

To: Warden and Members of County Council

From: Director of Community Planning

Minimum Distance Separation Formulae Implementation

RECOMMENDATIONS

1. That Report Number CP 2022-298 titled “Minimum Distance Separation Formulae Implementation” be received;
2. And further, that Report No. CP 2022-298 be circulated to the Area Municipalities for information.

REPORT HIGHLIGHTS

- To provide Council with an overview of the Minimum Distance Separation Formulae (MDS) and how it is currently applied, and identify potential areas that may benefit from further review and/or discussion, particularly with respect to its application to agricultural properties.







Financial Impact

There are no financial implications associated with the recommendations in this report.

Communications

There are no immediate communication considerations. However, there could potentially be future communication considerations associated with any further direction that may be received from County Council with respect to this report.

Strategic Plan (2020-2022)

					
WORKS WELL TOGETHER	WELL CONNECTED	SHAPES THE FUTURE	INFORMS & ENGAGES	PERFORMS & DELIVERS	POSITIVE IMPACT
		3.i. 3.ii.			

DISCUSSION

Background

This report was prepared in response to a County Council resolution, passed at the May 25th, 2022 meeting, which directed staff to bring a report regarding potential Minimum Distance Separation Formulae (MDS) changes that would reduce the burden on agricultural properties, but not on non-agricultural properties in the Agricultural Reserve, and further, consider both potential changes that are within the power of municipalities to enact and changes that would require the province to enact or approve.

What is Minimum Distance Separation (MDS)

The MDS Document (i.e. Minimum Distance Separation Formulae I and II and associated implementation guidelines) is a land use planning tool developed by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) to prevent land use conflicts and minimize nuisance complaints from odour generated by livestock facilities, manure storages and anaerobic digesters.

MDS was originally introduced into land use planning through the Agricultural Code of Practice in 1976 and has been reviewed and updated several times since (1995, 2006 and 2016). The current version is publication 853 '[The Minimum Distance Separation \(MDS\) Document, Formulae and Guidelines for Livestock Facility and Anaerobic Digester Odour Setbacks](#)'.

Policy Basis and Legislative Authority

The Planning Act, 1990, requires that all decisions on land use planning matters shall be consistent with the Provincial Policy Statement (PPS), which includes policies that require compliance with MDS (e.g. new land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the minimum distance separation formulae).

As such, municipalities must ensure that their Official Plans, Zoning by-laws and decisions on all planning applications comply with MDS. The requirement to incorporate MDS into municipal Zoning by-laws also provides the 'applicable law' necessary to ensure any building or structure requiring the issuance of a building permit complies with MDS. Therefore, it is ultimately the responsibility of municipalities to ensure that MDS is implemented through local planning and development processes.

MDS and Normal Farm Practices

The Farming and Food Production Protection Act, 1998 establishes the legal framework for protecting farm operations from nuisance complaints made by neighbours, provided they are following normal farm practices. The Act also established the Normal Farm Practices Protection Board (NFPPB) as a tribunal to resolve disputes regarding agricultural operations and to determine what constitutes a normal farm practice.

The NFPPB relies on and considers regulatory and related provincial requirements or standards when determining whether activities, which are the subject of nuisance complaints, constitute a normal farm practice.

This includes consideration as to whether operations have met applicable MDS setbacks where complaints are in relation to odour generated from livestock facilities, manure storages and anaerobic digesters. As such, the board may order compliance with MDS as a means to resolve a normal farm practice complaint.

How MDS Works

The MDS document contains two formulae which are based on mathematical calculations that take into consideration a number of factors. These include:

MDS I - determines setbacks between proposed new development and existing livestock facilities, manure storages and anaerobic digesters; and

MDS II - determines setbacks between proposed new/expanding livestock facilities, manure storages and anaerobic digesters and other existing or approved uses/development.

The MDS document includes a series of implementation guidelines which establish rules to ensure consistent application of MDS, these include:

- Direction on how to apply MDS/measure setbacks under various scenarios (e.g. building permits on existing lots, surplus farm dwelling severances, reconstruction, renovation, treatment of unoccupied livestock facilities etc.);
- Direction on applying MDS to certain land use types and lots (e.g. Types A and B, on-farm diversified uses, settlement areas, lot creation, cemeteries, lot lines, road allowances, etc.); and
- Guidance on the reduction of MDS setbacks on a site specific basis.

The current MDS calculations are designed to provide greater flexibility for new and expanding livestock operations than for non-agricultural development (e.g. residential, commercial, and industrial uses and settlement boundary expansions).

Commentary

The discussion below focuses on aspects of MDS where there is, or may be, some flexibility for municipalities to make implementation choices that can potentially reduce the burden/impact of MDS on agricultural uses and operations. As the direct impacts of MDS on agricultural operations are primarily a function of the application of MDS II, the discussion in this report is focused primarily on MDS II, with some limited discussion of MDS I, where it is applicable.

a) Areas of Municipal Discretion in MDS Implementation

There are limited circumstances, as specifically set out in the MDS implementation guidelines and described in general below, where municipalities are provided some discretion in the application of MDS. In order to exercise these options, the relevant municipal planning documents (e.g. official plan and/or zoning by-law) must provide clear direction on the municipality's preferred approach.

- i) *MDS I setbacks and lot creation for a residence surplus to a farming operation as part of a farm consolidation.*

Municipalities may decide whether or not to apply MDS I to an existing livestock facility, manure storage and/or anaerobic digester for the purposes of severing an existing surplus farm dwelling from a farming operation (i.e. as part of a farm consolidation), provided that those facilities are already located on a separate lot from that dwelling. The option of applying MDS in this circumstance was considered as part of the recent review and update of the County's agricultural policies, but not considered to be necessary or beneficial, as any existing odour impacts from those neighbouring livestock facilities on the dwelling would not change as a result of the severance, nor would the MDS II setback requirements for any potential future expansion of those livestock facilities.

- ii) *MDS I setbacks for agriculture-related uses and on-farm diversified uses (OFDUs) from existing livestock facilities, manure storages and anaerobic digesters.*

Municipalities may choose whether or not to apply MDS I to proposed agriculture-related uses and OFDUs, as they could involve certain activities that may be sensitive to odours from surrounding livestock facilities or anaerobic digesters (e.g. food service, accommodation, agri-tourism, retail etc.).

This option was considered as part of the recent review and update of the County's agricultural policies and it was decided that MDS I would be applied to agriculture-related uses and to OFDUs, except for those consisting exclusively of a rural home occupation, value added agricultural facility and/or value retaining facility. Council may also consider site specific exceptions in specific circumstances (e.g. where an existing insufficient MDS I setback will not be further reduced, or the level of human occupancy and/or activity does not warrant full compliance with MDS I).

- iii) *MDS II setbacks for new livestock facilities, manure storage and anaerobic digesters from agriculture-related uses and on-farm diversified uses.*

Municipalities can choose whether MDS II should be applied to agriculture-related uses and on-farm diversified uses when locating new and/or expanded livestock facilities or anaerobic digesters. This option was considered as part of the recent review and update of the County's agricultural policies and it was determined that MDS II setbacks would not be required from such uses. That said, it is noted that the required MDS II setbacks from any dwelling (which is typically the more sensitive receptor) located on the lot with the agricultural-related use or OFDU would still need to be met.

- iv) *MDS II setbacks for cemeteries*

Municipalities can choose to treat certain types of cemeteries as type A instead of type B uses for the purposes of calculating MDS II setbacks. Cemeteries which are closed, receive low levels of visitation and where no place of worship is present can be treated as type A uses. Types A uses receive a lower factor score which results in a smaller MDS II setback for new livestock facilities, manure storage and anaerobic digesters. As such, the County and area municipalities generally treat cemeteries as type A uses.

- v) *Application of MDS I to dwellings on existing lots*

Municipalities are strongly encouraged, but may forego, the application of MDS I setbacks to building permit applications for new dwellings on lots that existed prior to March 1, 2017, where such exemption is specified in a municipality's Zoning By-law.

No County level direction on this option is currently provided in the Official Plan, leaving the approach to the discretion of each Area Municipality. From a Planning staff perspective, there are a range of factors that should be considered when determining whether to provide such an exemption and under what circumstances (i.e. only on existing residentially zoned lots).

As noted above, where municipal discretion with respect to the implementation of MDS is provided, the County and Area Municipalities have generally already chosen to implement the option that provides the greatest flexibility and/or protection for new/expanding agricultural uses.

b) Other MDS Implementation Related Considerations

There are several other situations where the potential impacts of MDS have been specifically considered by Planning staff in the development of the County's land use policies, and the implementation tailored locally with a view to protect and support agricultural operations to the extent possible. These include:

i) Designation of Settlements

The County's existing OP policies regarding rural clusters (Section 4.2.2.2 of the OP), clarify that smaller groupings of rural residential lots (fewer than 10) are not considered to be a rural cluster (i.e. designated as a settlement), so are treated as a Type A land use versus Type B land use for the purposes of MDS, which results in a much lower MDS II setback requirement. Given the numerous smaller groupings of residential lots in the County, this approach provides significantly greater flexibility for locating livestock operations than if all of these groupings had been identified as settlements.

ii) Limiting the creation of new lots for non-agricultural purposes

The creation of new lots for non-agricultural use (including rural residential) and the establishment of new or additional dwellings on lots (including additional residential units) can make the expansion and establishment of new livestock facilities and manure storages more difficult. While any such development is generally required to meet MDS I requirements from existing livestock facilities, manure storages and anaerobic digesters, it still creates new receptors and opportunities for nuisance complaints with respect to odour and can further limit the range of potential locations for new livestock facilities on surrounding farms (i.e. make it more challenging to meet MDS II requirements).

As such, the policies developed for such uses as part of the recent review and update of the County's agricultural policies closely considered the potential impacts on surrounding agricultural operations, including with respect to MDS.

iii) Limiting and/or avoiding variances to MDS I

Municipalities can also assist in protecting agricultural uses by ensuring minor variances, zoning by-law amendments or official plan amendments which propose to reduce MDS I setbacks are only considered in very limited circumstances. Generally the MDS document indicates the MDS I should not be reduced, except in site specific instances that continue to meet the intent of the MDS document.

As such, the recent updates to the County's agricultural policies provide some further direction in this regard, including, but not limited to ensuring that the development will not result in an existing insufficient MDS I setback being further reduced, and that any change in use to a non-agricultural use is as, or more, compatible with surrounding agricultural operations than the existing use.

c) Provincial Review of the MDS Document

The current MDS document states that future reviews will be undertaken by Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) in concert with other provincial regulatory, land use policy or plan reviews (e.g., PPS or Growth Plan review) or earlier, if OMAFRA deems it necessary. As previous Provincial reviews of the document have occurred roughly every 10 years, it is expected that the next review of the document could potentially be in 2026 or 2027.

If a review of the MDS Document were to be commenced by the Province, some aspects of MDS that could potentially benefit from review to better protect and support agricultural operations, may include:

- Further clarification and/or greater municipal flexibility with respect to what uses constitute a Type A vs Type B land use for the purposes of calculating MDS II setbacks. It is staff's understanding that the general intent of treating settlements and certain other land uses (i.e. commercial, industrial, institutional) as Type B uses is to recognize the greater potential for odour conflicts due to the sensitivity/intensity of these uses and, to some extent, the possibility they could expand in the future. As being categorized as a Type B land use can have a significant impact on (e.g. double) required MDS II setbacks, it may be beneficial to further review the need for certain uses to be categorized as Type B, for example:
 - Smaller privately/partially serviced settlement areas which are not intended for further growth (i.e. except through minor infilling and rounding out of development);
 - Areas of settlements that are exclusively designated for industrial purposes etc.;
- Clarifying the need to apply MDS I and II to additional residential units, particularly where such units are located in an accessory structure in close proximity to the principal dwelling on the farm (i.e. within the existing farm building cluster);
- Opportunities to reduce the required side/rear yard setbacks (currently 30 m or 98.5 ft) and road allowance setbacks (currently 60 m or 197 ft) for MDS II calculations.

Staff note that it is unlikely that any formal review of the MDS document by the Province could be limited to just consideration of opportunities to reduce the impact on agricultural operations and may also open the potential for other changes and input (i.e. from those seeking to reduce MDS requirements for non-agricultural uses) that may not be desired. Further, while the above noted changes could potentially result in reductions to the required MDS II calculations, these reductions may not be significant and/or may only apply in specific circumstances, or only benefit certain types or scales of livestock operations.

Conclusions

The development of the Official Plan policies, including the recent update of the County's agricultural policies through OPA 269, specifically considered the application of MDS and opportunities to reduce the potential burden and impact agricultural properties wherever possible, including the areas of flexibility pertaining to application of MDS which are available to municipalities, and provide important clarity and direction in that regard. Once the Province approves OPA 269, the rural area municipalities will need to complete updates to their Zoning By-laws to better reflect the policy updates within OPA 269, including those with respect to MDS.

A future review of the MDS document is anticipated to be commenced by the Province in 2026 or 2027, unless the Province identifies a need to initiate a review sooner, and may provide a further opportunity to identify refinements and enhancements to MDS that could better protect and support agricultural operations. If County Council would like to request that the Province consider expediting their next review of the MDS document, they may wish to consider formalizing such request through a resolution.

SIGNATURES

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