

May 8, 2020

BY EMAIL

Richard Lyall  
President  
Residential Construction Council of Ontario  
13-25 North Rivermede Road  
Vaughan, ON L4K 5V4

Joe Vaccaro  
Chief Executive Officer  
Ontario Home Builders' Association  
20 Upjohn Road, Suite 101  
North York, ON M3B 2V9

Dave Wilkes  
President and CEO  
BILD  
20 Upjohn Road, Suite 100  
North York, ON M3B 2V9

Dear Sirs:

**Re: Ontario Regulation 82/20, as amended  
"Essential" Construction Businesses**

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This is further to your joint request for an opinion respecting the interpretation of certain aspects of Ontario Regulation 82/20, as amended, enacted pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9.

This opinion letter addresses the issue of below grade construction and whether such construction, that had started before April 4, 2020 or not, is permitted under the COVID-19 emergency orders.

Two recent events have substantially influenced this opinion. Ontario Regulation 196/20 filed late last Friday revised the list of essential construction projects by adding the following:

"30.1 Construction to prepare a site for an institutional, commercial, industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure."

This addition makes explicit that site preparation for residential development is now permitted. Included in that permission, *i.e.* not a "closed" list of activities, is necessary excavation, grading, roads or utilities infrastructure. Note that there is no limiting aspect which defines what type of residential development qualifies under this new s. 30.1...or when or whether that development has commenced.

On Wednesday afternoon the Province announced a further easing of restrictions on construction activity. The press release included the following statements:

"...the government is also expanding essential construction to allow below-grade multi-unit residential construction projects like apartments and condominiums to begin and

existing above-grade projects to continue. This will help clear the way for the housing and jobs our economy will need to support economic recovery from the impacts of the COVID-19 outbreak.

Businesses must follow public health measures and should review the workplace safety guidelines, such as promoting physical distancing and frequent handwashing, sanitizing surfaces, installing physical barriers, staggering shifts, and using contactless payment options to stop the spread of COVID-19.”

Ontario Regulation 200/20 has just been filed this morning which sets out the precise language of the revision being made to O.Reg. 82/20, as amended. The Province has revoked s. 30 of Schedule 2 and substituted the following:

30. Residential construction projects where,
- i. a footing permit has been granted for single family, semi-detached and townhomes,
  - ii. the project is a condominium, mixed use or other residential building, or
  - iii. the project involves renovations to residential properties and construction work was started before April 4, 2020.

This revision takes effect as of 12:01am on Monday, May 11.

As matters now stand, it is our opinion that site preparation, excavation, grading, road and utility infrastructure encompass a vast array of activities that may now be undertaken at residential development sites. Note also the “Supply Chain” definition of O.Reg. 82/20, as amended, which permits businesses that serve “essential businesses” as otherwise listed under Schedule 2 to also operate:

“1. Businesses that supply other essential businesses or essential services within Ontario, or that supply businesses or services that have been declared essential in a jurisdiction outside of Ontario, with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate.” [emphasis added]

Some of these activities permitted through the combination of ss. 1 and 30.1 are listed in Attachment “A” to this letter.

Excavation would certainly include undertaking all shoring necessary to maintain the integrity of the excavation area specifically and the development site generally.

Today’s filing of O.Reg. 200/20 now also deems as essential all below-grade construction of multi-unit residential development projects such as apartments and condominiums as well as mixed-use projects. This permits construction of underground parking, utility vaults and service room areas.

Valid in-effect building permits are of course still required before actual construction can commence. As noted above, construction sites will also be required to comply with the Province’s recently released COVID-19 health and safety guidelines and practices for workplaces and construction sites.

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Should you require anything further from us, please advise.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink that reads "Leo Longo". The signature is written in a cursive style with a large, looping "L" and "O".

Leo F. Longo  
LFL/ly

## ATTACHMENT "A"

### 1. Preparatory studies associated with site preparation, grading and excavation

General list of studies - Records of Site Condition (brownfields), Archeological (stages 1-4), Species at Risk (studies, monitoring activities etc.), EIS (Environmental Impact Studies), Geotechnical study, Topographic surveys / vegetation studies, Storm Water Management / Erosion Control Study

Archaeological Studies – (Consists of Tractors to turn over soils, Back hoes to dig in key areas and Archeologists to search through the soils for artifacts, relics, etc.)

Soils Analysis – Environmental – Site walks to review existing conditions, Record of Site Conditions (Agencies), soil sample testing and critical contaminated removals and remediation like leaking underground storage tanks etc. Machines used – Trucks, Back hoes.

Environmental, Geotechnical and Hydro geological reports – Environmental surveys (wildlife) (underground water drilling for measuring and ensuring water levels and quality) – Machines used – Back hoes, drilling equipment.

Seasonal Aspects such as migratory bird, bats, Spring water runoff and various others require certain seasonal timing.

Land Surveying services

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

### 2. Site Access

Traffic management/street occupancy – Temporary lane restrictions or lane painting on existing roads to allow for safe passage. Installation of traffic signage. Preparation of traffic studies/reports to address these matters.

Site fencing – environmental, servicing and construction.

Road Mud mat construction and Construction site compound. Construction of a mud mat to allow trucks to enter safely and clean wheel upon leaving site. Aggregate materials are used, pavement, curbs and a construction trailers to abide by construction safety regulations.

Civil Engineering consultants, Soil consultant/ Land surveyors and City inspection officials all take part in this process.

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

### 3. Earthworks, Site grading, excavation

Numerous machines and trucks moving dirt on and off the site, drill rigs.

Permanent and Temporary Storm water Management Pond constructed.

Site fencing

Demolition – including as relates to building sites and part 3 construction

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

#### **4. Underground and Road (Municipal and private) and parking lot Construction**

Back hoes, Dump trucks, Cranes, tunneling equipment, concrete trucks and asphalt paving machines are necessary to complete road construction

Demolition and Site fencing.

Storm, sanitary, water and other pipes get laid.

Gravel goes down for road construction.

Utility road crossings completed.

Asphalt gets laid.

Maintenance of sites – street sweeping and cleaning

Civil Engineering consultants, Soils consultants and environmental Consultants required, City inspection officials.

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

#### **5. Utility Construction – Site Servicing**

After road construction – Hydro/Cable/Gas Utilities and street lighting are required to be completed.

A trench is dug and wires and pipe laid and backfilled, site fencing.

Energization occurs after completion of the construction process. Typically includes local utilities.

Maintenance services on site – street sweeping and cleaning

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

**6. Building Construction under Part 3 of the OBC – currently above grade is permitted but activities below grade Now appear to be included**

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Excavation and Shoring including caissons and tiebacks

Dewatering activities

Construction of below grade foundation

Land Surveying services, additional noise and wind consultants, traffic engineers

Maintenance of site, street sweeping and cleaning

## **7. Landscaping / Site Servicing**

Park and Trail Construction.

Street tree, fencing, SWM POND landscaping etc completed and channel landscaping, general hard and soft landscaping

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next with next stage of development

## **8. Inspections**

During house/building construction, inspections and repairs are completed on the Road, Utilities and Servicing Stage

Landscaping is inspected and replacements done.

Review/Inspection/Approval/Registration/Certification of the Studies/Plans/Permits by the Authority to proceed to the next stage of development

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