authorities**

*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....must be up-to-date and in accordance with this Guideline.*

Updating OPs and zoning by-laws is a daunting task which puts pressure on planning authorities' capacity requirements and ultimately for increasing property taxes. Although mandated under the same Planning Act as municipalities, Local Planning Authorities in rural and unorganized territories do not have the corresponding human and financial resources to carry out basic planning functions, let alone up-dates to OPs and zoning by-laws in regards to this Guideline.

#### **GWO Recommendation #6:**

- Do no overburden planning authorities' capacity and planning budgets.
- Review the viability and effectiveness of Local Planning Boards to carry out high level planning functions.

## **2. TOOLS TO ASSESS LAND USE COMPATIBILITY**

### **2.1.1-3 Areas of Influence and Minimum Set Back Distances**

#### **GWO Concern/Issue – Preferential Treatment Given to Aggregate Operations**

An influence area approach to minimize land use conflicts for aggregate resource extraction has long been recognized. The 1986 Guideline on Implementation of the Mineral Aggregate Resources Policy Statement (Ministry of Natural Resources) states that:

*“An influence area is the area surrounding a pit or quarry where the impacts of the operation may be felt on the environment, nearby residents and land uses. The influence area concept is intended to protect existing or designated sensitive land uses from proposed pits or quarries and existing or designated pits or quarries from encroachment by sensitive uses ...”*

Guideline Section 1.2 recognizes that sensitive land uses located too close to a major facility could experience environmental impacts as well as risks to public health and safety. Similarly, Section 2.1.3 states that:

*“proposals should not result in sensitive land uses being located in MSDs as adverse effects are highly likely to occur.”*

While a planning authority may determine that an Area of Influence may be smaller (based on supporting studies), it must never be smaller than the MSD in the Guideline. However, while recognizing that some above-ground equipment such as crushers, ready-mix concrete plants and asphalt plants may require ECA's, the Guideline states:

*The AOI and MSD in the Guideline are not applicable to land use decisions for new or expanding aggregate operations proposed near sensitive land use.*

And, Section 2.2 states:

*Aggregate Operations (Aggregate extraction, Resource Extraction, Other mineral quarries) identified as Class 3 (AOI 1,000 m/MSD 500 m) AOI and MSD only applies to new or expanding sensitive land use proposals near major facility aggregate operations.*

In addition, the Aggregate Resources Ontario Provincial Standards (AROPS) refers to measurement of separation as the distances to sensitive receptors, not to the property boundary of a sensitive land use as recommended in Section 2.4 and in relation to Section 3.3 “At-receptor mitigation is not recognized by the Ministry to mitigate odour and dust impacts” and in Appendix B.1 “the Ministry-developed AOIs in this Guideline should address both noise and vibration...separation distances for noise are larger than vibration so covering noise impacts will cover vibration impacts” which fails to account for any future expansions of the aggregate operation or changes to the site plan.

Although Guideline Section 4 recommends planning mechanisms to assist in the implementation of land use compatibility, Section 66 of the ARA is highly restrictive of municipal authority such as municipal site plan controls and development permits. Both the PPS (Section 2.5.2.4) as well as the ARA (Section 12.1 (1.1) prohibit municipalities from issuing zoning by-laws to restrict the depth of extraction while Guideline Section 4.1 recommends adverse impacts on sensitive land uses to be considered at the Official Plan (OP) and zoning stage. Section 13 of the ARA, however, allows the Minister, at any time, to rescind or vary a condition of a licence, amend a licence or require a licensee to amend the site plan. A licensee may also make the same requests of the Minister at any time. These unknown operational impacts cannot be adequately assessed or determined at the planning/approval stage. The question then becomes...how can a planning authority be responsible for approvals of an industrial extractive zoning when site plans can be changed at the licensing stage and throughout the life of the license for which the planning authority has no control?

#### **GWO Recommendation #7:**

- For new or expanding aggregate operations:
  - Apply the prescribed AOI and MSD required for Class 3 Major Industrial Facilities proposed near Sensitive Land Uses,
  - Measure separation distances (AOI and MSD) from the property boundary of the proposed aggregate operation (Class 3 Major facility) and from the property boundary of the existing sensitive land use to accommodate future expansions of the major facility,

- Adhere to the Guideline for a Class 3 Major Facility (as identified in Section 2.2 Table 1) with the understanding that some aggregate operations may cause adverse effects beyond the MSD of 500 M and in some cases, beyond the AOI of 1000 M
- Be subject to the steps in Section 2.5 for a proposed or expanding major facility that is within the AOI or MSD of an existing or planned sensitive land use.
- Recognize Section 2.9 of the Decision Tree for Land Use Compatibility that may result in a proposed Major Facility not going ahead if expected adverse effects cannot be minimized and/or mitigated to the level of no adverse effects.

## 2.8 Demonstration of Need

### GWO Concern/Issue – Preferential Treatment Given to Aggregate Producers – no balance

*The demonstration of need.....is only required by proponents of sensitive land uses.*

*When considering new sensitive land uses near mineral aggregate areas, planning authorities must consider active aggregate operations, zoning which permits future aggregate operations and, where provincial information is available, deposits of mineral aggregate resources.*

The concern in this Section is the nature and regional distribution of aggregate since there are areas throughout the province where distribution of aggregate is ubiquitous. “Freezing” land has the potential to restrict settlement to narrow confines. This situation does not take into consideration future generations, which is antithetical to the United Nations concepts and definitions pertaining to ‘development that meets the needs of the present without compromising the needs of future generations’<sup>1</sup>. Freezing land also creates the risk for mega-quarry development that can lead to long term and irreversible impacts. There is little data available regarding aggregate reserves yet the focus is to open up new lands closer to market as a means to reduce transportation costs for the producer. Lands nearest to market are also lands nearest or adjacent to residential or farm lands which places the risk of long term and irreversible impacts onto the sensitive land use.

An unbalanced approach to demonstration of need will perpetuate conflict, constrained relations, and more appeals, thereby increasing costs for government, the proponent and the general public which is contradictory to the stated purpose of this Guideline.

### GWO Recommendation #8

- Apply the same requirement for Demonstration of Need in the same manner to new or expanding major facilities as for sensitive land uses being proposed near major facilities.
- Ensure compatibility is a two way process.

The Guideline further states:

*Compatibility studies should be prepared by the proponent.....the planning authority is responsible to review compatibility....If in house expertise is not available, the planning authority should consider having a peer review of studies at the expense of the proponent.*

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<sup>1</sup> World Commission on Environment and Development. Our Common Future, Oxford, UK. Oxford. University Press. 1987.

### **GWO Recommendation #9**

- Should a planning authority conduct a review of a proponent's compatibility study with in-house expertise, the expense should be borne by the proponent.

### **3. COMPLIANCE**

#### **GWO Concern/Issue – The public is expected to tolerate impacts for the long term Increased municipal responsibility to deal with complaints**

*“Per its compliance framework, the Ministry may refer incidents related to compatibility issues that stem from planning decision to a more appropriate level of government or agency (e.g. municipality).....after a major facility has obtained its necessary planning approvals to be located in an area that may be close to a sensitive land use (e.g. a residential development), or vice versa..... the tools available to the Ministry (MECP) to deal with contaminants from the facility as well as technical solutions may be limited..... 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 affects (noise, dust and odour) may be directed to the municipality”.*

Conceptual alignment regarding co-existence as being compatible is applicable here. Refer to Section 1 regarding terminology. Co-existence and compatibility are not conceptually the same and compatibility is a two-way process.

Refer to page 3 regarding the discussion pertaining to Section 1.2 and the lack of distinction between minor and major impacts. Shifting EPA compliance to the planning authority puts pressure on municipal capacity requirements which ultimately puts pressure on increasing municipal property taxes thereby shifting the financial responsibility to the public. In areas outside municipal boundaries, the role of Local Planning Boards is not mentioned and the public in these areas have no avenue available to have their concerns or complaints dealt with appropriately given the capacity limitations of Planning Boards. Similar to Section 2, how can planning authorities be responsible for compliance issues when site plans can be changed at the licensing stage and throughout the life of the aggregate operations which is outside the planning authorities' jurisdiction?

### **GWO Recommendation #10**

- Ensure compatibility goes both ways.
- Do not overburden planning authorities with EPA compliance issues.
- Review the viability and effectiveness of Local Planning Boards to deal with EPA complaints and compliance issues.



## **4.0 IMPLEMENTATION AND PLANNING TOOLS**

### **4.3.1 Municipal By-laws**

#### **GWO Concern/Issue**

- **Increased workload for planning authorities and risk of increasing property tax burden**
- **Lack of reference to fly rock as a contaminant**

*Onus is on the municipality to enforce by-laws that would prevent and respond to land use compatibility issues.*

Development and enforcement of by-laws regarding EPA compatibility issues puts further pressure on planning authorities' capacity requirements and risk of increase to local property taxes. As stated above, once the license has been approved, the planning authorities' oversight is limited by the PPS and the ARA. In addition, Local Planning Boards do not have the capacity for by-law enforcement. The public in these areas must rely on the good will of the self-reporting aggregate producers to comply with compatibility issues.

#### **GWO Recommendation #11:**

- Do not overburden planning authorities' capacity and planning budgets.
- The province needs to review the viability and effectiveness of Local Planning Boards to not only develop by-laws but to carry out their enforcement.

#### **GWO Recommendation #12:**

- MECP to take responsibility for monitoring and compliance regarding their mandate for the environment as it relates to major facilities.

## **APPENDIX - D – SECTOR SPECIFIC RELATED TO AGGREGATES**

#### **GWO Concern/Issue**

- **Preferential Treatment of Aggregate Industry**
- **PPS not being referred to in its entirety**
- **Recognition of the differences between planning and licensing stages**

Overall, aggregate operations are depicted as having priority over sensitive land uses. This imbalance includes the following:

- AOIs and MSDs are not applicable to land use decisions for new or expanding aggregate operations proposed near sensitive land uses,
- Not requiring demonstration of need,
- PPS clauses are not being applied consistently, and
- Grey areas exist between the planning and licensing functions.

The PPS favours a balanced approach regarding the potential for social and environmental impacts. Pertinent PPS clauses that consider the EPA state that development is to only be permitted when public health & safety, air quality and climate change have been addressed. Incompatibility in terms of noise, air, contaminants and vibration relate to public health and safety or environmental degradation and

although they are potential impacts of aggregate operations, they are not fully addressed by this Guideline.

Within this section, the planning authority is to consider compatibility as per the PPS and the ARA.

*Planning authorities....should also take into consideration that through the licensing process under the Aggregate Resource Act (ARA), MNRF also has requirements to assess potential impacts on existing nearby land uses and whether it is feasible to mitigate potential impacts through that process.*

The ARA is not a feasible mechanism to address compatibility because it is proponent driven. Although addressing public concerns regarding potential impacts from operations are the proponent's responsibility under the ARA, the purposes of the ARA are to manage, control and regulate aggregate resources and operations to "minimize" the adverse impact on the environment. Compatibility between land uses is a government planning function and a responsibility that relates to public interest and community well-being. As a business, the proponent's corporate responsibility is to their shareholders and business profitability. The ARA and accompanying AROPS are not planning but operational documents and focus on the merits of the proposed pit's operations.

#### **GWO Recommendation #13**

- Be explicit regarding all compatibility requirements.
- Clearly identify that the PPS is to be read in its' entirety.
- Aggregate operations should not take precedence over municipal planning.
- Recognize the difference between the planning and licensing functions.

#### **GWO Concern/Issue – Preferential Treatment of Aggregate Operations**

*"Planning authorities must consider the potential for adverse effects from aggregate operations (including existing, planned and potential future operation), such as traffic to and from the facilities, and noise and dust from blasting, crushing or other operations, for proposals that require a planning approval."*

The Guideline also requires planning authorities to consider impacts for future aggregate operations where zoning is approved, deposits of mineral aggregate resources where provincial information is available, as well as dormant, licenced pits and quarries and un-rehabilitated "legacy" sites. Although the surficial geology maps identify location and extent of aggregates, quality is not always well defined, only the range and nature of the deposit. Determining quality requires further testing through bore holes and analysis of the material. Under this Guideline aggregate operations can freeze land for potential (not predicted) development even though the operation may not be permitted or even feasible given the quality or quantity of the material in particular locations. Freezing land would be detrimental to a cohesive society, compatible relations and future generations.

#### **GWO Recommendation #14:**

- Consider equity and the balance of land uses and opportunities for future generations.

Appendix D does not consider other potential adverse effects from aggregate operations such as the potential for groundwater and surface water contamination. Since these adverse effects on sensitive

land uses are not specified in the Guidelines, there may be confusion for planning authorities when considering approvals for rezoning of aggregate operations.

**GWO Recommendation #15:**

- Clearly indicate that MECP Guidelines relate to noise, dust, odour and vibrations only.
- Clearly indicate that planning authorities need to consider all adverse effects when considering planning proposals.

**WHAT'S MISSING IN THE GUIDELINES**

**1. Fly Rock**

The Guideline does not include fly rock as a discharge from quarry blasting and the adverse effect on sensitive land uses. Ontario Regulation 244/97 under the ARA which pertains to fly rock was approved on November 2020 and should be addressed in the Guideline.

**2. Cumulative Effects**

Aggregate extraction is often described as a temporary or interim use even though aggregate licenses are granted with no end date (in perpetuity) and gravel pits and quarries can lie dormant for decades. It is the local property owners, residents and communities which are in the location for the long term and will have to live with the consequences. MNRF's siloed approach to assessing aggregate operations and pit licenses is maladaptive to deal with the long term consequences that can result from the expansion of aggregate operations. A project specific lens is not adequate to determine the incremental effects from past, present and future human actions. It is misleading to not consider the full potential of social and environmental impacts from all development occurring in a region, not merely from one operation but how that operation relates within the locational context.

**GWO Recommendation #16:**

- Include land use compatibility provisions to protect sensitive land uses and the environment from the adverse impacts of fly rock.
- Consider the cumulative effects of past, current and future developments before there are unsightly and irreversible effects.

**CONCLUSION**

The long standing recognition of the inherent incompatibility between sensitive land uses and industrial lands goes back in history to when land use activities that generated noise, smell, unsanitary or hazardous conditions were walled off from civic activities and living spaces as a means to regulate compatibility. Whether a sensitive land use proposes to expand near an existing aggregate operation, or whether an aggregate operation proposes to expand near an existing sensitive land use, the effects will be the same. Planning was and is the mechanism to provide guidance to reduce the risk for social and environmental impacts and/or conflicts associated with land use decisions.

Compatibility is a two-way process and must be reflected throughout the document. Aggregate extraction, by its very nature, is not a renewable resource and therefore cannot be considered a

sustainable resource. The Guideline should align with global concepts of sustainable development and the underlying tenants of corporate social responsibility and adherence to good planning. The Guideline should be applied by the municipality when considering planning applications for new and expanding pits and quarries near sensitive land uses where the effects on and of climate change and the health and safety of communities and future generations can be considered. The ARA proponent-driven, site-specific studies of the aggregate licencing process should not be substituted for good planning. Unless the Guideline is applied to aggregate operations as Class III industrial facilities without exemption, and planning authorities are given the tools and human and financial resources to carry out the expectations in this Guideline, land use compatibility and the potential for conflict with nearby sensitive land uses cannot be resolved.

## **SUMMARY OF RECOMMENDATIONS**

### **GWO Recommendation #1**

- Apply the Guideline in the same manner for new or expanding aggregate operations as for sensitive land uses.

### **GWO Recommendation #2:**

- Maintain the conceptual distinction between compatibility and co-existence.
- Distinguish between minor and major impacts.
- Ensure the MECP Guideline aligns with national and international agreements as well as the provinces' social, environmental and climate change responsibilities.

### **GWO Recommendation #3:**

- Apply the same requirement for new or expanding major facilities near established and planned sensitive land uses as for sensitive land uses being proposed near major facilities.
- Consistently apply all relevant PPS clauses.

### **GWO Recommendation #4:**

- Change the word 'should' to 'shall' to provide clear direction to ensure incompatible uses are not enabled nor approved.

### **GWO Recommendation #5:**

- Change 'should work together' to 'shall work together'.
- Enable collaboration to achieve the desired outcome of compatibility.
- Clearly identify the government's responsibility for the Duty to Consult with Indigenous Peoples and ensure it is implemented at the outset of development when changes in land use are being considered.

### **GWO Recommendation #6:**

- Do not overburden planning authorities' capacity and planning budgets.
- Review the viability and effectiveness of Local Planning Boards to carry out high level planning functions.

**GWO Recommendation #7**

- That new or expanding aggregate operations:
  - Apply the prescribed AOI and MSD required for Class 3 Major Industrial Facilities proposed near Sensitive Land Uses,
  - Measure separation distances (AOI and MSD) from the property boundary of the proposed aggregate operation (Class 3 Major facility) and from the property boundary of the existing sensitive land use to accommodate future expansions of the major facility,
  - Adhere to the Guideline for a Class 3 Major Facility (as identified in Section 2.2 Table 1) with the understanding that some aggregate operations may cause adverse effects beyond the MSD of 500 M and in some cases, beyond the AOI of 1000 M
  - Be subject to the steps in Section 2.5 for a proposed or expanding major facility that is within the AOI or MSD of an existing or planned sensitive land use.
  - Recognize Section 2.9 of the Decision Tree for Land Use Compatibility that may result in a proposed Major Facility not going ahead if expected adverse effects cannot be minimized and/or mitigated to the level of no adverse effects.

**GWO Recommendation #8**

- Apply the same requirement for Demonstration of Need in the same manner to new or expanding major facilities as for sensitive land uses being proposed near major facilities.
- Ensure compatibility is a two way process.

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- Ensure compatibility goes both ways.
- Do not overburden planning authorities with EPA compliance issues.
- Review the viability and effectiveness of Local Planning Boards to deal with EPA complaints and compliance issues.

**GWO Recommendation #11:**

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- Review the viability and effectiveness of Local Planning Boards to not only develop by-laws but to carry out their enforcement.

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**GWO Recommendation #13**

- Be explicit regarding all compatibility requirements.
- Clearly identify that the PPS is to be read in its' entirety.
- Aggregate operations should not take precedence over municipal planning.
- Recognize the difference between the planning and licensing functions.

**GWO Recommendation #14:**

- Consider equity and the balance of land uses as well as opportunities for future generations.

**GWO Recommendation #15:**

- Clearly indicate that MECP Guidelines relate to noise, dust, odour and vibrations only.
- Clearly indicate that planning authorities need to consider all adverse effects when considering planning proposals.

**GWO Recommendation #16:**

- Include land use compatibility provisions to protect sensitive land uses and the environment from the adverse impacts of fly rock.
- Consider the cumulative effects of past, current and future developments before there are unsightly and irreversible effects.

**REFERENCES:**

Arnstein's Ladder of Public Participation, found at:

(<https://www.citizenshandbook.org/arnsteinsladder.html>.)

EPA D-Series Guidelines

- D-1 Land Use and Compatibility
- D-1-1 Land Use Compatibility: Procedure for Implementation
- D-1-2 Land Use Compatibility: Specific Applications
- D-1-3 Land Use Compatibility: Definitions
- D-6 Compatibility between Industrial Facilities
- D-6-1 Industrial Categorization Criteria
- D-6-3 Separation Distances

Government Documents:

- Aggregate Resources Act Regulations, Amendments 2020
- Aggregate Resources of Ontario Provincial Standards, Amendments 2020
- Provincial Policy Statement 2020
- Ontario Planning Act
- Mineral Aggregate Resources Policy Statement and Guideline on Implementation
- Ontario Environmental Protection Act (EPA)

World Commission on Environment and Development. Our Common Future, Oxford, UK. Oxford. University Press. 1987.

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## **Mark L. Dorfman, Planner Inc.**

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**June 21, 2021**

**Report to:** Township of Ramara Committee of the Whole  
**Subject:** Proposed Land Use Compatibility Guideline  
Ministry of Environment, Conservation and Parks (MECP)

### **Recommendations**

1. That the Committee of the Whole receive the Report, 'Proposed Land Use Compatibility Guideline', dated June 21, 2021, as presented by Mark Dorfman; and
2. The Township of Ramara shall submit this Report and Recommendations to the Ontario Ministry of the Environment, Conservation and Parks under Environmental Registry of Ontario Number 019-2785, prior to July 3, 2021, to [mecp.landpolicy@ontario.ca](mailto:mecp.landpolicy@ontario.ca)

At its meeting held on June 7, 2021, the Committee of the Whole passed a motion requesting "A report regarding the Aggregate sections of the proposed Land Use Compatibility Guidelines".

On May 4, 2021, MECP published the proposed Guidelines for public consultation. This is one of four initiatives that were issued at the same time. These initiatives are intended "to strengthen compliance tools that hold polluters accountable and create consistent guidelines to prevent and address noise and odour issues."

Submissions to MECP are to be made on or before July 3, 2021.

### **EXISTING D-SERIES GUIDELINES**

The MECP intends to update and replace the D-Series Guidelines related to land use compatibility that has existed since July 1995. The existing Guideline D-6, "Compatibility Between Industrial Facilities and Sensitive land uses" applies to the land use planning process "to prevent or minimize future land use problems due to the encroachment of sensitive land uses and industrial land uses on one another".

The D-6 Guideline does not apply to pits and quarries if there are site specific studies related to an aggregate application. Otherwise, as I understand, when an official plan/ amendment and zoning bylaw/amendment are considered for new sensitive land uses encroaching on an existing pit or quarry, the D-6 Guideline should be used by the municipality. Although not clearly enunciated in the D-6 Guideline, I believe that the D-6 Guideline should be used when the municipality is considering planning applications for new and expanding pits and quarries.



## **THE PROPOSED LAND USE COMPATIBILITY GUIDELINE**

### **Overview**

The proposed Guideline focuses on official plan and zoning bylaw updates; applications to amend the official plan, the zoning bylaw, site plan applications, and plan of subdivision applications. It is clearly stated that the municipality should use the Guideline where a new or expanding sensitive land use is proposed near an existing or planned major facility and where a new or expanding major facility is proposed near and existing or planned sensitive land use.

A **Major Facility** includes Resource Extraction Activities. A **Sensitive Land Use** is a building, amenity area or outdoor space, such as dwellings, day care centres, health and education facilities, public parks, harbours.

The Guideline is used to enable certain land uses to coexist in the long-term. Compatibility is two ways: it means that adverse effects such as noise, dust, odour and vibration from Major Facilities on Sensitive Land uses can be achieved, and that complaints from nearby Sensitive Land Uses do not add costs to Major Facilities for mitigation after the fact.

### **COMPATIBILITY METHODOLOGY**

- (a) Municipalities are guided to determine **Areas of Influence ("AOIs")** and **Minimum Separation Distances ("MSDs")** surrounding existing or planned Major Facilities that are established by the Province. The AOI for Aggregate Operations is 1,000 metres. The MSD for Aggregate Operations is 500 metres. **The AOI and the MSD only apply to new or expanding Sensitive Land Use proposals near a Major Facility aggregate operation.** (See Table 1, pages 23 to 25).
- (b) The Municipality is directed to undertake a **Compatibility Study** if a development proposal is in an AOI of 1,000 metres. The Compatibility Study assesses where potential noise, dust, odour and vibration adverse effects are very likely to occur and incompatible development should not normally take place in the minimum 500 metre MSD.
- (c) A **Demonstration of Need Study** is required by the municipality to determine whether there is an identified need for the proposed Sensitive Land Use in the proposed location in the AOI, and if alternative locations outside the AOI have been evaluated and there are no reasonable alternative locations. Mitigation Measures would be needed to ensure no adverse effects or potential impacts and no Sensitive Land Use in the MSD.

#### **The Township of Ramara recommends:**

1. **that the Land Use Compatibility Guideline should apply to new or expanding Aggregate Operations that are near existing and planned Sensitive Land Uses, as well as new or expanding Sensitive Land Uses.**





2. that the Minimum AOIs and the Minimum MSD should apply where there are new or expanding Aggregate Operations near existing or planned Sensitive Land Uses, as well as new or expanding Sensitive Land Uses.
3. that if the Municipality is required to undertake a Compatibility Study, the Municipality should not be required to pay for the total cost of a Compatibility Study where there are planning applications for new or expanding Aggregate Operations and new or expanding Sensitive Land Uses.
4. that if the Municipality is required to undertake a Demonstration of Need Study, the Municipality should not be required to pay for the total cost of a Demonstration of Need Study for proposed Sensitive Land Uses in the AOI and MSD of the existing Aggregate Operations.
5. that if the Municipality is required to pay for the required Compatibility and Need Studies, it is appropriate that the Municipality may deny the acceptability of planning applications.
6. that the Land Use Compatibility Guideline shall be used by the Municipality to assess the appropriateness of licence and planning applications under the *Aggregate Resources Act* and the *Planning Act* and approve or deny according to good planning, conformity and consistency.

#### **AGGREGATE SECTOR CONSIDERATIONS (APPENDIX D)**

In the existing Ramara Official Plan, Schedule "D" identifies in the order of 12,560 hectares of land as "High Potential Mineral Aggregate Resource Areas" (HPMARAS). This represents 30% of the Ramara's total land area. The total HPMARA consists of predominately bedrock resources. The HPMARA excludes designated Settlement Areas. The boundary of the HPMARA is located a minimum of 1,000 metres from existing and planned Sensitive Land Uses such as designated Settlement Areas, designated Shoreline Residential Areas, First Nation Reserve lands, and Provincially Significant Wetlands. The HPMARA is consistent with the spirit of the D-6 Guideline.

There are 14 licenced Quarries and 8 licenced Pits in Ramara that annually produce in the order of 3 million tonnes of aggregate on 1,660 hectares. Ramara is one of the top 10 producers in the provincial Growth Plan Area.

In Ramara, 13 of the 14 licenced quarries are located within the identified HPMARAs, thereby achieving the objective of land use compatibility with designated residential sensitive land use areas. The only quarry that is not within an HPMARA is currently proposing to expand its aggregate operation within the 1,000 metre AOI and the 500 metre MSD. This matter is scheduled to be heard by the Ontario Land Tribunal.



Following from the above recommendations, the following issues arising from Appendix D - Aggregate Sector Considerations raise several issues and recommendations for improvements to the proposed Land Use Compatibility Guideline.

### **Issues Regarding Noise, Dust and Odour Emissions and Other Adverse Effects**

- (a) On page 77, it is suggested that municipalities “will also need to consider other potential *adverse effects*, such as the potential for groundwater and surface water contamination, which are not discussed specifically in this section”. This statement is very general and applies to all Major Facilities proposed in a municipality. Ramara understands that there are other adverse effects or impacts on Sensitive Land Uses and that these are not included as considerations in these proposed Guidelines. This raises confusion when considering Major Facilities in general and Aggregate Operations specifically.

**7. The Township of Ramara recommends that the second paragraph on page 77 should be deleted.**

- (b) On page 79, there is a caution addressed to municipalities when considering Aggregate Operations:

It is important to plan land uses surrounding aggregate resources in a way that both prevents adverse impacts to *sensitive land uses* and ensures the long-term protection of aggregate resources.

The Township of Ramara Official Plan policies implement this approach by keeping Aggregate Operations away from settlement areas, shoreline residential areas and First Nation Reserves and provides opportunities within the identified HPMARAs for continued Aggregate Operations in the long-term.

**8. The Township of Ramara agrees with this caution and recommends that the proposed Guideline include the Ramara Official Plan case as one successful example for achieving this land use objective.**

- (c) On page 79, the second sentence in the first paragraph, as stated, raises a major concern for the Township of Ramara:

*Planning authorities* must consider the potential for *adverse effects* from aggregate operations (including existing, planned and potential future operations), such as traffic to and from the facilities, and noise and dust from blasting, crushing or other operations, for properties that require a planning approval.

I interpret this to mean that the Municipality is directed when assessing a planning application for Sensitive Land Uses, such as residential, that the Municipality is responsible for determining adverse effects as defined in the *Environmental Protection Act*. It is evident from this statement that the province expects that existing, planned and potential Aggregate Operations should have priority over Sensitive Land Uses. The



direction to the Municipality is onerous since it implies that an environmental impact assessment is required for any planning approval including a consent, minor variance or even one dwelling.

**9. The Township of Ramara disagrees that the Aggregate Operations should take precedence in municipal planning. Since the Aggregate Operation is the potential source of adverse effects, the adverse effect assessment must be undertaken by the aggregate proponent whether an Aggregate Operation is new or it is expanding near Sensitive Land Uses.**

- (d) On page 79, the second paragraph reiterates the provincial interest in Provincial Policy Statement 2020. In particular, policy 1.2.6.1 in PPS2020 sets out the provincial interest to balance the planning and development of Major Facilities and Sensitive Land Uses in order to avoid, minimize or mitigate adverse effects of Major Facilities. The effects are broader and include contaminants other than odour and noise and also the policy is to minimize risk to public health and safety, and to always ensure economic viability of Major Facilities.

Policies 2.5.2.4 and 2.5.2.5 in PPS2020 direct Municipalities to protect *mineral aggregate operations* and under certain "requirements" allow development and activities within identified mineral aggregate resource areas. These provincial policies are well understood. The paragraph continues with the caution that "these requirements are in addition to what is recommended in this Guideline."

This is interpreted to always mean that Aggregate Operations and Aggregate Resource protection take precedence over development of sensitive uses.

**10. The Township of Ramara reiterates that Aggregate Operations should not take precedence in municipal planning. Ramara has realized the balance between land uses and provides 12,560 hectares for protected Mineral Aggregate Resources.**

- (e) On page 79, paragraph 3 confirms that the onus is on the Municipality to demonstrate that new or expanding Sensitive Land Uses conform with the provincial AOIs and MSDs for existing or planned Aggregate Operations. This implies that if the Municipality has identified protected provincial Mineral Aggregate Resources required for planned Aggregate Operations, these areas essentially are unavailable for other development such as residential.

In many Municipal Official Plans, Mineral Aggregate Resources are identified as an overlay of existing designated settlement areas and built-up areas. This Guideline should be clear that to avoid potential adverse effects, the Ramara Official Plan model should be encouraged in all Municipalities



**11. The Township of Ramara recommends that paragraph 3 on page 79 should be modified to add an option that municipalities should identify protected Mineral Aggregate Resources in appropriate areas beyond designated settlement areas and residential clusters in order to avoid potential adverse effects and land use incompatibility.**

(f) On pages 79 and 80, the first sentence in paragraph 4 clearly enunciates the provincial objective:

The AOI and MSD in the Guideline are not applicable to land use decisions for new or expanding aggregate operations proposed near *sensitive land uses*. *Planning authorities* are required to address land use compatibility with respect to new or expanding operations, as required by the PPS.

This means that when a Municipality receives a planning application to amend the Official Plan and/or the Zoning Bylaw for an Aggregate site, the Municipality cannot use the AOIs and MSDs to separate the new or expanding aggregate operation from existing residential areas. Simply stated, the new or expanding aggregate operation can locate within 1,000 metres or even 500 metres, or less from an existing stable residential area.

In Ramara's experience, this direction is not acceptable and this municipality has already made the planning decision when identifying Mineral Aggregate Resource Areas, that aggregate operations are not appropriate within 1,000 metres of existing and planned residential areas.

**12. The Township of Ramara strongly disagrees with the provincial direction that existing and expanding aggregate operations are not required to consider land use compatibility and may locate within 1,000 metres of existing and planned residential areas that are sensitive land uses.**

(g) On page 80, reference is made to the role of the MNR "to assess potential impacts on existing nearby land uses and whether it is feasible to mitigate potential impacts through that process". Under the *Aggregate Resources Act* and the aggregate regulation and standards, the proponent for a licence is only required to consider an area of 120 metres surrounding the proposed licenced area for most impacts.

**13. The Township of Ramara disagrees that there should never be a distinction between land use compatibility addressed in the *Aggregate Resources Act* and under the *Planning Act*. The AOIs and MSDs should be applied in both directions.**



- (h) The proposed Land Use Compatibility Guideline does not include an important contaminant emanating from Aggregate Quarries. The contaminant is fly rock. On January 1, 2022, Rule 22 of subsection 0.13 in Ontario Regulation 244/97 under the *Aggregate Resources Act*, comes into effect. It stipulates that an aggregate licensee shall ensure that the quarry is in compliance with the Rule as follows:

a licensee shall take all reasonable measures to prevent fly rock from leaving the site during blasting if a sensitive receptor is located within 500 metres of the boundary of the site.

Fly Rock discharge from a quarry blasting is a contaminant and it is likely to cause an adverse effect under the *Environmental Protection Act*. The Act requires that the licensee must report forthwith to the MECP if the contaminant may likely cause an adverse effect. The Ministry may issue an order for remediation and preventative measures. Currently, there is no provincial policy, regulation or guideline that protects the environment, people, property and natural heritage features on land and in the air and water from the discharge of fly rock from a quarry.

- 14. The Township of Ramara recommends that the MECP should modify the proposed Guideline to include land use compatibility provisions to adequately protect the environment beyond quarry sites from the possible adverse impacts of fly rock during blasting operations.**

Respectfully submitted,



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