

Peel Region Comments on the Guidelines on Permitted Uses in Ontario's Prime
Agricultural Areas

Ontario Ministry of Agriculture, Food and Rural Affairs

General Comments:

In 2014, the Provincial Policy Statement (PPS 2014) introduced and amended several policies and definitions to recognize the significance of agriculture to the rural economy of Ontario. These changes improved land use policies to promote agricultural economic development while also protecting agricultural lands, but did not fully address the need for further interpretation and understanding of the policies by planners and other users. Overall, the Draft Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas addresses the need for improved interpretation and consistency and should assist stakeholders, decision makers and municipalities in supporting viable, long term agriculture in Ontario.

Ministry staff is requested to consider the comments and recommendations provided as part of the consultation process for the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas.

Section 1.1 Purpose and Scope of the Guidelines

The initiative by OMAFRA to update and develop guidance on permitted uses is welcome provided that guidelines balance consistency with appropriate flexibility so that municipalities can tailor and implement local planning approaches that may not be fully captured in the guidelines. The reference in Section 1.1 to specific parameters representing best practices and not standards is an important distinction and clarification.

Additional clarification of the relationship of the PPS to the Guidelines and municipal official plans is recommended. There is also inclusion of guidance that uses the words "shall", "should" and "must" in different locations and contexts within the document which suggests there are limits on some flexibility depending on the policy, criteria and language of the PPS. An explanation within the document and its status as guidelines in these instances in relation to the PPS and official plans should be clarified.

Section 2.2.1 PPS Criteria for Agriculture Uses – Value-retaining and Value-added

The Guidelines could provide generic definitions for "value-retaining" uses and "value-added" uses building on the explanations provided in the Draft Guidelines.

Additional guidance could also clarify that the portion of a value retaining use serving the farm property on which it is located can be measured separately from the portion serving other farms in situations where a value retaining use is both an agricultural use and an agriculture-related or on-farm diversified use.

Section 2.2.1 PPS Criteria for Agriculture Uses – Housing for farm labour

The guideline that housing for full-time farm labour should be located within the farm building cluster is supported; however, in situations where it is not feasible to locate housing for farm labour within a building cluster, it is recommended that additional criteria and options for alternate locations be provided. The guidelines could list criteria that farm operations are not impacted and that land taken out of production, if any, is minimal.

Section 2.2.1 PPS Criteria for Agriculture Uses – Agriculture-related uses

The reference to the criterion that agriculture-related commercial and industrial uses must be directly related to farm operations “in the area” requires additional clarification that the service or market areas for these types of uses can vary from local to regional and that regulation of the uses should reflect local needs and consideration of an appropriate market area, land use compatibility and scale of use. This also applies to the criterion that agriculture-related uses must demonstrate a relationship to and benefit from being in proximity to farm operations they serve.

Section 2.3.1 PPS Criteria for On-farm Diversified Uses

The Ministry’s recommended approach for regulating the criterion “limited in area” through lot coverage provisions and recommendation not to regulate on-farm diversified uses using measures related to land use activity, such as specifying local food content in products and services, which are more difficult to regulate, is supported.

Section 3.1 Settlement Areas and Prime Agricultural Areas**Section 3.1.1, 3.1.2 and 3.1.3 Preliminary Assessment, Alternative Locations and Impact Mitigation**

The reference in the Guidelines in Section 3.1.2 to municipalities undertaking land evaluation studies (e.g. Land Evaluation and Area Review (LEAR) studies) either before or during a comprehensive review, to help identify prime agricultural areas should be clarified. In situations where a municipality has already completed a comprehensive LEAR to identify prime agricultural areas, is it intended that there is also an option to initiate a subsequent LEAR as part of a comprehensive review to support a settlement expansion? Comprehensive review studies for settlement expansions are typically focused to a specific geography and may not be comprehensive as in the case of a LEAR that has identified prime agricultural areas for the entire municipality. Although LEAR studies consider many of the same factors relevant to evaluating the impact of development and may help inform consideration of alternative locations for new or expanding settlement areas, the comprehensive review process should not be used to redefine prime agricultural areas if prime agricultural areas have already been evaluated and identified through a comprehensive study.

Additional guidance should be included to indicate that the preliminary assessment, evaluation of alternative locations, and assessment of compliance with MDS setbacks when assessing settlement area options should be addressed through an agricultural impact assessment.

9.1-9

Appendix I – Provincial Agricultural
Policy Guidelines

The Guidelines should provide model terms of reference for use by municipalities and clarify that agricultural impact assessment requirements may be scoped and varied for situations when a full assessment is not required.

Region of Peel and Town of Caledon Review of Minimum Distance Separation Formulae and Implementation Guidelines

EXECUTIVE SUMMARY

The application of Minimum Distance Separation (MDS) in land use planning in Ontario dates back to the 1970's and has undergone several revisions since this time. The MDS Formulae and its Implementation Guidelines is now an established agricultural land use planning tool that is reflected in Provincial, Regional and local policies.

The intent of the MDS Formulae and Implementation Guidelines is to ensure that there is adequate protection and separation distance between agricultural and non-farm uses to ensure that existing or proposed farm operations are viable for continued production, prosperity and expansion if possible. MDS is applied in both rural areas and prime agricultural areas.

The Region of Peel and the Town of Caledon have undertaken a review and assessment of the application of the MDS Formulae to assess its effectiveness and identify opportunities for improving its implementation at the local approval authority level.

The study undertaken by MHBC includes:

- a review of the origins of MDS and its implementation in regional and local policies;
- a review of the Province's current review of the MDS Formulae and Implementation Guidelines; and,
- discussions/interviews with Provincial, Regional and Area Municipal staff as well as the public, Peel Agricultural Advisory Working Group (PAAWG) and Peel Federation of Agriculture (PFA).

As a result of MHBC's review, a number of recommendations regarding the implementation of the MDS Formulae at the Region and Town levels are presented. This also includes recommendations to be considered by the Province in its five-year review of the MDS Formulae. Recommendations are presented in Section 7.0 of this report. Recommendations include:

- More technical guidance is needed from the Province for municipalities to apply and interpret the MDS Formulae;
- The Region and the Town should develop mitigation guidelines on normal farm practices along the fringe of agricultural areas and urban and rural settlement boundaries;
- The Town of Caledon's Agricultural Impact Assessment Guidelines should be revised and updated to ensure appropriate reference is made to MDS; and,
- In addition to the issues currently identified by the Province in the 2013 MDS review, the Region and/or Town recommend that OMAF consider the following:
 - providing appropriate flexibility to existing livestock operations in proximity to existing or new urban or rural settlement boundaries to allow the continued use and potential future expansion of these operations and ensure viable and sustainable agricultural industry. This may include revised or clarified minor variance guidelines, best practices, technologies and other mitigation solutions for farms; and,
 - review the MDS setbacks associated with certain types of outdoor recreational uses (e.g., golf courses), to ensure they are appropriate and not unnecessarily restrictive.

7.0 SUMMARY AND RECOMMENDATIONS

The Region of Peel and Town of Caledon have appropriately included policies within their respective Official Plans which requires implementation of MDS Formulae relative to non-agricultural uses as well as livestock operations. Based on the review of existing policies and practices at the Town of Caledon related to the implementation of MDS, the following are recommended for consideration by the Region and Town:

1. Official Plan policies should be more specific with respect to how MDS would be applied to other surplus dwellings and / or catastrophes (e.g. if a barn is lost due to fire).
2. The Town of Caledon's Agricultural Impact Assessment Guidelines should be revised and updated to ensure appropriate reference is made to MDS and ensuring the assessment of impacts on agriculture includes consideration of MDS and not just the Agricultural Code of Practice requirements.
3. In an effort to promote a greater understanding of normal farming practices and promoting a better understanding from non-farm residents living in rural areas, the Region in collaboration with the Town should consider developing an education program which promotes agriculture in the Region and normal farm practices that may be experienced by those choosing a rural lifestyle and for urban residents living adjacent to agricultural areas.
4. The Region and Town are encouraged to continue supporting best management practices (BMPs) with respect to farming practices as well as rural non-farm residents. In this regard, the Region and Town should continue to encourage promotion of the Canada-Ontario Environmental Farm Plan (EFP) and assist local farmers in implementing BMP's to address potential odour concerns and other possible points of nuisances due to normal farm practices.
5. The Region and Town are encouraged to continue supporting the Peel Rural Water Quality Program, which provides technical and financial support to farms and the rural community in the implementation of voluntary BMPs.
6. The Town of Caledon should consider reviewing the application of MDS to existing lots of record at its next Zoning By-law review.
7. The Town of Caledon is encouraged to contact the Ministry of Agriculture and Food and coordinate an MDS training session for its planning and building staff.
8. The Region and the Town should develop mitigation guidelines on normal farm practices to address the mitigation of conflicts along the fringe of agricultural areas and urban and rural settlement boundaries.
9. In addition to the issues currently identified by the Province in the 2013 MDS review, the Region and/or Town recommend for OMAFRA's consideration the following:

- i. providing flexibility to existing livestock operations in proximity to existing or new urban or rural settlement boundaries to allow the continued use and potential future expansion of these operations to ensure viable and sustainable agricultural industry. This may include revised or clarified minor variance guidelines, best practices, technologies and other mitigation solutions for farms; and,
- ii. review the MDS setbacks associated with certain types of outdoor recreational uses (e.g., golf courses), to ensure they are appropriate and not unnecessarily restrictive. This may include the need for the province to undertake technical research and review regarding: the complaint history associated with these types uses; OMB appeals/hearings related to recreational uses and MDS; complaints to Normal Farm Practices Protection Board; OMAFRA odour studies; etc.

Peel Region Comments on the Minimum Distance Separation Distance Formulae (MDS
Formulae) 2015 Review

Environmental Bill of Rights Registry Number 012-3526

Background:

In 2014, the Region and Town of Caledon completed a review of the MDS Formulae and provided recommendations that were endorsed by Regional Council for submission in anticipation of the provincial consultation. A copy of the final report and the endorsed recommendations are provided in this submission and are available online at <http://www.peelregion.ca/planning/paawg/lear-mds.htm>. Ministry staff is requested to consider the background information and recommendations in the report in its review of the MDS Formulae.

General Comments:

The agricultural sector within the Region of Peel is a recognized and valued contributor to the economy and cultural heritage of the Region. As in many communities in the Greater Toronto Area, agriculture continues to face growth and development pressures and can be affected by both urban and rural non-farm land uses. The recent revisions to the Provincial Policy Statement 2014 (PPS) have clarified permissions for agricultural uses and provided policy that supports economic opportunities for agriculture-related and on-farm diversified uses.

The initiatives by OMAFRA to update and develop further guidance is welcome provided that guidelines support consistency and appropriate flexibility to enable the farming sector to adapt new practices and evolve to take advantage of economic opportunities while still protecting the resource base for the long term. In this regard, improved guidance for MDS should balance protection of both livestock operations and non-farm uses in a manner that avoids adding regulatory burden or results in policy that is overly complex for staff to interpret and implement.

The revisions contained in the draft MDS Formulae, now referenced as the MDS Document, are significantly improved in relation to the current version. Overall, the consolidation of various training material into an updated MDS Document and harmonization with the PPS and Nutrient Management Act definitions and policy will improve consistency and application of MDS policy.

Given the technical complexity of MDS, additional detailed and ongoing training and implementation supports should be provided by OMAFRA for municipal staff including on-line training aids, more formal instruction based education, and access to technical staff.

Detailed Comments:**Guideline #1 – Referencing MDS in Municipal Official Plans**

The guidance explaining how MDS is to be incorporated into official plans and zoning by-laws, and the guidelines where options are available to municipalities, such as applying MDS to agriculture-related and on-farm diversified uses, is clear. Further guidance, however, is recommended to differentiate requirements where upper-tier municipalities have adopted official plans to guide local planning.

Clarification should be provided in the MDS Document to enable regional official plans to provide general direction for more detailed implementation at the local level so as not to duplicate or involve regional planning in local land use planning matters. The Region of Peel Official Plan is based on principles that disentangle regional planning from local land use planning regulation. Many of the more detailed MDS policies do not need to be included in a regional plan. Lower tier municipalities are typically responsible for implementing MDS and generally the more detailed policy direction should be provided in the local official plan documents.

Guideline #7 MDS I setbacks for building permits on existing lots

The clarification that MDS I setbacks are required for all building permit applications on existing lots for dwellings and non-agricultural uses unless exemptions are specified in a municipal zoning by-law is supported. The list of examples of zone provisions is useful guidance and should be included in the final MDS Document.

Guideline # 11 MDS setbacks for building reconstruction

The clarification that municipalities no longer have the option to apply MDS I setbacks to the reconstruction of existing buildings or structures destroyed by catastrophe is supported. The requirement that the resulting building or structure is built no closer to the neighbouring livestock facility is an important condition to this exception.

Additional guidance could be provided to enable the reconstruction to be regulated if the replacement building or structure substantively increases the size and intensity of use. Municipalities may wish to regulate reconstruction in a similar manner as expansions to existing legal non-conforming uses. Ministry staff should also consider if it is appropriate to provide an option for municipalities to apply the criteria in Guideline #43 (reducing MDS setbacks) to these situations.

It is also noted that the guideline further enables reconstruction “to improve an environmental issue or public safety concern”. Clarification on what qualifies as an environmental issue or public safety concern is recommended.

Guideline #12 Existing uses that do not conform to MDS

This guideline clarifies that MDS I setbacks are required for new proposed development and enables reduction of the setback if there are four, or more non-agricultural uses and dwellings closer to the livestock facility. It further requires that all four, or more, of the

uses are to be of the same intensity as the proposed development (i.e. Type A or B land uses) to qualify for the reduced setback. It is unclear why this criterion is important as either Type A or B uses will have an impact on agricultural operations. This added criterion has the potential to be more restrictive than the current Guidelines. Further rationale and clarification/guidance from the province is recommended. Additionally, it is requested that the Ministry illustrate examples of this guideline in situations where MDS setbacks may be reduced in relation to settlement expansions.

Guideline #16 Obtaining information from livestock facility operators and #20 MDS setbacks for unoccupied livestock barns

These guidelines provide improved clarification to assist municipalities with the implementation responsibility for MDS, however, they do not completely resolve issues where information is not provided by livestock operators or is unavailable or unclear. Ministry staff should consider if it is appropriate to provide examples where reasonable effort by municipal staff would address due diligence when reviewing information submitted by applicants (e.g. reference to MDS guidelines, site visit to property, etc.).

Guideline #19 Cumulative Design capacity of livestock facilities on a lot

This guideline is similar to the existing MDS Guideline, however, there should be greater clarity in terms of how the MDS measurement is to be taken when calculations are made for multiple livestock barns on the same lot (e.g. is the measurement from the closest livestock barn?) This guideline also seems to contradict Guideline No. 40, which requires measurement from each of the neighbouring livestock barns (and not based on a cumulative capacity).

Guideline #22 NDS setbacks for anaerobic digesters

MDS calculations are no longer required for anaerobic digesters and standard setbacks are provided for these types of uses. The proposed setbacks are supported.

Guideline #26 Factor B: Nutrient Units Factor

The new Guidelines remove the terminology and application of 'tillable hectares' as one of the components of the MDS I formulae. Instead, a new expansion factor calculation is added to replace the existing tillable acres factor in the calculation of MDS I setbacks. The new expansion factor calculates a percent increase of Nutrient Units depending on the lot size and total number of nutrient units.

The Ministry should provide an explanation of how this change may impact (or not impact) setback distances along with sample calculations illustrating how setbacks will be different with the two approaches. Generally, it appears these changes would result in similar setbacks as the current formulae, which applied the tillable hectare factor, for larger livestock operations. However, in some cases the new formula may result in lower setbacks for smaller operations.

It is recommended that the province clarify the intent of the change to remove tillable hectares and replace the calculation with a new calculation using an expansion factor scaled to lot size and barn size. The information does not need to be incorporated into

the MDS Document but should be provided to municipal staff during the consultation on the draft document.

Guideline #35 MDS setbacks for agriculture-related uses and on-farm diversified uses

The option for municipalities to exempt agriculture-related uses and on-farm diversified uses from MDS setbacks or to tailor MDS regulation of certain types or classes of these uses is strongly supported as it places the responsibility to develop appropriate setback policies at the local level where local preferences and needs are best determined.

Guideline #36 Non-application of MDS within settlement areas

The revised guideline that MDS is not required within approved settlement areas is supported as it enables municipalities to determine appropriate regulation of urban agricultural uses within urban and rural settlement areas.

Guideline #43 Reducing MDS setbacks

The guidance related to how municipalities may consider reductions of MDS setbacks in limited situations is improved. It is acknowledged that in some site-specific circumstances, it may be appropriate for a municipality to consider reduced setbacks through a minor variance or other type of Planning Act application provided that the intent of the MDS policy is met. The assessment criteria and questions that municipalities should apply when considering a reduced setback should be included in the MDS Document for clarity. Emphasis in the guidelines should continue to be placed on compliance with setback distances and assigning responsibility to the local municipality to determine if a reduction to a MDS setback is appropriate in the circumstance.