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**ONTARIO - OPEN FOR BUSINESS  
MORE THAN JUST A PAPER EXERCISE**

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*Building Industry and Land Development Association*  
**Submission to the Ministry of Economic Development**

**December 2008**

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As part of the Ministry of Economic Development's **Open For Business Initiative**, the Province is attempting to fulfill its commitment to create a stronger and more prosperous Ontario by focusing on what matters to business, making it easier to do business with government and reducing the regulatory burden. BILD is pleased to have the opportunity to provide comments as part of the Open for Business exercise. We do so on behalf of our over 1,500 member companies who are engaged in all aspects of the planning, development and construction of communities and buildings throughout Ontario.

The land development and construction industry is vital to the Ontario economy. The new housing and renovation sector is the largest industry in Ontario. Over 325,000 direct and indirect jobs are provided every year by the residential construction industry. In 2007, the value of new housing, residential renovations and impacts of other expenditures related to residential construction in Ontario totaled \$36.2 billion. Residential construction alone accounts for approximately 6% of the provincial GDP. The non-residential sector contributes approximately \$5 billion of building and land development investment in the Greater Toronto Area.

While the land building and development industry is so crucial to Ontario, it is also one of the most heavily regulated. The land development process is unnecessarily complicated, often duplicative and time-consuming. It is hoped that the Open for Business exercise results in a rationalization of government structure and the legislative framework to allow our industry to meet the housing and business space needs of Ontarians at the lowest possible cost. BILD believes that a rationalization of the many existing regulatory measures is long overdue and is now paramount for our industry, and the economy in general. It is particularly critical in this current, declining economic environment. What is required is not new regulation, but better implementation of existing rules, and a clear understanding of "who does what."

It is encouraging to note that the Open for Business mandate includes a desire to work with, not against, business and understand their needs. BILD wishes to work with the Province in achieving the stated outcomes for the Open for Business exercise which includes an 'open and responsive working relationship', 'simple, straightforward regulations', and 'faster, easy-to-use business services.' Looking to assist in achieving that end, this preliminary brief is intended to provide the Province with input on how to improve certain regulatory measures and provides recommendations on how to minimize or avoid duplication of either internal ministries or ministries and external agencies. Understanding that this Provincial program for regulatory reform has long term goals, we look forward to providing additional input as the Open for Business exercise progresses forward.

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**SUMMARY OF BILD RECOMMENDATIONS**

*BILD recommends that the Premier's Office uphold the commitment made in the 2007 Ontario Liberal Plan "Moving Forward Together" to "reduce the paper burden on business through a cap and trade system for government regulation (and that) every time a new regulation is put in place, an old one will have to be removed."*

*BILD recommends that the Province adopt a "jobs first" assessment of all of their decision making, and assess how their business decisions will impact the residential and non-residential building and land development industry.*

*BILD recommends that the Premier's Office provide Ministers that play a key role in the planning and land development process with a mandate to, within three months, assess their service delivery models and provide a report outlining a strategy to deal with short, medium and longer term solutions to cutting red tape. The review should focus on eliminating duplication of roles, simplifying the definition of responsibilities, and clearly communicating the regulatory framework for those who have to navigate through it. Upon receipt of these reports, the Premier's office should assess and provide direction to achieving the short term solutions and articulating a process to address the mid- and longer term solutions. BILD suggests that the findings and recommendations of this report are presented to the G-9 Ministers as a means of conveying the issues and looking for real time solutions.*

*BILD recommends that each ministry looking to introduce new legislation or regulation be asked to produce an assessment of costs and benefits, both financial and otherwise. After implementation, ministries should assess the legislation's performance against the stated costs and benefits since the time it was implemented.*

*BILD recommends that ministries take into account the cumulative burden that already exists in relation to an activity, and avoid imposing new obligations that contradict or are in tension with existing obligations. It is also essential that when imposing new regulation or legislation that there be clear transition provisions.*

*BILD recommends that Memorandums of Understanding between the various ministries and regulatory authorities be established to ensure free exchange of information and establish common reporting and resource sharing protocols.*

*BILD recommends that the Province empower and strengthen the Office of the Provincial Development Facilitator and provide it with the tools necessary for it to effectively carry*

*out its mandate. BILD also requests that the Province consider having the Office of the Provincial Development Facilitator report to a Senior Officer within the Premier's Office that is responsible for the land development file.*

*BILD strongly recommends that the Province take leadership and responsibility to ensure growth management is implemented at the municipal level. Provincial goals and objectives must be defended, and the goals and expectations of the Growth Plan must continue to be clearly articulated to municipalities. The Province must take a leadership role in ensuring that municipalities are undoubtedly aware of their own responsibilities and have a work-plan to ensure that their objectives meet those of the Province. In addition, the Ministry of Energy and Infrastructure must co-ordinate and work with other provincial ministries and commenting agencies to ensure other government policies, legislation and initiatives, support and do not counteract the intent and objectives of the Provincial Growth Plan.*

*BILD members are opposed to undertaking an approvals process under the Environmental Assessment Act which duplicates that of the planning process under the Planning Act. BILD is of the opinion that there is absolutely no reason for an additional Class EA Study when the Planning Act process already contains approval mechanisms for arterial and collector roads. To eliminate this costly duplication, BILD recommends that O.Reg.345/93 of the Environmental Assessment Act be amended. This amendment would re-define private sector developer projects which are designated under the Environmental Assessment Act to exclude arterial and collector roads shown on a secondary plan approved under the Planning Act after October 4, 2000.*

*BILD recommends a broader application of "Standardized Approval Regulations" which specify conditions to qualify for automatic approval without the requirement for a Certificate of Approval. A thorough technical review of the design and construction process is already undertaken by the assuming municipality, and often by the conservation authority, to ensure conformity with appropriate environmental standards. Therefore, an additional review by the Ministry of Environment represents duplication, added expense, and little or no added value.*

*BILD recommends that the Province streamline MTO's commenting agency role by establishing/enforcing clear timeframes for the review of development applications and associated technical reports. All residential development that is part of an approved Draft Plan or Site Plan, which by default involves the MTO, should be exempt from the requirements of a Building and Land Use Permit.*

*BILD recommends that the province revisit the recommendations of the Building Regulatory Reform Advisory Group through its Building Advisory Council. BILD recommends that the Building Advisory Council take the lead in advancing a system to have municipalities track performance statistics in relation to the mandatory processing*

*time-frames imposed by Bill 124. In addition, BILD recommends that the Province take the lead in creating a 'Streamlining the Planning Process Review' to identify and implement opportunities to streamline the planning approvals process.*

*BILD recommends that municipalities can encourage the building industry to offer or build housing or structures that exceed Ontario Building Code energy standards, but that they NOT be mandated, or use this request to withhold or leverage planning or servicing approvals.*

*BILD recommends that the Province, in cooperation with the development industry, undertake a review of the "hidden" costs beyond the Development Charge that the industry is forced to pay to municipalities and external commenting agencies.*

*BILD recommends a review of how Natural Heritage Systems Planning is implemented, that the Province take the lead in initiating an agreement between the industry and the Ministry of Natural Resources to streamline processes, and generally recommends that there be a reasonable approach and a consistent application of the Ministry of Natural Resource's policies/guidelines in the various jurisdictions necessary to support the Growth Plan.*

*BILD recommends that the Conservation Authority Liaison Committee reconvene immediately in order to continue its discussions and efforts, and that it be used as a mechanism to address industry and municipal Conservation Authority issues. BILD recommends that the draft Chapter of the Policies and Procedures Manual for Conservation Authorities be finalized. In addition, BILD recommends that new policies for review timelines be entrenched in legislation, that a Regulation be added to the Conservation Authority Act similar to those included in Planning Act, and that appeals under the Mining and Land Commissioner be moved under the jurisdiction of the Ontario Municipal Board.*

*BILD recommends that the Province oversee a municipal assessment of how each Conservation Authority is involved in their individual review processes, that areas for improvement are identified, and that the Memorandums of Understanding are reviewed to encourage streamlining and common approaches.*

*BILD recommends that Section 5 of Ontario Regulation 525/91 of the Surveyors Act, which relates specifically to subdivision surveys, be amended such that there is no further requirement for lot corner monumentation. The requirement to monument all points on a modern plan of subdivision in an urban area is an outdated, archaic and totally unnecessary exercise which is costly to the land developer and to the homeowner.*

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## OPEN FOR BUSINESS – MORE THAN JUST A PAPER EXERCISE

As part of the Open for Business exercise, fixing the existing structure, and developing and reinforcing new ways of working are identified as priorities for a new business-to-government relationship.

Effective organizational and cultural change requires strong leadership. Those responsible for delivering regulatory reform must be committed to the reform program. To be effective, regulatory reform requires strong leadership from the Premier's Office as well as Ministers across government.

***BILD recommends that the Premier's Office provide Ministers that play a key role in the planning and land development process with a mandate to within three months, assess their service delivery models and provide a report outlining a strategy to deal with short, medium and longer term solutions to cutting red tape. The review should focus on eliminating duplication of roles, simplifying the definition of responsibilities, and clearly communicating the regulatory framework for those who have to navigate through it. Upon receipt of these reports, the Premier's office should assess and provide direction to achieving the short term solutions and articulating a process to address the mid- and longer term solutions. BILD suggests that the findings and recommendations of this report are presented to the G-9 Ministers as a means of conveying the issues and looking for real time solutions.***

Many regulatory problems are caused or exacerbated by the fact that the same activity is governed by legislation or regulations produced/managed by several different ministries. Often times each ministry may not know what the others have done or are doing. Each Ministry is caught within their own silo of regulation and there are conflicts between Ministries and within themselves that prevent them from achieving their goals.

Recognizing that every decision made has an economic consequence, ***BILD recommends that the Province adopt a "jobs first" assessment of all of their decision making, and assess how their business decisions will impact the residential and non-residential building and land development industry.***

Additional regulation continues to pour out in an uncoordinated, unevaluated manner from a multiplicity of provincial ministries, government agencies and local governments. Since 2003, the McGuinty government has created approximately 430 new regulations and has revoked only 81. This translates to an average of 5 new regulations for every one regulation they revoked. ***BILD recommends that the***

***Premier's Office uphold the commitment made in the 2007 Ontario Liberal Plan "Moving Forward Together" to "reduce the paper burden on business through a cap and trade system for government regulation (and that) every time a new regulation is put in place, an old one will have to be removed."***

When looking to introduce new legislation, ***BILD recommends that ministries take into account the cumulative burden that already exists in relation to an activity, and avoid imposing new obligations that contradict or are in tension with existing obligations. It is also essential that when imposing new regulation or legislation that there be clear transition provisions.*** The land development process in Ontario takes several years, if not decades, and any changes mid way through a multi-year approvals process can and does have extreme negative results on timely approvals. Ministries should discuss proposals with other ministries regulating the activity, to ensure that contradictory requirements are not imposed and that the different regulations fit sensibly together, minimizing the cumulative regulatory burden as much as possible.

The regulation of business activity in Ontario is out of control. The building and land development industry finds itself subject to numerous regulations that have compiled over time, each imposing their own costs. Neither the provincial government nor any local government make any attempt to measure the money costs it imposes. There is no attempt to control or measure the overall impact of regulation. ***BILD recommends that each ministry looking to introduce new legislation or regulation be asked to produce an assessment of costs and benefits, both financial and otherwise. After implementation, ministries should assess the legislation's performance against the stated costs and benefits since the time it was implemented.***

***BILD recommends that Memorandums of Understanding between the various ministries and regulatory authorities be established to ensure free exchange of information and establish common reporting and resource sharing protocols.***

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**BILD has identified the following Ministries or areas where refinements to existing systems could result in more efficient processes and procedures:**

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## OFFICE OF THE PROVINCIAL DEVELOPMENT FACILITATOR

In August, 2005, the Minister of Public Infrastructure Renewal appointed a Provincial Development Facilitator to help the province, municipalities, developers and community groups resolve issues relating to growth management, land use and infrastructure planning, and environmental protection. The Facilitator was also charged to undertake mediation and facilitation in an independent and impartial manner.

Prior to this announcement, the home building and land development industry had long sought for a return of the Provincial Facilitator whose office and position could assist stakeholders groups, including developers, to expedite, resolve planning and development issues, and avoid lengthy appeals to the Ontario Municipal Board.

***BILD recommends that the Province empower and strengthen the Office of the Provincial Development Facilitator and provide it with the tools necessary for it to effectively carry out its mandate.*** It should also serve as a resource to coordinate and ensure that the policies of all provincial government initiatives support the government's strategic directions. The Facilitator should be equipped with the proper enforcement powers so that clear outcomes from any mediation sessions can be achieved, and so that it has the ability to carry out its functions as the Province had intended. ***BILD also requests that the Province consider having the Office of the Provincial Development Facilitator report to a Senior Officer within the Premier's Office that is responsible for the land development file.***

## MINISTRY OF ENERGY AND INFRASTRUCTURE

### ***Implementation of the Provincial Growth Plan***

BILD has been actively engaged in discussions with both the Ministry of Municipal Affairs and Housing and the Ministry of Energy and Infrastructure with respect to the implementation of the Growth Plan for the Greater Golden Horseshoe, Places to Grow (Growth Plan). BILD has provided input to guidance materials developed by the Province. Association members and staff continue to be invested in the process and the policies necessary to support the Growth Plan.

The Growth Plan calls on all levels of government, non-governmental organizations, the private sector and all Ontario citizens to work together towards its full implementation. BILD members and staff are currently in discussions with a number of regional, county and municipal governments regarding their Growth Plan

conformity exercises, to ensure that Official Plans are updated to reflect the principles and policies articulated within the Growth Plan. Although many claim to be on track, it is not yet certain as to whether or not regional and local municipalities will be able to meet the June 2009 Growth Plan conformity deadline. Now is the right time to deal with municipal Growth Plan compliance exercises to prepare the Province for the next upswing in the market. The Province must ensure that they are prepared to deal with those who intend on meeting the conformity deadlines, and those who are yet prepared to do so. If not, it will also serve detrimental to the ability of the industry to have certainty of timing and land supply. Ontario must be prepared when we surface from this economic downturn, so that a ready supply of land is available.

***BILD strongly recommends that the Province take leadership and responsibility to ensure growth management is implemented at the municipal level. Provincial goals and objectives must be defended, and the goals and expectations of the Growth Plan must continue to be clearly articulated to municipalities. The Province must take a leadership role in ensuring that municipalities are undoubtedly aware of their own responsibilities and have a work-plan to ensure that their objectives meet those of the Province. In addition, the Ministry of Energy and Infrastructure must co-ordinate and work with other provincial ministries (primarily the Ministry of Municipal Affairs) and commenting agencies to ensure other government policies, legislation and initiatives, support and do not counteract the intent and objectives of the Provincial Growth Plan.***

## **MINISTRY OF THE ENVIRONMENT**

### ***Environmental Assessment Requirements for Collector Roads in Approved Secondary Plans***

Ontario Regulation 345/93 designates the private sector developers as subject to the requirements of the *Environmental Assessment Act* for the construction of municipal infrastructure. The regulation designates certain types of projects as defined within the Municipal Class Environmental Assessment including new roads, provided for residents of a municipality, to the *Environmental Assessment Act* and to the Municipal Class Environmental Assessment process.

During the last five-year review of the Class EA leading to the approval of the October 2000 and September 2007 Municipal Class Environmental Assessment by the Minister, BILD's submissions to the MOE and MEA indicated that major new collector and arterial roads that are included as part of a secondary plan (ie., official plan amendments under the *Planning Act*) ALREADY are the subject of full environmental studies. Such studies may include Master Environmental Servicing Plans (MESPs) or Master Transportation Plans and involve the identification of need, a review of alternative solutions and consultation with all regulatory approval agencies, and municipal officials. These studies are mandatory components of the *Planning Act* applications to

municipal officials and are reviewed as part of the statutory *Planning Act* public meeting process.

Typically, these studies also include Public Information Centre(s) where the general public is invited to comment on the alternatives and preferred alignments of roads similar to the process mandated under the *Environmental Assessment Act*. The cost of these studies for larger secondary planning areas can typically range from \$300,000 - \$500,000.

Despite the numerous BILD submissions, when the Class EA was approved in 2000 and amended in 2007, private sector developers were required to undertake a full Class Environmental Assessment planning process under the *Environmental Assessment Act* in every case, regardless of having received approval for development through an approved secondary plan under the *Planning Act*. This has only led to a duplication of process and increased costs. It also means that some projects have been delayed for over one year while the “duplicate” Class EA study has been undertaken.

BILD notes that these types of roads, having been approved through the *Planning Act* process, could potentially be the subject of a request for a Part II order as part of the Class EA process. This duplication has led to public confusion over the consideration of alternatives when the *Planning Act* process has concluded. It also potentially means that the *Environmental Assessment Act* process could result in a decision by the Minister of the Environment which is contrary to a detailed approval of a Planning Application already granted by a municipal planning authority or by the Ontario Municipal Board. There is no provision in law to adjudicate such differences.

BILD members are opposed to undertaking an approvals process under the *Environmental Assessment Act* which duplicates that of the planning process under the *Planning Act*. BILD is of the opinion that there is absolutely no reason for an additional Class EA Study when the *Planning Act* process already contains approval mechanisms for arterial and collector roads.

***To eliminate this costly duplication, BILD recommends that O.Reg.345/93 of the Environmental Assessment Act be amended. This amendment would re-define private sector developer projects which are designated under the Environmental Assessment Act to exclude arterial and collector roads shown on a secondary plan approved under the Planning Act after October 4, 2000.***

***A recommended amendment is attached to this submission.***

## **MINISTRY OF THE ENVIRONMENT**

### ***Certificates of Approval For Water, Sewage & Stormwater Systems***

Currently, under the Ontario Water Resources Act, Certificates of Approval are required for all new water, sewage and stormwater management infrastructure regardless of their scale or scope. The Certificate is issued after the Ministry of the Environment receives and approves an application and a supporting engineering submission from the municipality on behalf of the proponent. Failure to obtain the approval certificate prior to construction of the works can result in a charge being laid under the Act.

The vast majority of the works consist of water distribution, sewage collection systems (pipes and pumping stations) and stormwater management facilities (detention and retention ponds which control the quantity and quality of stormwater flows). The works are implemented by municipalities directly or are designed and constructed by private land developers and ultimately assumed by municipalities. In both cases, the works are designed by a registered professional engineer and reviewed by municipal staff, or retained consultants, prior to being forwarded to the MOE for a rubber stamp approval and the issuance of the Certificate of Approval.

In the case of stormwater management facilities, the works are usually subject to additional review by and approval of the local conservation authority and/or the Ministry of Natural Resources. This issue continues to be of great significance in outlying Regions that do not have “transfer of review” programs, such as the growth areas of Simcoe County and the City of Guelph. A Certificate of Approval on a storm pond can take as long as eight months to be issued.

***BILD recommends a broader application of “Standardized Approval Regulations” which specify conditions to qualify for automatic approval without the requirement for a Certificate of Approval.*** They should be applied to those non-process municipal and private water, sewage and stormwater works which are designed by a registered professional engineer and reviewed and approved by a delegated municipal authority. A thorough technical review of the design and construction process is already undertaken by the assuming municipality, and often by the conservation authority, to ensure conformity with appropriate environmental standards. Therefore, an additional review by the Ministry of Environment, which is virtually a rubber-stamp exercise only, represents duplication, added expense, and little or no added value. The use of Standardized Approval Regulations and the elimination of Certificate of Approvals would substantially reduce delays and allow municipalities and the development industry to proceed with routine infrastructure works under a more predictable, streamlined schedule. Projects would be able to proceed immediately after municipal approval has been granted.

## **MINISTRY OF TRANSPORTATION**

### ***Role in Development Application Review Process***

Under the jurisdiction of the *Public Transportation and Highway Improvement Act* (PTHIA), the Ministry of Transportation (MTO) currently acts as a commenting agency to the Ministry of Municipal Affairs and Housing and to municipalities throughout Ontario. Through the issuance of permits, MTO controls all land use within 45m/150ft of the Ministry's property limit and within 395m/1300ft from the centrepont of a highway intersection. The Ministry can comment on all Secondary Plans, Official Plan Amendments, rezonings, draft plans and site plans that fall within this highway corridor management area and involves the review of Master Environmental Servicing Plans, stormwater management reports, grading and drainage plans, detailed engineering design, traffic reports and/or any other technical reports deemed appropriate.

BILD's widespread experience is that MTO's review time on these applications falls well beyond the limitations set out in the *Planning Act*, and usually involves a less than cooperative attitude, leading to a consistent view that MTO is one of the most difficult ministries to work with in the Provincial government.

Pursuant to Section 34/38 of the PTHIA, MTO also requires the applicant to obtain a Building and Land Use Permit (BLUP). In addition to what is noted above, this control area can extend to 800m/2600ft of any limit of a King's Highway or Controlled Access Highway. This permitting process involves the review of detailed house siting and grading information on a lot-by-lot basis and requires the payment of a \$170/unit fee. The process usually takes 2 to 3 weeks and is a prerequisite to the municipality issuing a building permit for the same unit. The review of development applications and then issuance of building and land use permits involving the same land is duplicative with the associated fees being totally unnecessary.

***BILD recommends that the Province streamline MTO's commenting agency role by establishing/enforcing clear timeframes for the review of development applications and associated technical reports. All residential development that is part of an approved Draft Plan or Site Plan, which by default involves the MTO, should be exempt from the requirements of a Building and Land Use Permit.***

It is important to note that a recent court decision (Superior Court of Justice, Charter Construction Ltd. vs. MTO) held that residential developments are not captured by the current legislative wording of the *Public Transportation and Highway Improvement Act* concerning the Ministry of Transportation's permit requirements for developments occurring in certain areas of their control (between 45m up to 800 m). MTO is considering submitting a proposed amendment to the PTHIA to increase the catchment area for BLUPs for residential developments to within 800m of the limits of a provincial highway. By virtue of the comments referred to above, BILD does not

support this proposed legislative change. This only exacerbates a problem that already exists between the development industry and MTO.

## **MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING**

### ***Streamlining of the Municipal Application Review Process***

The Government has committed to modernizing Ontario's regulatory environment, and as part of the Open for Business exercise, will be aiming to modernize, simplify and streamline the environment for business. Municipalities are creatures of provincial legislation. While the Province cannot be held responsible for everything that municipalities do, it can and must be held responsible for systematic problems that consistently produce undesirable results.

Recent reforms to the *Building Code Act*, through Bill 124 have affected the way both municipalities and the building industry operate in the building permit process. Despite its good intentions, Bill 124 did not result in a streamlining of the permit process. What the Building Reform Regulatory Working Group put forth as recommendations did not translate in to Regulations for Bill 124. It is still business as usual, or worse. BILD members feel as though they have lost even more processing time and it is even more difficult for staff to accept permit applications. Many BILD members would contest that the permit process has become more complicated and costly since the legislation took effect. ***BILD recommends that the province revisit the recommendations of the Building Regulatory Reform Advisory Group through its Building Advisory Council.***

Municipalities are finding it difficult to meet the thirty day time-frame for making decisions on permits for complex buildings. As a result, the industry is seeing that ad-hoc/ "business as usual" two-stream permit application process arrangements are being made with municipalities. This often involves the applicant having to waive the municipal obligation to process permits within mandatory time-frames. Although the arrangement is often being accepted by the applicant, it is a less than satisfactory situation as it continues to result in unpredictable delays in construction schedules. In addition, these sorts of arrangements undermine the spirit of Bill 124 and, if practiced widely, will result in delays becoming the norm rather than the exception.

Municipalities need to adopt a coordinated and consistent approach to their dealing with construction plans submitted by professional engineers and architects. They also need to aim in eliminating duplication as it is often the case that municipal engineers and planners comment and review the professional work that the private sector already hires. Adopting a consistent approach would have a positive streamlining effect on the plans review process. The Province's Building Advisory Council should provide guidance to municipalities in this respect.

Performance measures could be used to assess which municipal practices are effective in delivering Building Code services. However, comprehensive measures of municipal performance with respect to permit processing currently do not exist. What's required is an efficient reporting system, of a solid data base that is widely accessible.

***BILD recommends that the Building Advisory Council take the lead in advancing a system to have municipalities track performance statistics in relation to the mandatory processing time-frames imposed by Bill 124.***

***In addition, BILD recommends that the Province take the lead in creating a 'Streamlining the Planning Process Review' to identify and implement opportunities to streamline the planning approvals process.*** The objective would be to work with local governments to examine ideas and opportunities for improving the operation of the planning system; to engage with stakeholder groups to identify what needs to change and how to make these changes happen; and, to promote innovation and Best Management Practices (BMPs) by local governments.

Also, in the current approvals process, some municipalities are demanding that new housing and business be constructed to a higher "environmental" or "energy" standard than the current requirements of the Ontario Building Code. These requests are often used as leverage to obtain planning approvals or servicing allocation. The development industry recognizes its role in the delivery of sustainable development, however, the demands exceed legislative requirements with little to no appreciation of the impacts on construction costs and consumer's willingness to pay for such premiums. This is simply unfair. ***BILD recommends that municipalities can encourage the building industry to offer or build housing or structures that exceed Ontario Building Code energy standards, but that they NOT be mandated, or use this request to withhold or leverage planning or servicing approvals.***

## **MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING**

### ***Development Charges***

BILD was very pleased to hear in a recent announcement from the Premier that the Province was not interested in reviewing the current *Development Charges Act*. BILD strongly supports this position. Although the *Development Charges Act* remains unchanged, municipalities consistently ask for or leverage the industry through Section 110 Agreements (*Municipal Act*), Voluntary Assistant Agreements, or conditions of approval. In most instances, the requests are beyond the legislative obligations of the *Development Charges Act*.

***BILD recommends that the Province, in cooperation with the development industry, undertake a review of the "hidden" costs beyond the Development Charge that the industry is forced to pay to municipalities and external commenting agencies.*** The

purpose of this review will be to educate and inform all involved to the extent and depth of the problem with the goal of providing some recommended solutions.

## **MINISTRY OF NATURAL RESOURCES**

### ***Natural Heritage Systems Plan***

The building and land development industry is of the belief that Ministry of Natural Resource's application of standards and policies leading to the creation of Natural Heritage Systems Plans are being inconsistently applied by different MNR district offices. This is a problem when specifically applied to Wetland Designation Practices (ie. what is included in a wetland, and wetland complexing - linking wetlands/buffers that are in proximity to each other to form a "wetland complex"), and to woodlands (linking insignificant tree patches to form "significant woodlands" as well as linking different features - wetlands, woodlands, etc. to form "environmentally significant areas").

In addition, the Ministry of Natural Resources's practices and protocols in establishing the Natural Heritage Systems Plan is in conflict, to a certain extent, with the Provincial Growth Plan. No balancing of natural environment and other planning requirements that support the Growth Plan exists (ie. no balancing of environmental objectives with other planning objectives to reduce urban sprawl, implement transit-oriented communities, increase densities). This is a substantive issue that can cause conflict and introduce significant time delays and costs to the planning process to resolve.

A consistent application of policy is required. Some district offices do reasonably apply MNR policies and BILD recommends that the Province highlight these as "best practices."

***BILD recommends a review of how Natural Heritage Systems Planning is implemented, that the Province take the lead in initiating an agreement between the industry and the Ministry of Natural Resources to streamline processes, and generally recommends that there be a reasonable approach and a consistent application of the Ministry of Natural Resource's policies/guidelines in the various jurisdictions necessary to support the Growth Plan.***

## **MINISTRY OF MUNICIPAL AFFAIRS/ NATURAL RESOURCES**

### ***Roles, Policies and Procedures for Conservation Authorities***

In 2001, the Ministries of Municipal Affairs and Housing and Natural Resources signed a Memorandum of Understanding with Conservation Ontario outlining the delegated responsibilities of conservation authorities under the one window planning



system. Since this time, a significant concern has emerged within the land development industry that the Conservation Authorities' plan review role has become increasingly excessive, resulting in unnecessary delays and costs for development applications. In addition, the industry is extremely troubled by the differing interpretation of the roles and responsibilities that some Authorities have in relation to the current planning policy.

Conservation Authorities see their planning authority being granted through various pieces of legislation, regulation, policies and Memorandums of Understanding, specifically, the *Conservation Authorities Act*, the Generic Regulation, the *Planning Act* (and associated Memorandums of Understanding with municipalities), the PPS (and associated Memorandums of Understanding with the provincial government), the *Fisheries Act* (and associated agreements with the Federal Department of Fisheries and Oceans), the *Oak Ridges Moraine Conservation Act* and Plan, and the *Clean Water Act*.

With good intentions, the Ministries of Natural Resources and Municipal Affairs and Housing have established a Conservation Authority Liaison Committee to clarify the roles and responsibilities of Authorities in the areas of municipal planning, plan review, and permitting as it relates to growth management. ***BILD recommends that this group reconvene immediately in order to continue its discussions and efforts, and that it be used as a mechanism to address industry and municipal Conservation Authority issues.***

One of the deliverables identified by the Conservation Authority Liaison Committee was the development of a board-approved services delivery policies and procedures manual outlining the permitting and planning processes in each individual Authority. This Ministry of Natural Resource's draft Chapter of its ***Policies and Procedures Manual for Conservation Authorities*** document is intended to clarify the roles of Conservation Authorities in the areas of municipal planning, plan review, and permitting related to development activity and the protection of environmental interests. It also aims to establish new policies regarding complete application requirements for permits pursuant to the *Conservation Authority Act*, and timelines within which Conservation Authorities are to make decisions on permit applications.

Since the work of the Conservation Authority Liaison Committee was never completed, no timelines exist with respect to decisions on permit applications. As a result, non-decisions on permit and planning applications cannot be appealed. ***BILD recommends that the draft Chapter of the Policies and Procedures Manual for Conservation Authorities be finalized. In addition, BILD recommends that new policies for review timelines be entrenched in legislation, that a Regulation be added to the Conservation Authority Act similar to those included in Planning Act, and that appeals under the Mining and Land Commissioner be moved under the jurisdiction of the Ontario Municipal Board.***

Prior to establishing the Conservation Authority Liaison Committee, the Ministry of Natural Resources and the Ministry of Municipal Affairs and Housing surveyed and interviewed municipal and Conservation Authority planning staff, and were surprised to find that very few understood the role of Conservation Authorities within the planning and permitting application approvals process. The building and land development industry is also of the belief that there is a lack of harmonisation between municipal and Conservation Authority practices, that Conservation Authorities often act within their own rules, and do not always recognize municipal practices.

Conservation Authorities operate under the *Conservation Authority Act* and act as a commenting agency with each municipality. Each Conservation Authority has its own Memorandum of Understanding with each municipality. ***BILD recommends that the Province oversee a municipal assessment of how each Conservation Authority is involved in their individual review processes, that areas for improvement are identified, and that the Memorandums of Understanding are reviewed to encourage streamlining and common approaches.***

#### ***MINISTRY OF NATURAL RESOURCES/ GOVERNMENT SERVICES Subdivision Surveys/ Deferred Monumentation***

Since the proclamation of the *Surveys Act*, surveyors have been required to define all lot corners and angles on a plan of subdivision or condominium survey by way of iron bar “monuments.” In the past, when the country was largely rural and in the absence of advanced computerized technology, there was a value to the surveyor leaving his “mark” on the ground as a means of assisting those persons with an interest in the property in finding important reference points. However, the requirement to monument all points on a modern plan of subdivision in an urban area is an outdated, archaic and totally unnecessary exercise which is costly to the land developer. It serves no public interest and has little if any value to the homeowner.

In every survey of land made in preparation of a plan of subdivision, Regulation 525/91 of the *Surveys Act* requires the surveyor to:

- define every angle and corner on the exterior boundary of the subdivided land, every angle of each street intersection, the beginning and end of every angle of every curved boundary of constant radius and every angle in every street boundary by a rock bar, rock post, rock plug or standard iron bar; and,
- define every angle and corner on the exterior boundary of a unit not required to be defined under clause (a) of the Regulation by an iron bar, rock bar, concrete pin or rock post.

All of these bars are required to be placed at the time the plan of subdivision is registered when the lots are created, and again at the time the municipality assumes the subdivision. However, because they are usually disturbed or lost as a result of site

servicing and house construction, they are of little value by the time the purchaser takes possession of a new house, and those that are remaining are likely buried or out of place. For fence construction, most homeowners hire a surveyor to ensure that it is properly located rather than relying on the existence and placement of the bars. Accordingly, any suggestion that these bars actually serve a public interest and that there is a provincial role in protecting this interest is ill-founded and inappropriate.

Eliminating this requirement reduces the cost of subdivision development and the overall cost of housing in this province. ***BILD recommends that Section 5 of Ontario Regulation 525/91 of the Surveyors Act, which relates specifically to subdivision surveys, be amended such that there is no further requirement for lot corner monumentation.***

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## CONCLUSION

The fragmentation of responsibilities leads to poor outcomes, duplication of resources, and adds “red tape” and delays. Additional regulation also add costs and impede progress – all to the detriment of the Provincial economy as a whole. A cultural change will help to improve regulatory performance, and therefore, BILD is pleased to see that the Province has made this commitment to review measures to reduce regulatory burdens.

It is encouraging to note that the Open for Business mandate includes a desire to work with and to understand business. BILD wishes to work with the Province in achieving the stated outcomes for the Open for Business exercise, all of which will assist the Province and the industry’s common goals for a strong and prosperous Ontario.

An increased level of service from all Provincial ministries will assist in the industries dealings with municipal partners for all aspects of the development application process. The anticipated results of fewer delays and fewer costs are in the best interests of all those involved in ensuring that Ontario is open for business. We look forward to continued dialogue on this and related matters.

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PROPOSED AMENDMENT BY BILD

**DESIGNATION AND EXEMPTION – PRIVATE SECTOR DEVELOPERS**  
**Environmental Assessment Act ONTARIO REGULATION 345/93**

*This Regulation is made in English only.*

1. *In this Regulation,*

2. (1) An enterprise or activity by a private sector developer is defined as a major commercial or business enterprise or activity and is designated as an undertaking to which the Act applies if it is,
- (a) of a type listed in Schedule C of the Municipal Class Environmental Assessment that was approved on October 4, 2000 **as amended in 2007** under section 9 of the Act **excluding any arterial or collector road shown on a secondary plan approved under the Planning Act after October 4, 2000**; and
  - (b) a project provided for residents of a municipality for roads, water or wastewater.

O. Reg. 345/93, s. 2 (1); O. Reg. 391/01, s. 1 (1).

(2) An undertaking designated under subsection (1) is exempt from section 5 of the Act if,

- (a) no other environmental assessment has been submitted to the Minister;
- and

- (b) the procedure for the undertaking is set out in the Municipal Class Environmental Assessment and its approval does not require a further approval under section 5 of the Act. O. Reg. 391/01, s. 1 (2).

3. Revoked: O. Reg. 391/01, s. 2.

4. This Regulation does not apply with respect to an enterprise or activity by a private sector developer that is commenced before June 7, 1993 if all of the contract drawings and plans related to the enterprise or activity are completed and submitted on or before November 30, 1993 to the municipal engineer of the municipality in which the enterprise or activity is being carried out. O. Reg. 345/93, s. 4.

5. Copies of the approval and class environmental assessment referred to in this Regulation may be found in the public records maintained under section 30 of the Act. O. Reg. 391/01, s.3.