

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

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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.

1.0 INTRODUCTION

1.1 Identifying Minimum Distance Separation

Ontario features a unique resource of agricultural lands that are fundamental to Ontario's economy. This resource is being impacted by an increase in population and related need to accommodate growth, an evolving industrial sector, and a decrease in the number of people living within rural areas who are employed in the agricultural sector.

A history of rural non-farm development has restricted agricultural potential and farm development in many agricultural areas. This has made it difficult for farmers to establish new livestock operations, and/or expand existing operations. The Province has recognized the importance of protecting agricultural lands, and has adopted land use policies to protect farms and farm operations (Caldwell et.al, 2012; OMAFRA, 2006a).

In recognizing the need to group compatible land uses, and separate incompatible uses, the Province implemented an Agricultural Code of Practice in the 1970's that included guidelines that apply to the management of livestock operations. The Minimum Distance Separation (MDS) Formulae was developed under this Code, and has been implemented to calculate an appropriate distance between agricultural and non-farm uses to reduce potential land use conflicts and thereby the likelihood of nuisance complaints due to odour. The MDS Formulae not only applies to new or expanding livestock operations located near an existing use, but it also applies to proposed rural non-farm and urban uses in the vicinity of an existing or proposed livestock operation. The MDS Formulae does not account for noise, dust or other farm generated impacts, which may arise from normal farm practices (OMAFRA, 2006a).

It is the intent of the MDS Formulae 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, with separation distances varying according to a number of factors including: type of livestock facility, size of farm operation, manure handling practices, and form of development, either existing or proposed. Specifically, new lot creation and lot creation through severance to permit the development of non-farm residential uses impose the MDS Formulae on surrounding agricultural operations (OMAFRA, 2006a). Conversely, MDS is applied to new or expanding livestock operations and/or manure storage facilities relative to non-farm development.

In general, MDS policies and guidelines are supported by municipalities, farmers and planners as an effective land use planning tool to reduce conflict between non-farm uses and livestock operations, thereby protecting the long-term viability of livestock operations in agricultural areas.

1.2 Purpose of Review

The Region of Peel and the Town of Caledon retained MHBC to undertake a review and an assessment of the application of MDS Formulae in Ontario and the Region, with specific emphasis on the Town of Caledon. There is an emphasis on the Town of Caledon as local governments are responsible for implementing the MDS Formulae when reviewing specific development applications. The Regional Official Plan provides broad policy direction regarding compliance with the province's MDS Formulae, and directs area municipalities to implement the Formulae.

This study includes:

- a review of the origins of MDS and its implementation in regional and local policies;
- a review of the province's current MDS Review/up-date;
- discussions/interviews with Provincial, Regional and Town staff as well as the Peel Agricultural Advisory Working Group and Peel Federation of Agriculture with respect to the challenges/concerns and improvements required regarding the implementation of MDS; and,
- recommendations in respect to regional and local guidelines and/or policies are provided regarding the implementation of the MDS Formulae and Implementation Guidelines.

2.0 ORIGINS OF MINIMUM DISTANCE SEPARATION

Minimum Distance Separation (MDS) policies and associated setbacks originated in 1970 with the development of a provincial Code of Practice intended to address nuisance issues associated with odour from neighbouring agricultural operations. This document outlined fixed minimum separation distances between livestock operations and neighbouring houses, residential zones, lot lines, and roads (OMAF, 2013a). While the suggested Code of Practice provided a framework for managing the location and expanse of livestock facilities, it did not address the encroachment of non-farm uses on existing agricultural operations.

In 1976, the policies were updated and the provincial Agricultural Code of Practice was introduced, which included a formula to calculate MDS. The implementation of the Agricultural Code of Practice introduced a two-way approach to separating livestock/farm operations from non-compatible uses (and vice-versa). The formulae also included a “sliding scale” or range of separation distances as opposed to the fixed distances that were used previously (OMAF, 2013a).

Following the adoption of the Agricultural Code of Practice, MDS policies and formula were later incorporated into Provincial land use policy documents to provide direction for municipalities and the development of Official Plan policies and implementation through zoning, (OMAFRA, 2006b). In 1995, the Agricultural Code of Practice was replaced with three separate documents: Guide to Agricultural Land Use; Minimum Distance Separation I (MDS I); and Minimum Distance Separation II (MDS II). These documents were periodically revised to reflect emerging trends in agriculture and rural land use.

In 2005, the MDS I and MDS II documents were replaced by the provincial Minimum Distance Separation (MDS) Formulae and Implementation Guidelines - Publication 707. The Implementation Guidelines stipulate that all MDS related documents will be reviewed and revised regularly (i.e., every five years) to ensure compliance with current legislation, and ensure that MDS policies reflect emerging trends and innovation in the agricultural and livestock industries (OMAF, 2013a). In 2013, the Province began a review of the MDS Implementation Guidelines. A brief discussion on the status and issues currently identified through the review process is provided in Section 5 of this report.

3.0 WHAT IS MINIMUM DISTANCE SEPARATION?

MDS is part of the planning process for proposed new development, settlement boundary expansions, and rezoning or official plan amendments of agricultural land to permit development, in proximity to existing livestock facilities on an existing or proposed separate parcel of land (OMAFRA, 2006a). MDS is also applied to new or expanding livestock barns or manure storage, but does not apply to the following (OMAFRA, 2006a):

- Abattoirs, apiaries, assembly yards, fairgrounds, feed storages, field shade shelters, greenhouses, kennels, machinery sheds, mushroom farms, pastures, slaughter houses, stockyards, or temporary field nutrient storage sites;
- Livestock facilities less than 10m² (108ft²) in floor area; and,
- Buildings or structures, accessory to a dwelling (e.g., decks, garages, gazebos, greenhouses, picnic areas, etc.).

3.1 Type A and B Land Uses

MDS divides all land uses into two types: Type A Land Uses and Type B Land Uses.

Type A Land Uses - have a lower density of human occupancy, habitation or activity. It includes such uses as a recreational use, low intensity industrial use and/or a residential dwelling. The MDS Implementation Guidelines define lower intensity recreational use as a use that does not typically require buildings nor alter the soils or topography and/or have a lower concentration of human activity (e.g., open space and environmental areas).

Type B Land Uses - have a higher density of human occupancy, habitation or activity, and can include commercial uses, institutional uses, recreational uses (e.g., golf courses, sports fields, trailer parks, campgrounds and conservation areas with facilities), settlement areas, and designated residential areas (OMAFRA, 2006a, 2006b). Generally, MDS is greater for Type B land uses. Proposed settlement area expansions are considered a Type B land use.

3.2 The Minimum Distance Separation Formulae

MDS calculations are based on the maximum livestock housing capacity for all livestock facilities on a lot, even if the building is not currently used, but is structurally sound and reasonably capable of housing livestock. Elements of the Formulae include type of livestock, maximum capacity for livestock within a barn, type of livestock/manure system, etc. MDS Formulae are based on five (5) factors (OMAFRA, 2006b):

<i>Factor A</i>	Odour Potential Factor (i.e., smell)
<i>Factor B</i>	Nutrient Units Factor
<i>Factor C</i>	Orderly Expansion Factor (% increase)
<i>Factor D</i>	Manure or Material Form (i.e. solid vs. liquid)
<i>Factor E</i>	Encroaching Land Use Factor (i.e., uses nearby)

The MDS Formula is comprised of two separate, but related Formulae: *MDS I* and *MDS II*. MDS I and MDS II are applicable as follows:

MDS I is applied when locating new development adjacent to existing livestock facilities and manure storages. MDS I provides the minimum distance separation between proposed new development and existing livestock facilities and/or permanent manure storages located in areas where livestock keeping is permitted.

In accordance with the Ministry's Implementation Guideline #6, MDS I is applied to all livestock facilities "reasonably" expected to be impacted by proposed development, lot creation, rezoning or redesignation through an official plan amendment (OMAFRA, 2006b). Therefore, this Formula is applied to all farm operations that have the potential infrastructure to house livestock facilities, even if the barn currently does not house livestock. This includes livestock facilities within areas being considered for settlement area expansions.

MDS I generates setbacks for both Type A and Type B land uses, from livestock facilities within a 1,000m and 2,000m radius, respectively. Measurement of MDS I is generally taken as the shortest distance between the lot line of a lot to be created, the area to be rezoned or redesignated, and the occupied portion of a livestock facility and/or manure storage area.

Figure 1 illustrates how MDS I is measured from a Type A land use (e.g., new lot or a new development requiring a re-zoning).

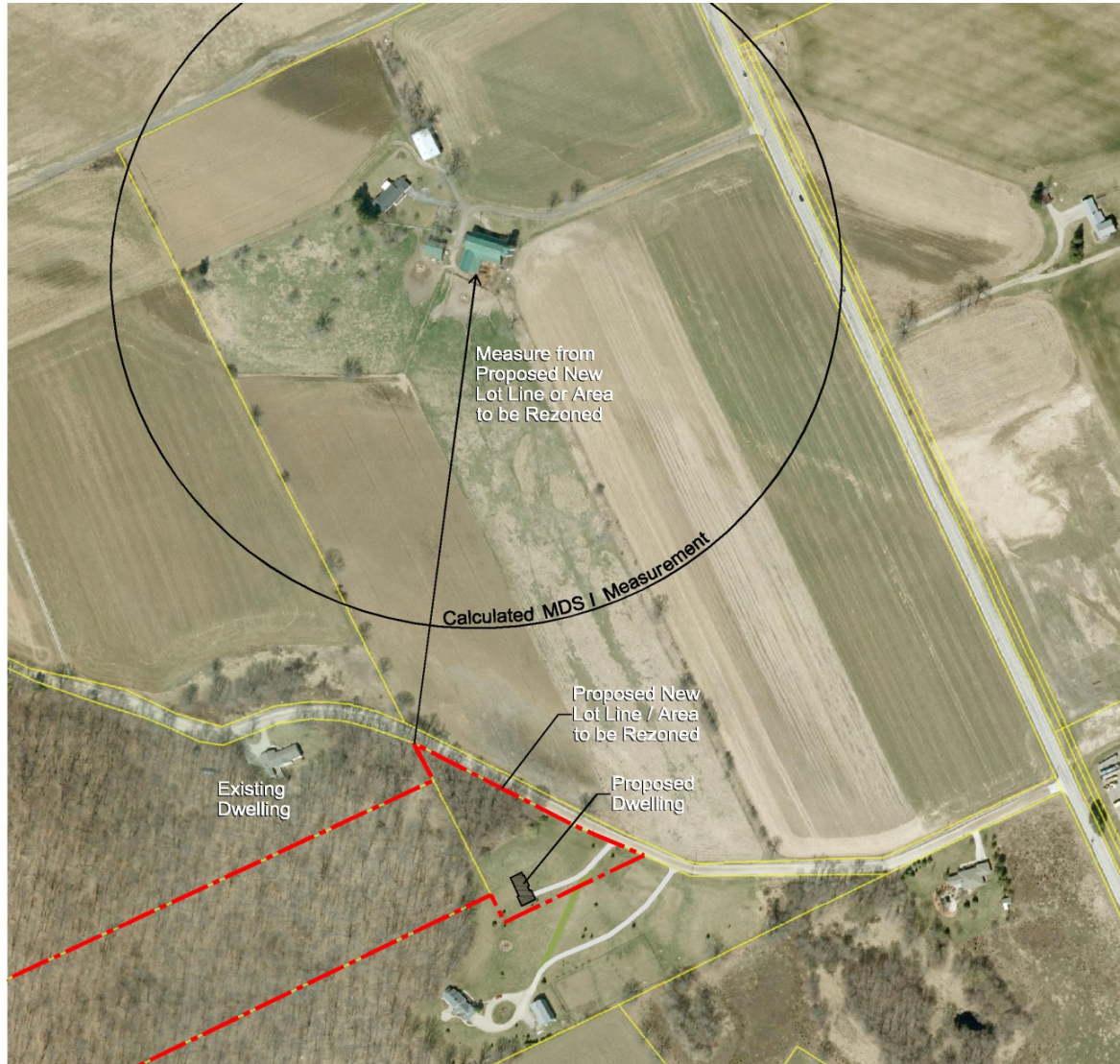


Figure 1. Schematic of MDS I measurement from a new lot or area to be redesignated or re-zoned.

MDS II is applied when locating new or expanding livestock and/or manure storage facilities. Unlike MDS I, which is applied at the time of planning and/or development review for proposed new development, MDS II is applied at the time of building permit application to build a new or expand an existing livestock facility (including manure storage facilities). The Formula provides the minimum distance separation between proposed new, enlarged and/or remodeled facilities. MDS II also applies to both Type A and Type B land uses, with setbacks calculated from existing dwellings, lot lines and road allowances (OMAFRA, 2006b). **Figure 2** illustrates how MDS II is measured from a new livestock operation to Type A land uses (e.g., existing rural residential uses).

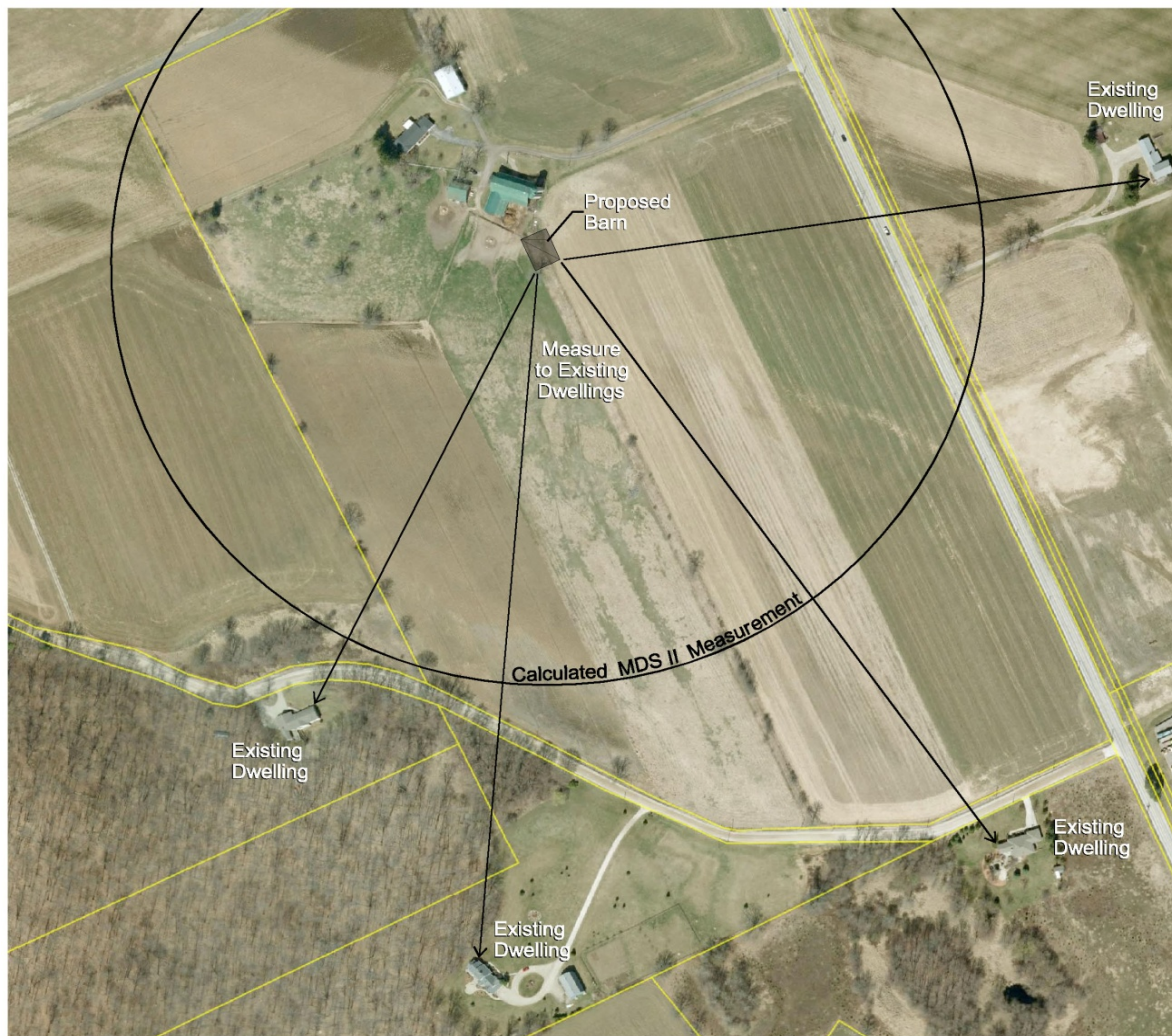


Figure 2. Schematic of MDS II measurement from a new lot or area to be redesignated or re-zoned.

4.0 POLICY AND MINIMUM DISTANCE SEPARATION

Historically, Ontario's agricultural resources have been governed by Ontario Foodland Guidelines, Growth and Settlement Policy Guidelines, the *Planning Act*, the Food and Farming Protection Act, the Nutrient Management Act and the Provincial Policy Statement. However, these provincial Acts are specifically mandated to regional and municipal planning frameworks and policy for implementation. The following provides a summary of applicable MDS policies as regulated in current provincial, regional and local policy documents.

4.1 Provincial Policy Statement (2014)

The Provincial Policy Statement (PPS) is issued under the authority of Section 3 of the *Planning Act*. The 2014 PPS which amended and replaced the 2005 PPS, came into effect on April 30, 2014. The PPS provides policy direction on matters of provincial interest related to land use planning and development. All regional and municipal planning decisions must be consistent with the PPS.

Major themes of the PPS which are relevant to agricultural and related uses include rural lands planning, long-term economic prosperity, and agriculture.

Rural Lands in Municipalities (Section 1.1.5)

Section 1.1.5 provides policies related to appropriate planning and development on rural lands, and emphasizes the promotion and protection of agricultural uses in such areas.

In rural lands located in municipalities:

- 1.1.5.8 *Agricultural uses, agriculture-related uses, on-farm diversified uses and normal farming practices should be promoted and protected in accordance with provincial standards.*
- 1.1.5.9 *New land uses, including the creation of lots, and new or expanding livestock facilities **shall comply with the minimum distance separation formulae.***

Long-Term Economic Prosperity (Section 1.7)

Section 1.7 states that long-term economic prosperity of the province should be supported by various initiatives, including:

- 1.7 (h) *providing opportunities to support local food, and promoting the sustainability of the agri-food and agri-product businesses by protecting agricultural resources and minimizing land use conflicts;*

Agriculture (Section 2.3)

Section 2.3 provides policies associated with the protection of prime agricultural areas, including direction on permitted uses, lot creation and lot adjustments, and removal of land from prime agricultural areas.

Relevant policies again stipulate the need to implement minimum distance separation formulae in municipal official plans and zoning bylaws, and include:

- 2.3.3.3 *New land uses, including the creation of lots and new or expanding livestock facilities **shall comply with the minimum distance separation formulae.***

Non-Agricultural Uses in Prime Agricultural Areas

- 2.3.6.1 *Planning authorities may only permit non-agricultural uses in prime agricultural areas for:*
...b) *limited non-residential uses, provided that all of the following are demonstrated:*
...2. ***the proposed use complies with the minimum distance separation formulae;...***
- 2.3.6.2 *Impacts from any new or expanding non-agricultural uses on surrounding agricultural operations and lands are to be mitigated to the extent feasible.*

The PPS also makes provision for the removal of prime agricultural areas for the expansion of or identification of settlement areas subject to policy 1.1.3.8, which reads as follows:

- 1.1.3.8 *A planning authority may identify a settlement area or allow the expansion of a settlement area boundary only at the time of a comprehensive review and only where it has been demonstrated that:*
...c) *in prime agricultural areas:*
1. *the lands do not comprise specialty crop areas;*
2. *alternative locations have been evaluated, and*
i. *there are no reasonable alternatives which avoid prime agricultural areas; and*
ii. *there are no reasonable alternatives on lower priority agricultural lands in prime agricultural areas;*
d) ***the new or expanding settlement area is in compliance with the minimum distance separation formulae; and***
e) *impacts from new or expanding settlement areas on agricultural operations which are adjacent or close to the settlement area are mitigated to the extent feasible.*

The PPS therefore provides clear planning direction on the protection and promotion of agricultural lands and the agri-food sector and relies on the MDS Formulae to prevent land use conflicts.

One area of significant change in the new 2014 PPS relates to the implementation of the MDS Formulae relative to settlement area expansions or consideration of limited non-residential uses within prime agricultural areas. The policies of the 2014 PPS make specific reference to compliance to the MDS Formulae when considering settlement area expansions through a comprehensive review as well the consideration of non-residential uses in prime agricultural areas.

4.2 Niagara Escarpment Plan (2005 – Office Consolidation April 2013)

The Niagara Escarpment Plan (NEP) provides direction for the maintenance of the Niagara Escarpment and land in its vicinity as a continuous natural environment, as well as policies to ensure that development is compatible with the natural environment. As a portion of the Region of Peel and Town of Caledon are located within the Niagara Escarpment, the policies of the NEP are applicable in these areas.

The most recent NEP was issued by the Niagara Escarpment Commission in June 2005. The NEP is issued under Section 3 of the *Niagara Escarpment Planning and Development Act* (NEPDA). This document replaces the previous NEP issued in June 1994 and is recognized as a “Provincial Plan” under Section 1(1) of the *Planning Act*. In the event of conflict, any policies contained within Provincial Plans such as the NEP take precedence over policies of the PPS or local Plans.

In regard to agricultural land uses, the NEP states:

- 2.10 *The objective is to encourage agricultural uses in agricultural areas, especially in prime agricultural and specialty crop areas, to protect such areas, **to permit uses that are compatible** with sustaining the agricultural use / or land base.*

- 2.10.2. *Development and the creation of new lots, including any lot associated with a farm consolidation, and new or expanding livestock facilities, **shall comply with the minimum distance separation formulae.***

Note, Section 2.10.2 of the NEP was not included in the 2005 Plan - it is a recent addition, based on the latest amendments to the NEP. The NEP policies are consistent with the PPS and promote the protection of agricultural uses in agricultural areas. This is accomplished by permitting uses that are compatible with agricultural uses by way of applying the MDS Formulae.

4.3 Greenbelt Plan (2005)

The Ministry of Municipal Affairs and Housing (MMAH) approved the *Greenbelt Act* and its associated Greenbelt Plan in 2005. The Greenbelt Plan identifies appropriate areas for urbanization in order to provide permanent protection to the agricultural land base and the ecological features and functions within the Greenbelt. The Greenbelt Plan includes lands within, and builds upon the ecological protections provided by, the NEP, among other Provincial Plans.

Policies 3.1.2.4 (Specialty Crop Area), 3.1.3.4 (Prime Agricultural Area), and 3.1.4.6 (Rural Area) all contain similar policy direction as the PPS and NEP and reads as follows:

3.1.2.4, 3.1.3.4, 3.1.4.6

*New land uses, including the creation of lots, as permitted by the policies of this Plan, and new or expanding livestock facilities **shall comply with the minimum distance separation formulae.***

4.4 Oak Ridges Moraine Conservation Plan (2002)

The Oak Ridges Moraine Conservation Plan (ORMCP) is an ecologically based plan established by the Province to provide land use and resource management direction for the Oak Ridges Moraine which stretches from the Trent River to the Niagara Escarpment. The ORMCP applies to a portion of the Region of Peel and Town of Caledon. Decisions made under the *Planning Act* must conform with the ORMCP.

Agricultural uses that support the ORMCP's objectives are encouraged in the Countryside Area designation. Prime agricultural areas are protected in the Countryside Area. Municipal official plans and zoning by-laws cannot be more restrictive than the ORMCP for agricultural uses. Although the ORMCP does not make specific reference to the MDS formulae, the policies in the PPS, and the MDS policies in the Regional and local plans which comply with the PPS, would continue to apply.

4.5 Region of Peel Official Plan

The Region of Peel Official Plan (ROP) was originally adopted by Regional Council on July 11, 1996 and subsequently approved by MMAH on October 22, 1996. The entire ROP came into effect on July 6, 1998, following resolution of a number of Ontario Municipal Board Decisions/Orders. Since this time, a number of amendments to the ROP have been made including the 2008 ROP review and corresponding Regional Official Plan Amendment 21B (ROPA 21B), which relates to the agriculture policies of the ROP¹. These amendments culminate the 'Region of Peel Official Plan Working Draft Office Consolidation February 2013'.

The ROP implements the PPS and Provincial Plans, and as such provides a long-term strategic policy framework for effectively and efficiently guiding growth and development in the Region while protecting the environment. MDS Formulae and criteria in the ROP are regulated where livestock facilities are a permitted use, and are applied in prime agricultural areas and rural areas in accordance with the Provincial Policy.

The ROP states that it is the policy of Regional Council to:

3.2.2.3 *Require compliance with the minimum distance separation formulae in the Prime Agricultural Area.*

3.2.2.8 *Direct the Town of Caledon in its official plan to allow in the Prime Agricultural Area, primary agricultural uses, and where deemed appropriate by the*

¹ As of May 23, 2014, the Ontario Municipal approved Regional Official Plan Amendment 21B (ROPA 21B) however, made no decision on ROPA 21B regarding two parcels of land located in Part of the East Half of Lots 21 and 22, Concession 4, W.H.S. in the Geographic Township of Caledon.

municipality, secondary uses and agriculture-related uses; provided all new uses are limited in scale, are compatible with, and shall not hinder surrounding agricultural activity, and meet the requirements of the minimum distance separation formulae, and the Oak Ridges Moraine Conservation Plan. Further, direct the Town of Caledon in its official plan to include criteria for secondary uses and agriculture-related uses as recommended by the Province, or based on a municipal approach which achieves the same objectives.

- 3.2.2.9 *Support the Region's long-term economic prosperity by promoting the sustainability of the agri-food sector and by protecting agricultural resources and minimizing land use conflicts.*
- 3.2.2.12 *Direct the Town of Caledon, in its official plan, to recognize in the Prime Agricultural Area existing non-residential uses, the residential use of existing and approved vacant severed lots, and the residential use of lots that may be approved in accordance with this Plan and applicable Provincial policies.*
- 5.4.2.9 *Direct the area municipalities to consider incorporating policies with respect to minimum distance separation formulae, as appropriate, within the Rural System.*
- 5.4.6.2.1 *Direct the Town of Caledon and the City of Brampton to:*
 - ...(d) *include policies in its Official Plan to protect agricultural operations in the rural area by requiring all uses to comply with the minimum distance separation formulae;...*

The ROP provides clear policy direction on the implementation of MDS Formulae within the Region of Peel.

In regard to urban expansions, the policies of the ROP require an Official Plan Amendment subject to a municipal comprehensive review (MCR). Relevant policies of the Official Plan include:

- 5.2.2.3 *An expansion to the 2031 Regional Urban Boundary will only be undertaken by the Region once a municipal comprehensive review has been completed, as identified in Section 7.9 of this Plan.*

Similar requirements for a MCR are also included in policy 5.4.3.2.2 of the ROP for the designation of the Rural Service Centre boundaries of Mayfield West and Bolton in the Town of Caledon. Furthermore, the policies of section 7.9.2.12 of the ROP detail the requirements to be considered in a MCR, and reads as follows:

- 7.9.2.12 *Consider an expansion to the 2031 Urban Regional Boundary, 2021 or 2031 Rural Service Centre boundary only through a Regional Official Plan Amendment which is based on municipal comprehensive review which demonstrates the following:*
 - ...(f) *there are no reasonable alternative locations which avoid the Prime Agricultural Areas;*

- (h) *within the Prime Agricultural Area there are no reasonable alternative locations on lower priority agricultural lands;*
- (i) *impacts from expanding settlement areas on agricultural operations are mitigated to the greatest extent feasible;*
- (j) *compliance with the minimum distance separation formulae;...*

When evaluating a Regional Official Plan Amendment, policy 7.3.6.2.2 of the ROP also identifies a number of potential studies that may be required in evaluating an application to amend the ROP. One of these studies includes an 'agricultural impact study'. It is through an agricultural impact study that issues of compatibility and MDS can be appropriately and comprehensively considered. Further discussion regarding the Town of Caledon's Agricultural Impact Assessment (AIA) Guidelines is provided in Section 4.7 of this report.

Based on the foregoing policies, the ROP appropriately implements the policies of the PPS with respect to compliance with the MDS Formulae. The ROP also provides appropriate policy direction to area municipalities with respect to the evaluation of alternatives and an assessment of impacts on agricultural operations when evaluating ROP amendments or undertaking municipal comprehensive reviews.

4.6 Town of Caledon Official Plan

The Town of Caledon Official Plan (2014 Consolidation) implements the Region's Official Plan and provides objectives and policies to guide future land use, and development within the Town up to the year 2021. Official Plan Amendment (OPA) 179 (Agricultural and Rural Policies) was approved by the Ontario Municipal Board in 2009. OPA 179 provided an up-dated policy framework for the Agricultural and Rural Areas in the Town of Caledon.

OPA 226, Caledon's Provincial Policy Conformity Amendment has also made subsequent amendments to the policies of OPA 179. However, the amendments made through OPA 226 have not affected the relevant policies noted below regarding the implementation of MDS and Agricultural Impact Assessments (AIA).

Section 4.2.3.3.1 requires compliance with MDS Formulae during a municipal comprehensive review for settlement boundary expansion:

4.2.3.3.1 *Expansions to settlements will require an amendment to this Plan and shall be undertaken through a municipal comprehensive review that will address the following:*

- ... (j) *compliance with minimum distance separation formulae.*

The Official Plan establishes the following broad objective, which speak to ensuring all new land uses in prime agricultural areas are compatible with surrounding agricultural uses:

5.1.1.3.2 *To ensure all new land uses are compatible with surrounding agricultural uses.*

The Official Plan also emphasizes the need to minimize land use conflicts in agricultural areas and ensure that appropriate regulations are in place to ensure compatibility.

- 5.1.1.6.3 *The Zoning By-law shall contain appropriate provisions to regulate such operations based on the density of livestock or total number of livestock.*
- 5.1.1.6.4 *The Town will impel the Ontario Ministry of Agriculture and Food to develop effective, but reasonable measures to ensure that all manure storage facilities shall be properly located, constructed, and maintained.*

Similar provisions are provided in policies 5.1.1.7.1 and 5.1.1.7.2 with respect to ensuring compatibility with existing uses in relation to 'High Impact Agricultural Uses', and specifically policy 5.1.1.7.2 reads:

- 5.1.1.7.2 *New or expanding high impact agricultural uses shall be compatible with respect to odours, noise, dust, water and sewage servicing, traffic, visibility, emissions, chemical storage, safety, character, scale and visual impact.*

The Town of Caledon Official Plan agricultural area land use policies also require MDS compliance for development on agricultural land, and reads:

- 5.1.1.10.6 *A residence for the owner or operator may be allowed as an accessory use to an agriculture-related commercial or industrial use. The dwelling must ensure adequate separation distance in accordance with Section 5.1.16.1. ...*
- 5.1.1.12.1 *... The development envelope will have adequate area for the single-detached dwelling, accessory uses, on-site services, proper drainage, should take into consideration site topography or other hazards and, where possible, must ensure adequate separation distance in accordance with Section 5.1.1.16.1.*
- 5.1.1.15.5 *A new residential lot created in accordance with Section 5.1.1.15.4 must be limited in lot area to a minimum required for a single-detached dwelling and driveway, must have sufficient room for adequate servicing; must ensure adequate separation distance in accordance with Section 5.1.1.16.1 ...*

In conformity with the PPS and Regional Official Plan, the policies of the Caledon Official Plan make specific reference to the application of MDS, and the policy reads:

- 5.1.1.16.1 *The Town will use the Provincial Minimum Distance Separation Formulae I and II to ensure adequate separation distance between agricultural uses and non-agricultural uses.*

Consistent with the Regional Official Plan, the Caledon policies also require compliance with MDS as it relates to consideration of settlement area expansions, and reads:

- 5.10.3.25 *Expansions to settlements will require an amendment to this Plan and shall be reviewed based on the following:*
 - ... (h) *compliance with minimum distance separation formulae.*

Similar to the Regional Official Plan, the Caledon Official Plan policies (6.2.1.6.2) also provide criteria/studies that may be required to support development applications. An Agricultural Impact Assessment (AIA) is one of the many studies identified.

In accordance with policy 5.1.1.17 of the Caledon Plan, an AIA should consider “*land use compatibility with surrounding agricultural uses*”, among other criteria as detailed in the policy. Land use compatibility would include compliance with the MDS Formulae as per policy 5.1.1.16.1 of the Official Plan.

In summary, the Caledon Official Plan appropriately implements the policies of the PPS and Regional Official Plan with respect to compliance with the MDS Formulae. The policies of the Official Plan also provide appropriate direction with respect to the evaluation of alternatives and an assessment of impacts on agricultural operations when evaluating amendments or development applications through the AIA process.

4.7 Town of Caledon Zoning By-law (2006-50)

The Town of Caledon Zoning By-law (2006-50) implements the policies of the Town of Caledon Official Plan. The Zoning By-law regulates the specific uses and built form permitted within various land use designations, as well as site standards such as landscaping and parking requirements.

The Zoning By-law contains general provisions, including provisions for MDS for livestock facilities, as indicated below:

- 4.34.3 a) *Unless otherwise specified and notwithstanding any other yard or setback provisions of this By-law to the contrary, no residential, institutional, commercial, industrial, or recreation use located on a separate lot and otherwise permitted by this By-law, shall be established and no building or structure for such use shall be erected or altered unless it complies with the Minimum Distance Separation (MDS I) requirements applied in accordance with the MDS I Implementation Guidelines.*
- b) *Notwithstanding any other yard or setback provisions of this By-law, to the contrary, no livestock facility or manure storage facility shall be erected or expanded unless it complies with the Minimum Distance Separation (MDS II) requirements applied in accordance with the MDS II Implementation Guidelines.*
- c) *Notwithstanding the above noted provisions, where an existing use that was in compliance with the MDS provisions is changed, the new use shall also be subject to MDS I or MDS II provisions, whichever is applicable. For the purposes of this subsection, a change in the type of livestock use housed is considered to be a change of use.*
- d) *MDS I shall not be applicable to existing vacant lots of record.*

4.8 Town of Caledon Agricultural Impact Assessment Guidelines

The Town of Caledon has developed Draft Agricultural Impact Assessments (AIA) Guidelines (dated June 2003) to be used to create a Terms of Reference for the preparation of an AIA. The AIA's would be required to evaluate development proposals that may impact existing and future agricultural activities. Section 6.2.1.6.2 of the Town of Caledon Official Plan identifies an AIA as a potential study requirement when evaluating official plan amendments, zoning by-law amendments, plans of subdivision, condominium plans or other development proposals. In addition, an AIA is required as part of the municipal comprehensive review for settlement boundary expansion to ensure compliance with MDS Formulae (see Section 4.2.3.3.2 of the Caledon Official Plan).

The Draft AIA Guidelines have been prepared to ensure that completed AIAs are comprehensive and appropriate to ensure conformity with the provincial, regional and local policy framework with respect to the protection of the agricultural resource. The Draft AIA Guidelines are an important tool for the Town and development proponents in establishing consistent criteria for evaluating impacts on the Town's agricultural resources. Besides Caledon, there have been few municipalities in Ontario that have established AIA guidelines. The Region of Halton has established guidelines which are comparable to the Town's Draft Guidelines.

As part of this study, the consultant team has undertaken a review of the Town's Draft AIA Guidelines and identified for the Town's consideration the following items to be addressed when up-dating or finalizing the Draft AIA Guidelines:

- 'Prime Agricultural soils' in Section 1.3 of the AIA Guidelines should be defined in accordance with the PPS definitions. A definition section should be considered.
- Section 2.0 of the AIA Guidelines should include a requirement to review development proposals in the context of the relevant agricultural regulatory/policy framework to demonstrate how the proposed development is consistent with these policies.
- Sections 2.4(b) and 2.6(b) make reference to the 'Agricultural Code of Practice', which no longer exists. The AIA Guidelines should be up-dated to delete the reference to the Agricultural Code of Practice and add reference to the province's MDS Formulae and Implementation Guidelines instead.
- Section 2.4 (b) should be revised to add 'nutrient management and traffic impacts' to the list of agricultural production constraints to be evaluated.
- Section 2.6(b) should be revised to add 'nutrient management issues' to the list of issues to be identified regarding potential effects on existing or potential farming operations.
- An assessment of alternative locations should be included in the AIA, if a development is proposing to remove land from prime agricultural areas, in accordance with the PPS.
- The AIA Guidelines should make specific provision for including notices/warning clauses as a condition of development to help mitigate against potential impacts from existing or future agricultural operations on proposed developments.

- The Town should consider finalizing (deleting 'draft') the AIA Guidelines and proceed to have the AIA Guidelines endorsed by Town Council, if required.

In summary, the Draft AIA Guidelines are an excellent tool to assist the Town in the creation of the Terms of Reference for the AIA, and subsequent evaluation of potential impacts of development proposals on the Town's agricultural resources and ensures conformity with Provincial and Regional policies. The above recommendations represent 'minor' revisions, which may help strengthen and clarify the AIA Guidelines.

5.0 PROVINCIAL MINIMUM DISTANCE SEPARATION REVIEW

The province, led by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), is currently undertaking a review of the MDS Formulae and Implementation Guidelines (MDS Publication 707). The MDS Implementation Guidelines establish a 5-year review process. The current MDS Formulae came into effect on January 1, 2007. The purpose of the review is to ensure MDS:

- reflects current land use planning principles and practices;
- reflects current technology and approaches within the livestock industry; and,
- continues to meet the needs of the agriculture and rural communities of Ontario.

As part of the Ministry's review, a targeted survey was undertaken with technical experts who use MDS regularly. The purpose of the survey was to identify issues associated with the implementation of the MDS Formulae. The results of the survey formulated the basis for further focus group discussions, which were undertaken by the province between May-June 2013. Further consultations with stakeholder groups (e.g., farm organizations, professional associations, municipalities, developers, etc.) are expected in the future. At present, the timing of revised MDS Formulae and Implementation Guidelines is unknown.

The Ministry does not anticipate significant changes to the MDS Formulae and Implementation Guidelines. However, the following needs have been identified:

- improve the MDS Formulae software;
- review and consider specific MDS Formulae and Implementation Guidelines, related to the application of MDS, measurement of setbacks, definitions, etc.;
- consider the development of separation distances for non-livestock odour sources; and,
- improve the MDS Formulae training to make the MDS Formulae easier to implement.

Some of the issues that that have been identified to-date, include:

1. Application of MDS to empty/unused barns and methods to determine if a livestock barn is empty or "*reasonably capable of housing livestock*".
2. Whether the application of MDS to existing lots of record should no longer be an option for municipalities.
3. Applying MDS to agriculture-related or secondary uses.
4. Adjusting side, rear and road allowance setback requirements for new barns.
5. Providing more flexibility with respect to the expansion or reconstruction of a dwelling or livestock facility following a catastrophe to increase the range of alterations/reconstruction considered for an MDS exemption.
6. Clarifying the definition/measurement of 'tillable hectares' in determining MDS.
7. Revising the MDS Formulae for institutional uses serving the horse and buggy community.

8. Clarifying the unwritten 'first come/first serve' principal in the Implementation Guidelines which applies the MDS based on which land use was in place or proposed first.
9. Adjusting/increasing current setbacks for Anaerobic Digesters.
10. Clarifying how to apply MDS to multiple livestock facilities on a lot.
11. Consider modifications to how MDS is applied to Rural Residential Clusters (4 or more rural lots).
12. Clarifying how setbacks apply to livestock facilities without a manure storage facility.
13. Improving training opportunities.

Based on interviews with Town staff, it appears there are some common issues (e.g., defining an empty livestock facility, improved training, etc.). It is anticipated that through the province's review, current issues experienced by the Town may be alleviated. The Town and Region are encouraged to continue to participate in the province's MDS review process to ensure MDS issues are raised and addressed.

6.0 APPLYING MINIMUM DISTANCE SEPARATION – OPPORTUNITIES & CHALLENGES

6.1 Limitations of Minimum Distance Separation

- 1) MDS is an effective tool for dealing with nuisance issues related to odour, but cannot eliminate all potential odour complaints, nor address other nuisance issues such as noise, dust, light, smoke or vibration.
- 2) MDS Formulae are only intended to deal with odour generated from livestock facilities, such as barns and manure storages, and are not intended to address nuisance issues related to odour from application of manure to land. Other provincial legislation such as the *Nutrient Management Act, 2002*, and the *Farming and Food Production and Protection Act, 1998*, address matters related to nuisance and the application/management of manure or nutrients to land.
- 3) Although MDS Formulae helps mitigate against potential odours, the Formula and resultant setbacks can be restrictive to the future expansion of livestock operations
- 4) MDS Formulae are only applied to barns with the capability of housing livestock. As barns are agricultural buildings with various uses (e.g., livestock housing, equipment and grain storage, workshops and garages), determining whether a barn should be classified as a livestock facility can present challenges.
- 5) Estimating livestock housing capacity may present challenges, based on barn size, structural characteristics, other non-livestock uses of the barn, etc.
- 6) The Implementation Guidelines lack clarity with respect to a municipality's ability to interpret and apply the Formulae.

6.2 Exceptions

The objective of the MDS Formulae is to minimize nuisance complaints due to odour and reduce potential land use conflicts. In some circumstances, the application of the MDS Formulae may preclude the orderly or logical development or redevelopment of a particular property with an established use, building or structure. As a result, the Implementation Guidelines provide municipalities the option to alter the application of **MDS I** in four specific circumstances:

Exceptions - MDS I

Development on existing lots of record

Municipalities are not required, but are strongly encouraged to apply MDS I to developments proposed on existing lots of record. Municipalities have flexibility in MDS I requirements for development on such lots, based on land use, lot size, etc.

Although municipalities have the option to apply MDS to existing lots of record, the Town of Caledon has not applied MDS to existing lots of record. This is reflected in the general provision of the Town's Zoning By-law. Should the Town wish to consider providing additional protection to agricultural uses, the Town can consider adjusting this regulation by:

- restricting certain types of buildings or structures;
- applying a maximum lot size threshold where MDS would be applied; or,
- applying MDS only for new buildings and not additions or renovations to existing buildings.

It should be noted, that applying MDS to existing lots of record, may represent additional hardship on property owners as it may prevent certain existing lots from developing. Such a restriction may be viewed as taking away the inherent development rights of property. A further review/assessment of existing vacant lots of record throughout the Town is highly recommend in order to assess the relative impacts such a restriction may have on property owners.

Surplus farm dwelling severances

Municipalities are not required, but have the option to apply MDS I from a neighbouring livestock facility to a proposed lot with an existing dwelling through Official Plan policies. This option has not been used in the Region or the Town of Caledon.

Following a catastrophe

Municipalities have the option to apply MDS I to the construction of a new dwelling destroyed in whole, or in part, by a catastrophe, provided that the new dwelling is located no closer to a livestock facility than it was prior to the catastrophe.

Within settlement areas

Municipalities are not required, but have the option to apply MDS I within settlement areas through Official Plan policies, typically where:

- livestock facilities have been planned to be a permitted use within the settlement area;
- MDS I was not applied at the time the boundaries of the settlement area were delineated; or,
- the municipality wishes to offer increased protection to existing livestock facilities.

At this time, there are livestock barns within settlement boundaries of the Region and Town. However, the policies of both the Regional and Town Official Plans do not contain specific policies addressing existing livestock operations in settlement areas. Most municipalities in Ontario do not have policies in their Official Plan to require MDS I setbacks to be applied to existing livestock facilities within settlement areas. This is likely because many municipalities consider the presence of livestock operations when evaluating urban expansions and generally try to avoid areas with active livestock

operations, or alternatively, the livestock operations that existed have been abandoned or phased-out prior to settlement area expansions occurring.

Exceptions - MDS II

Municipalities also have the option to alter the application of **MDS II** in three different circumstances:

Following a catastrophe

Municipalities have the option not to apply MDS II to the construction of a new livestock facility replacing a previous livestock facility destroyed by a catastrophe, provided that the new facility does not result in increases for Factor A (odour potential), Factor B (number of nutrient units), or Factor D (manure system type) values.

Within settlement areas

Where municipalities permit new or expanding livestock facilities within an approved settlement area, they are strongly encouraged by OMAFRA to apply MDS II.

Closed cemeteries or cemeteries which receive a low level of visitation

Generally, MDS treats cemeteries as a Type B land use, but in some circumstances, where a cemetery is closed or receives low levels of visitation, it may be treated and identified as a Type A land use for the purposes of MDS.

6.3 Local Experience

6.3.1 Caledon's Implementation of Minimum Distance Separation

Interviews were conducted with Town of Caledon staff to understand challenges/issues experienced by staff regarding the implementation of the MDS Formulae and Implementation Guidelines and to identify areas of improvement. Town planning and building staff that regularly utilize and implement the MDS Formulae and Implementation Guidelines were targeted for the interviews. Staff also provided examples of reports and applications, which included livestock operations and the application of MDS.

Based on observations to-date, it appears the Town is appropriately applying the MDS Formulae and Implementation Guidelines. However, staff has identified the following issues with the application of MDS Formulae:

Challenges associated with identifying/verifying the maximum livestock capacity of livestock facilities

Staff has generally relied upon information provided by the applicants, which is often incomplete because of missing information (e.g., total housing capacity, tillable acreage, etc.). This information may not be obtainable due to the inability to gain access and confirm uses on the property or livestock operation with the livestock operator/property owner. This potentially results in additional staff resources required to complete/verify the information provided by applicants. OMAFRA staff has

offered in the past to provide assistance in obtaining this information for the Town and/or applicant. However to-date, staff's experience through past efforts to solicit the Ministry's assistance has generally not been successful. Direct staff training provided by Ministry staff may be beneficial. The Town should explore opportunities with the Ministry to coordinate one-on-one staff training. Consideration should also be given by the Town to develop clear guidelines/instructions to applicants regarding the minimum information requirements to complete the MDS Formulae for their applications.

Determining/confirming if an old or abandoned livestock facility is capable of housing livestock

Town staff noted that it is difficult at times to determine if a livestock facility is capable of housing livestock. MDS Implementation Guideline #20 requires MDS be applied to empty livestock facilities "if they are structurally sound and reasonably capable of housing livestock, or storing manure." Staff has suggested that they could benefit from additional guidance or assistance from the Ministry in determining if a livestock facility is structurally sound and reasonably capable of housing livestock. As noted above, the province is reviewing this Implementation Guideline as part of the current MDS Review and looking at providing further direction in the Implementation Guidelines to assist in defining and determining if a livestock facility is capable of housing livestock.

Negative implications on agricultural uses (e.g. removal of livestock facilities) as a result of the application of MDS

Staff has indicated that, in some instances, the application of the MDS Formulae to an existing livestock facility from a proposed development had or has the potential to prematurely phase out livestock facilities. Developers may choose to acquire the livestock facility with the intent of removing the facility and eliminating the MDS setback requirement. Unfortunately, this is a reality experienced across the province particularly in near urban areas actively undergoing settlement expansion. As part of this study, the Region is proposing the development of Edge Planning Guidelines to mitigate impacts to agricultural land uses. These Guidelines can be of some assistance in trying to mitigate any near urban conflicts between existing/proposed agricultural uses in relation to established settlement areas and/or development.

6.3.2 Region of Peel Official Plan Amendment No. 21B

As previously noted, the Region of Peel recently undertook a process to review and up-date the natural heritage and agricultural policies in the Region of Peel Official Plan. On May 13, 2010, Regional Council adopted Regional Official Plan Amendment Number 21B – Natural Heritage and Agricultural Policies (ROPA 21B).

There was extensive input from the public and agricultural community during the consultation process associated with ROPA 21B. At that time, issues and questions specifically related to MDS Implementation Guidelines were raised that were beyond the scope of the ROP Review but related to the Province's review of the MDS Formulae and Implementation Guidelines, which had not yet commenced but was scheduled to begin in 2012. Two key issues raised through this process include:

1. Settlement expansions and associated impacts/hardships imposed on abutting agricultural operations and the need for flexibility in policies/regulations to ensure existing operations abutting new urban or rural settlement boundaries can continue to operate and expand (e.g.,

through revised or clarified minor variance guidelines and/or clarity on best practices, technologies and other mitigation solutions for farms).

2. The perception by some members in the agricultural community that MDS setbacks are unnecessarily restrictive for some types of outdoor recreational uses (e.g., golf course fairways). Further discussion of this issue is required with Provincial staff to review and understand technical research associated with these types of outdoor recreational uses (e.g., OMB appeals/hearings related to recreational uses and MDS, complaints to the Normal Farm Practices Protection Board, OMAFRA odour studies, etc.) to ensure MDS setbacks are appropriate and not unnecessarily restrictive.

6.4 Summary

Overall MDS policy has been an effective tool to mitigate land use conflicts in agricultural areas. The MDS Formulae are an effective approach to improve long-term viability of farm operations and help reduce the administrative, operational and legal liabilities to livestock farmers through the avoidance or reduction of having to address nuisance complaints related to odour. Although there are some minor improvements required to the MDS Implementation Guidelines, they are generally an effective tool with sound policy and their intent/principles represent good planning in agricultural areas.

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.

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