




Report to Development Services Committee

TO: DEVELOPMENT SERVICES COMMITTEE

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SUBMITTED BY:  **STEPHEN NAYLOR, MES, M.C.I.P., R.P.P., DIRECTOR OF PLANNING**

GENERAL MANAGER APPROVAL: **RICHARD FORWARD, MBA, M.SC., P. ENG., GENERAL MANAGER OF INFRASTRUCTURE, DEVELOPMENT & CULTURE** 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: **CARLA LADD, CHIEF ADMINISTRATIVE OFFICER** 

DATE: MAY 7, 2012

SUBJECT: 141 – 149 WELHAM ROAD REZONING (STAFF REPORT PLN003-12)

RECOMMENDED MOTION

1. That in response to the concern raised regarding the required setbacks for sensitive land uses in industrial zoning categories and in accordance with the previous recommendation (PLN003-12), the application submitted by Innovative Planning Solutions on behalf of Mofan Holding Inc. to rezone lands known municipally as 141 to 149 Welham Road from General Industrial EM4 zoning to General Industrial Special Provision EM4 (SP-X) zoning be denied.

PURPOSE & BACKGROUND

2. On April 10, 2012, the Development Services Committee deferred consideration of the application for a zoning by-law amendment submitted by Mofan Holdings for property at 141-149 Welham Road pending a report from staff in the Planning Services Department to Development Services Committee concerning the setbacks for industrial uses if the proposed zoning amendment was approved (PLN003-12) (12-G-030) (12-G-063) (File: D14-1506).
3. In addition, the Committee requested some clarification as to the definitions for the uses applied for, the currently permitted uses, existing non-conforming uses and uses that were previously permitted prior to the passage of By-law 2005-275.
4. The purpose of this report is to provide some background on the applicable Ministry of the Environment Minimum Distance Setback Guidelines and describe their impact on the subject property. In addition, the report proposes to provide further clarification as to the existing, proposed and non-conforming uses.

ANALYSIS

Ministry of the Environment (MOE) Guidelines and Sensitive Land Use Separation

5. The concept of buffering incompatible land uses from sensitive land uses is established by the Provincial Policy Statement which states:

"1.7 Long-term economic prosperity should be supported by:

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- e) planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities) and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety."
6. The *Ministry of the Environment (MOE) Guidelines for Land Use Compatibility between Industry and Sensitive Land Uses (D-06 Guidelines)* govern the separation distance of such uses and are intended to minimize potential adverse effects due to encroachment of industrial and sensitive land uses on each other.
7. Potential adverse impacts on sensitive land uses from industry include point source and/or fugitive air emissions such as noise, vibration, odour, dust and others either through normal operations, procedures, maintenance and storage activities and/or from associated traffic/transportation.
8. The D-06 Guidelines categorize industrial land uses as Classes 1-3, with Class 1 considered to have the least potential adverse effects and Class 3 considered to have the most potential adverse effects. An excerpt from the D-06 Guidelines illustrating the definitions of the industrial land use classes is attached as Appendix A.
9. The guidelines provide an *influence area* separation required for each industrial class from a sensitive use.
10. The potential *Influence area* applied to each class is as follows:
- Class 1: 70m potential influence area
 - Class 2: 300m potential influence area
 - Class 3: 1000m potential influence area
- Refer to Map 1 attached showing these distances relative to the site. Refer to Map 2 attached showing these distances relative to surrounding sensitive uses.
11. The *influence area* may be reduced as follows, if supported or justified by a study:
- Class 1: 20m
 - Class 2: 70m
 - Class 3: 300m
- Refer to Map 3 attached showing these distances relative to the site. Refer to Map 4 attached showing these distances relative to surrounding sensitive uses.
- Proposed Uses and the Application of the D-06 Guideline**
12. The EM4 zone which is the zone of the subject site and the surrounding area permits uses covered under Classes 1 to 3 in the D-06 Guideline.

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13. The uses applied for in the site specific zoning application for the subject site are: a bank; a photographic studio; a commercial school; a health club; and daycare (defined as "day nursery" in the Zoning By-law). In staff's opinion, a daycare and a health club, where patrons potentially jog or walk outdoors as part of their fitness regimen, would be considered sensitive uses.
14. The attached maps demonstrate the effect of placing a new sensitive land use on the subject site for each of the 3 classes. The EM4 zone of the subject site and lands surrounding the subject site permit Class 1, 2 and 3 industrial uses. Class 3 industrial uses have a potential area of influence of 1000m. The 1000m buffer from the site impacts almost the entire EM4 zoned lands for potential new Class 3 uses should sensitive uses be permitted on the subject site. However, staff recognize that a considerable area of the EM4 zoned lands are already affected by surrounding sensitive uses or zones permitting sensitive uses.
15. There are existing Class 1 and 2 uses adjacent and nearby the subject site. In addition, there are existing vacant developable sites within 300m of the subject site which would, in staff's opinion, be potentially impacted by inserting sensitive uses within the subject site.
16. In consideration of the buffer for Class 1 and 2 uses (70m and 300m respectively) from the subject site and the surrounding area, and applying the 300m minimum distance separation for Class 3 uses if justified by a study; almost the entire EM4 zoned lands are affected for Class 1 and 2 uses. This is because the site is centrally located within the EM4 zoned areas. It is noted that the majority of the permitted uses in the EM4 zone would be considered Class 1 and 2 industrial uses. Thus the remaining available area for Class 1 and 2 lands which are additionally not affected by a buffer from surrounding sensitive uses are impacted, as well as any Class 3 use if justified by a study. Furthermore, there are existing Class 1 and 2 uses adjacent and surrounding the site which place the site within their area of influence which impact a proposed sensitive use on the site, including Theta TSS which is an auto parts stamping plant located adjacent to the site on the other side of the rail line on Truman Road.
17. Notwithstanding the above, The D-06 Guidelines are but one consideration to take into account in terms of inserting sensitive and other incompatible uses in a consolidated area of Employment Lands. They are guidelines and as such cannot be implemented as "applicable law". However, planning decisions are required to be consistent with provincial policy, and in this regard, staff are of the opinion that a site specific by-law is contrary to Policy 1.7 of the PPS referred to in paragraph 5 of this report.
18. The intent of the D-06 Guidelines is to provide a recommended minimum separation distance between industrial land uses and sensitive land uses. In staff's opinion, introducing new sensitive land uses at this location is undesirable given the MOE separation distances. It is stated in the D-06 Guidelines that *distance is often the only effective buffer, however, and therefore adequate separation distance based on a facility's influence area, is the preferred method of mitigating adverse effects*. Locating the proposed sensitive land uses on the subject property would result in a number of industrial facilities being located less than the minimum distances recommended by the MOE thus resulting in the potential for negative impacts. This, in staff's opinion, would be contrary to the D-06 Guidelines stated objective of *minimizing the encroachment of sensitive land uses upon industrial land use and vice versa*. In addition, it is staff's understanding that issuance or renewal of certificates of approval through the MOE for industrial uses in the area could potentially be complicated by the existence of sensitive land use on or nearby the affected properties.
19. In staff's view, inclusion of sensitive uses such as a daycare and health/fitness facility on the subject site would have implications in terms of potentially affecting the operations of existing and proposed industries in the area. Furthermore, as pointed out in Staff Report PLN003-12, it is not only sensitive uses that affect the operations of more traditional industrial uses. Past experience

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has shown the cumulative effect of permitting these other uses in the middle of an area that offers significant potential for retention, expansion and introduction of new traditional uses will eventually result in creating more pressure to add such uses, and will detract from the desirability for more traditional industrial uses to locate in the area. It is noted there are lands zoned EM3 with vacant suites available in buildings located on Huronia Road and the south east corner of Huronia and Big Bay Point Road, which permit the uses being applied for.

20. It should also be noted that the Planning Department is presently undertaking another comprehensive City wide review of Industrial zones. This review proposes to examine consolidated areas of specific Industrial zones to determine which, if any, blocks of industrial land may warrant consideration for permitting additional uses. In this regard the ad-hoc site by site consideration of lands outside of the broader context is not advisable until such time as we have a better understanding of the status of the 200+ ha of EM4 zoned lands that the subject site is located in, compared with other industrial lands within the City. The indications are that this is 200+ ha EM4 zoned area remains "intact" for the uses permitted in the EM4 zone.
21. For all of the above reasons, staff continue to recommend no change to the current EM4 zoning of the subject site and thereby continue to recommend the original denial motion as presented in Staff Report PLN003-12.

Clarification of Historic, Existing, and Proposed Uses

22. In 2005, Council updated the Industrial section of the zoning by-law to address concerns from existing industries in Barrie regarding the impact of non-industrial uses on their day to day operations. This update was approved as By-law 2005-275 and has now been incorporated into the new Zoning B-law (2009-141). The Industrial zone by-law represented a compromise between true industrial uses and the non-industrial uses which have proliferated in the City's industrial areas.
23. Some of the uses previously permitted in the old M2 zone which are not permitted in the EM4 zone include: *Private Club, Bank, Medical Office (with less than 5 practitioners), Assembly Hall, Conference Centre, Recreational Establishments, Commercial School, Day Nurseries, and Service Stores.*
24. Prior to 2005-275, clinics, defined as having 5 or more medical practitioners, were not permitted in the former M2 Industrial zones. However, a medical office with 4 practitioners or less would have been permitted as an "office" in the M2 zone. *Medical offices* of any size are among the uses which were removed from the list of permitted uses in the EM4 zone because of the high turnover in non-industrial traffic generated by these uses.
25. The definition of *Recreational Establishments* prior to By-law 2005-275 included a *health club* whereas By-law 2005-275 redefined *Recreational Establishments* to exclude *fitness centres*. This too was considered to be an inappropriate use creating conflicts with the traditional manufacturing and heavier industrial type of activity and industrial traffic and was thus removed from the EM4 zone.
26. *Commercial School*, as defined in By-law 85-95 and 2005-275, referred to schools such as dance studios, karate schools, or music schools.
27. The existing Kempettes Gymnastics Club located on the subject site is a "Commercial School". A commercial school is one of the uses being sought in the site specific zoning application.

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28. A stand alone daycare (defined as "day nursery" in the Zoning By-law) is not permitted in the EM4 zone. A daycare is permitted as an accessory employee use in association with a permitted use. A stand alone "day nursery" is being sought through the site specific application.
29. Staff note that the uses that were permitted prior to By-law 2005-275 were removed for the reasons explained in Staff Report PLN003-12. To the best of staff's knowledge, the applicant did not oppose these changes during the review of the Industrial section of the by-law which spanned January 2000 till February 2007 with final approval from the OMB.
30. In summary, the City has undertaken a long and exhaustive review of permitted uses within its Industrial zone categories. This undertaking was to address significant concerns from existing industries that were being impacted by the encroachment of non-industrial uses into industrial areas. As a result, Council amended the zoning by-law to create new zones and to redistribute uses into more appropriate zone categories in an effort to address these concerns as well as to accommodate the desire of some developers and landowners to retain permissions they had previously enjoyed.
31. With respect to the other uses applied for on the subject site, staff are concerned with the cumulative impact that such uses would have particularly in consideration of the fact that the site is centrally located within the subject area. These concerns have been outlined in Staff Report PLN003-12.
32. The Committee should note that the Planning Department is presently undertaking another comprehensive City wide review of Industrial zones. This review proposes to examine consolidated areas of specific Industrial zones to determine which, if any, blocks of industrial land may warrant consideration for permitting additional uses.

ENVIRONMENTAL MATTERS

33. There are no environmental matters related to the recommendation.

ALTERNATIVES

34. The alternatives as presented in Staff Report PLN003-12 continue to apply.

FINANCIAL

35. The review of the D-06 Guidelines and clarification of land uses does not impact the financial implications discussed in Staff Report PLN003-12.

LINKAGE TO COUNCIL STRATEGIC PLAN

36. The recommendations included in Staff Report PLN003-12 noted the following goals are supported in the 2010-2014 City Council Strategic Plan:
 - Direct and Manage Economic Development

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APPENDIX "A"

Class I Industrial Facility

A place of business for a small scale, self contained plant or building which produces/stores a product which is contained in a package and has low probability of fugitive emissions. Outputs are infrequent, and could be point source or fugitive emissions for any of the following: noise, odour, dust and/or vibration. There are daytime operations only, with infrequent movement of products and/or heavy trucks and no outside storage.

Class II Industrial Facility

A place of business for medium scale processing and manufacturing with outdoor storage of wastes or materials (i.e. it has an open process) and/or there are periodic outputs of minor annoyance. There are occasional outputs of either point source or fugitive emissions for any of the following: noise, odour, dust and/or vibration, and low probability of fugitive emissions. Shift operations are permitted and there is frequent movement of products and/or heavy trucks during daytime hours.

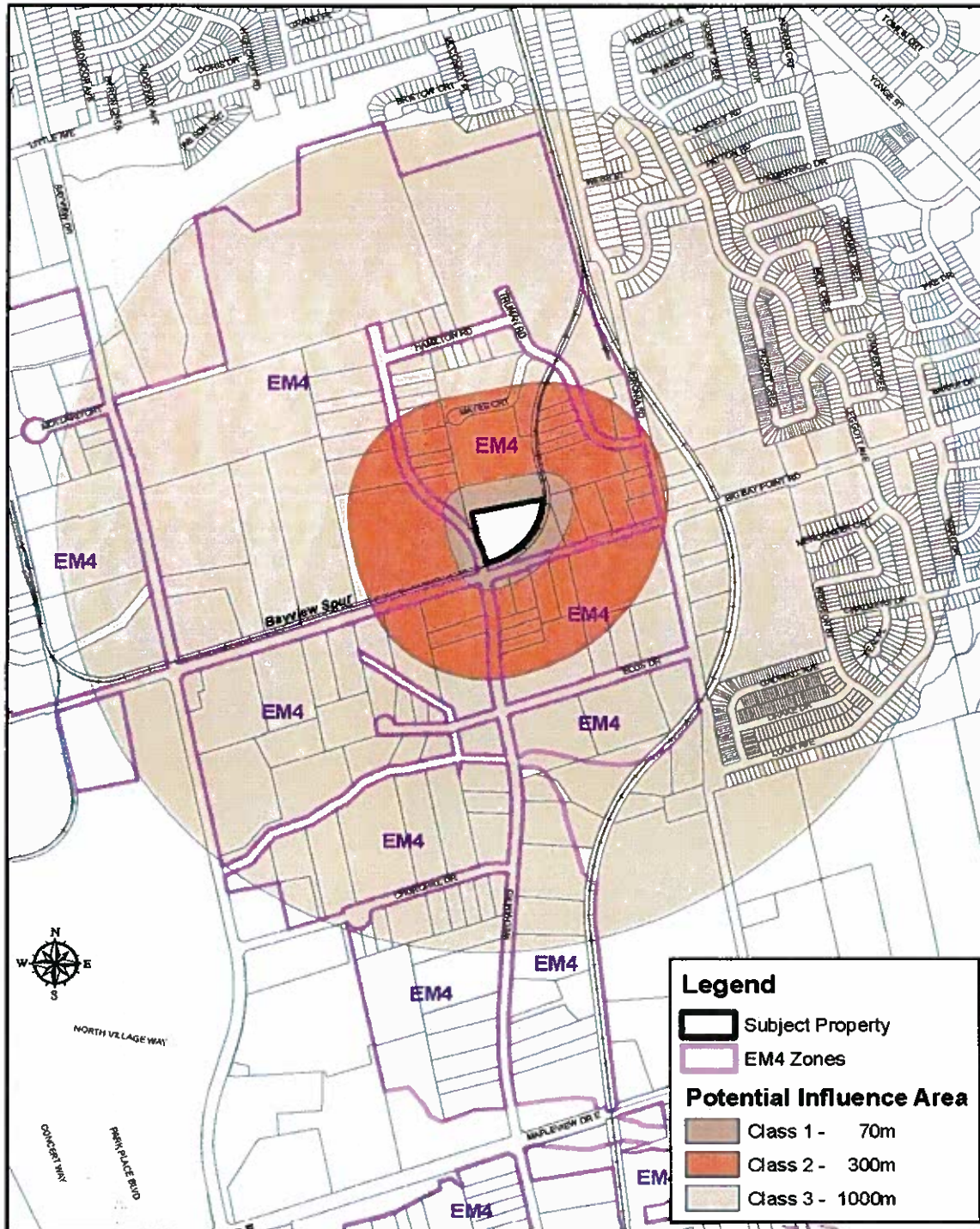
Class III Industrial Facility

A place of business for large scale manufacturing or processing, characterized by: large physical size, outside storage of raw and finished products, large production volumes and continuous movement of products and employees during daily shift operations. It has frequent outputs of major annoyance and there is high probability of fugitive emissions.

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MAP 1

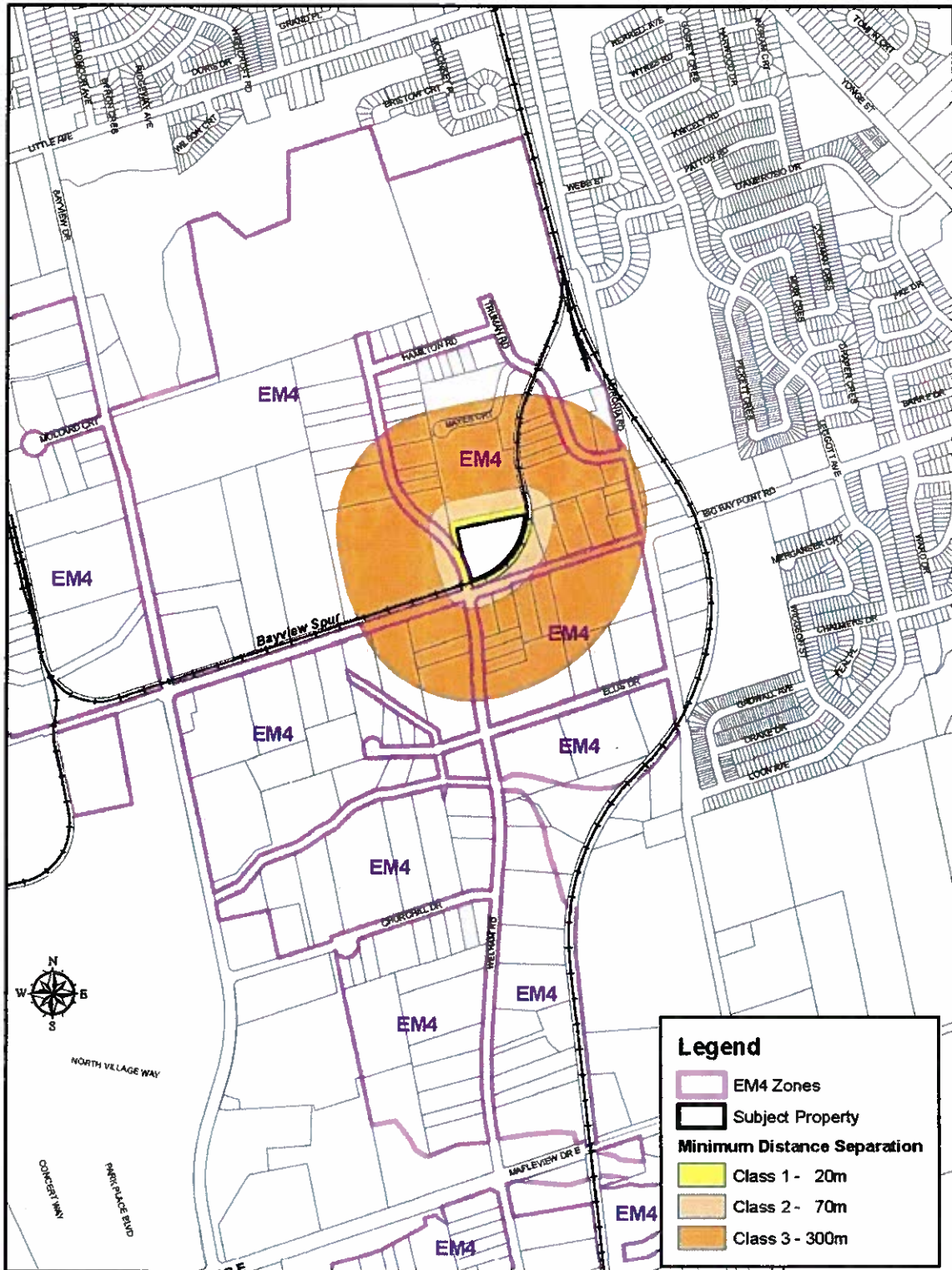
Influence Area From the Subject Property



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MAP 3

Minimum Distance From the Subject Site If Supported By a Study



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MAP 4

Minimum Distance From Sensitive Uses If Supported By a Study

