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***RE: Heritage Conservation Act Transformation Project***

Collectively, the membership of the Urban Development Institute (UDI) and Greater Vancouver Board of Trade (GVBOT) have formed billions of dollars' worth of partnerships with First Nations. Our members continue to advance innovative, reconciliation-based economic development across British Columbia.

While we recognize the importance of archaeological conservation, we are very disappointed with the Ministry's lack of consultation with stakeholders, including the business community. The *HCA* initiative will substantially impact the BC economy, and the ability of builders to provide much needed new housing supply. Engagement with stakeholders has clearly been an afterthought, demonstrated by the fact that since 2021 *"... a working group of provincial officials and Indigenous leaders has already identified 57 areas for change in the legislation and reached consensus on 53 of them."*<sup>1</sup> In addition, the Ministry is intending to bring the proposals to Cabinet this Fall, to seek approval for legislation intended to be brought forward in the Spring legislative session. This leaves little room for other stakeholders to provide meaningful feedback.

After consulting with our members on the proposed changes, ***we are calling on the Ministry not to proceed with any changes to the Heritage Conservation Act (HCA) until:***

- **Meaningful consultation can be conducted** with the development sector and other key industries who are drivers of the BC economy, along with local governments; and
- **Robust testing and economic analyses have been completed to ascertain the cost, risk and time impacts** of the proposed changes on housing and development projects, which are likely to be substantial and would be occurring at a time when the business community is facing numerous challenges.

Many of the new provisions broaden the scope of the *HCA*, which could lead to several unintended consequences. The proposals also exacerbate current difficulties and uncertainties facing the business community, and the housing industry. We also do not have confidence that the proposals will make *"...Permitting Faster and Easier"*, which has been a shared priority of the business community and the Province. ***In fact, we believe the most likely outcome is further delays, more***

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<sup>1</sup> <https://vancouversun.com/opinion/columnists/ubcm-leader-blasts-ndp-lack-consultation>.

**risk, and higher costs.** Given the economic difficulties BC is facing, and uncertainties around the recent Cowichan case decision, now is not the time to create more uncertainty by advancing the proposed changes to the *HCA*.

## **Adding More Uncertainty to the Housing Sector**

We agree that “*The current HCA permitting regime is administratively burdensome and complex - projects require up to three different permits, resulting in long wait-times. These issues have created difficulties for all British Columbians in navigating the permitting process.*” From our collective members’ perspective, there are many existing challenges with the current *HCA* such as:

- An incomplete archaeological database that takes time to access;
- Multiple approvals – each with long approval timeframes/signoffs - up to 12 months;
- An inability to balance the public interest on an expedited basis in the current process;
- Little clarity on the scope of work that is needed for permitting, which leads to that scope expanding;
- Long consultations/negotiations with First Nations with proponents having to manage multiple First Nation consultations on the same site; and
- Proponents having to manage Archaeology Branch and First Nation requirements and permits as well as navigating additional local government requirements regarding archeology assessments and consultations with First Nations.

However, we are concerned that these problems will not be resolved, and will likely be exacerbated, by the proposals to transform the *HCA*. Some guidelines are being codified, which could create less flexibility. However, at the same time, very broad and undefined language is being placed in the legislation.

We are concerned that many of these proposed provisions in the *HCA* will hinder our members’ ability to deliver housing because they would apply to fee simple sites, as well as municipal and Crown Lands needed to service housing projects (e.g., roads and pipes). The added uncertainty will discourage builders from purchasing sites, and in cases in which they do wish to proceed, their access to financing may be compromised.

An example of the problem is the proposal to codify *HCA* permit decision-making criteria in the legislation. The criteria will include the “*Cumulative impacts to affected sites.*” Most housing projects in British Columbia, especially in high-growth urban areas, are infill projects where our members are densifying already built-up areas. This activity could qualify as having potentially substantive “*Cumulative impacts to affected sites*” and could lead to obstacles for projects in [Transit Oriented Development Areas](#) where the Province wants growth to occur.

In addition, “*Negotiated mitigations/accommodations*” are part of the criteria that will be considered. This is critical given that another criterion that will be reviewed is “*Whether or not affected First Nations have provided their consent.*” With local governments, this type of approach led to negotiated Community Amenity Contributions (CACs) to get projects approved by municipal councils. The Province has been trying to [move away](#) from negotiated CACs because of the added

delays and costs that were imposed on housing projects. The issue may be substantially more problematic under the *HCA* because many sites would involve proponents negotiating with several First Nations.

The Ministry is also seeking to strengthen “... *the Role of First Nations in the Management of the Their Cultural Heritage*,” which we do not oppose. However, one of the core outcomes of the proposed legislation is “*To create a framework that acknowledges multiple legal orders and is grounded in respect for the authority of First Nations to self-determine and self-govern,*” which seems to also apply to fee simple sites. Our members are already having enough difficulty navigating the Federal, Provincial, and Municipal Orders of Government for approvals, we are concerned about what “... *multiple legal orders* ...,” could mean for housing projects. This could place First Nations in a quasi-regulatory approval role over development.

The Ministry is also planning to “*Expand the scope of the existing HCA s.4 agreements to cover more operational matters* ...”. These Operational Agreements between the Province and the First Nations would “*Apply to Crown and/or private lands,*” and could encompass several matters, including:

- “*Additional/alternative permitting requirements for protected heritage sites* ...;”
- “*Decision-making criteria*;”
- “*Public Engagement agreements*” (it is unclear how this would work with the current public engagement processes mandated and followed by local governments); and
- The “*Continued use of sites.*”

Under the proposals, the scrutiny over these agreements will diminish as the Ministry is seeking to change the provincial approval level for these agreements from “... *the Cabinet to the Minister (depending on the scope)*.” This approach will make it more challenging and add risk to purchasing fee-simple properties, as well as secure financing for projects because an agreement between the Minister of Forests and a First Nation regarding the “*Continued use of sites*,” could adversely impact the development potential and value of sites.

This is particularly concerning since “*compensation*” for impacted landowners is not noted in the Ministry’s *Phase 3 Session Primer for Engagement with Local Governments and Stakeholders* and the consultation session slide deck. In fact, it is likely that there will be no “*compensation*” because Ministry staff stated at the stakeholders’ sessions that no “*Additional resourcing*,” will be provided to administer and implement proposed changes to the *HCA*.

What will be recognized as heritage will also be expanded under the new legislation by enhancing “... *the definition of heritage (and related definitions) to include a broader suite of First Nations values (tangible and intangible)*.” This would include “... *cultural landscapes* ...,” and “... *intangible cultural heritage* ...,” which would again apply to private property.

Unlike soil remediation, *Water Sustainability Act* Permits, and the decisions related to the *Riparian Areas Protection Regulation (RAPR)* that are rooted in clear scientific measurements, archaeology is more of an “art”. Our members are already finding the scope of archeology work for their projects under the *HCA* is difficult to define and inevitably expands. With “... *intangible heritage* ...,” being

added to the legislation, the scope of work would broaden further. In addition, if it were linked to “*Negotiated mitigations/accommodations*,” or the “*Continued use of sites*,” projects would be stalled, cancelled – or would not be initiated in the first place – because of the uncertainty and increased risks.

We are also concerned with the potential impact of “... *cultural landscapes* ...,” given the precedent of [protected view corridors](#) in the City of Vancouver, which has limited development in the City’s core areas and along transit lines.

### Longer Permitting Timeframes

To its credit, the Province has made the delivery of new homes to improve affordability a key priority through several reforms over the past few years. There has been [suite of legislative changes](#) to improve municipal planning and development approvals. To accelerate provincial approvals, the [Ministry of Water, Land and Resource Stewardship has been working](#) with resource ministries, including the Ministry of Forests, on “... *creating a one-stop-shop approach to provincial permitting*.” It is not clear how the HCA proposals would work within this one-stop-shop approach, but we are concerned that Province’s objective and work to improve housing approvals will be undermined.

The Ministry is proposing to “*Replace the HCA’s current three permit structure with a single project-based permit model*.” While this may seem like a positive step in the right direction, it was made clear that there would still need to be “*check-ins*” with the Ministry under the new single-permit system, which seems to be a euphemism for “*approvals*”. The Ministry also notes that “*New permitting processes will not compromise or reduce opportunities for meaningful consultation with First Nations at key project junctures*.” It is very likely that builders will still need the same number of approvals under the new system that they have now under the three-permit structure.

Those approvals may be harder and take longer to obtain because while more may be expected of proponents (see above), the Ministry said there would be no “*Additional resourcing*,” to administer and implement the HCA changes.

There may also be more proponents because of the proposal to “... *require local governments to see proof of an archaeological data check prior to issuing development and building-related permits and authorizations*.” Building permits can include relatively small projects such commercial tenant improvements, new decks or kitchen renovations. On top of development and building permits, the Ministry is looking at checks occurring for subdivision approvals and when properties are sold. The BC Real Estate Association has noted that “*Based on a ten-year average, there are approximately 45,000 annual sales of detached homes and duplexes in the province*.”

Our members are already finding that the six-day timeframe to obtain an archaeological data check is rarely achieved. Without additional resources, and potentially many more requests, the current timeframes will substantially increase – especially since the Ministry is also promising to “*Protect confidentiality of Indigenous knowledge and heritage data that is provided in confidence by ensuring that it is only used for the purposes for which it was shared and identifying a limited suite of circumstances in which it may be disclosed*.”

In many areas of the Province, the database is of limited value. For most of the sites in Kelowna for example, it is noted that there may be heritage issues. While the proposals offer protections in circumstances in which “*A disaster response and recovery permit ...*,” could be granted, it is not clear what will be expected of proponents in other circumstances if the data check shows there maybe heritage issues – even if the Building Permit is for a laneway home, garage or a deck.

It is not just Provincial rules that concern our members. Local governments, some of whom are cautious regarding consultations with First Nations and the *HCA*, are requesting Archaeological Assessments before they issue municipal permits. The expansion of the *HCA*, and their role in it, could create additional municipal requirements for Archaeological Assessments and consultations with First Nations.

Additional Archeological Assessments may be needed because more sites will be designated under the *HCA*. This includes clarifying “... *the automatic protection criteria for ... “Culturally modified trees ...*”. In addition, there would be recognition “...*that First Nations have called for extending the protection of heritage sites which post-date 1846 ...*,” by creating “... *clearer and easier pathways for protecting sites that do not receive automatic protection, including sites of intangible heritage*.” This would include reducing “... *administrative barriers to seeking protections via designations (reduce Provincial approval levels)*.” This would fundamentally expand the regulatory framework of the *HCA*.

We anticipate that more delays would ensue as more projects need Archaeological Assessments, and this will likely include smaller builders who would have no capacity to go through the *HCA* permitting process and consult with multiple First Nations. The housing industry, nor local governments, are set up to have these types of negotiations, which should be the duty of the Provincial and Federal Governments. They would need to rely on the Archaeology Branch, which will be receiving no additional resources and already has timeframes that are too long. It is not even clear if there would even be resources for education and training – which would be critical given the *HCA* is being “*transformed*”.

The Province has relied on Qualified Professionals in other areas (e.g., for soil contamination issues and for *RAPR*). However, it is not clear that this would be possible under the *HCA* – even in the mid-term. Ministry staff admitted at the stakeholder sessions there are not enough archeologists in the Province. While we support the notion of the archeology profession being regulated by the Province, this would take time, and we would need to ensure that it results in improved efficiency.

It was not clear from the sessions or the released materials that the Ministry understands the potential impacts of the proposed transformational changes to the *HCA* or the number of archaeological data check requests and archeology permits that will need to be processed in the future. There certainly does not appear to be a plan to make the transformational changes that would be needed to increase the capacity of the current system, to meet the demand that will come with proposed changes.

## Headwinds Facing the Development and Housing Sector

This is all occurring as British Columbia's development housing sector is entering its deepest downturn in decades, with both affordability and economic stability at risk. Housing starts are down more than 60% in key markets. According to [CMHC](#), "...In 2024, condominium apartment unit cancellations were ... 10- fold higher than they were in 2022 in ... Vancouver ...". [Avison Young](#) noted that in Metro Vancouver, 22% of Q1 2025 land sales over \$5 million were court-ordered, more than double last year, with three of the four largest 2024 residential land transactions being court-ordered sales.<sup>2</sup> Unsold condo inventory is on track to rise by over 60% this year,<sup>3</sup> and presale absorption rates remain well below the 60–70% lenders require to finance construction.

As a result, projects are being [shelved](#), and fewer new projects are proceeding. So far this year, there have been 38 pre-sale launches totaling roughly 4,300 units, about 25% to 35% below a normal year. Notably, in the first half of the year there was only one presale launch of a new concrete high-rise tower that was not on leasehold land or a continuation of an existing phased project.<sup>4</sup>

This has resulted in layoffs in our sector. In May of this year, rennie, one of the largest condominium marketing companies in Canada, laid off 25% of their workforce citing the declining market. Their President, Greg Zayadi, stated "*The shifts we're seeing in real estate aren't temporary, they're structural. And yesterday is never coming back.*" Other companies in the sector, including [many builders](#), are also laying off staff.

The structural issues that Greg Zayadi referred to is the cost of delivery crisis our sector is facing. Purchasers and tenants have "*hit a wall*" in terms of what they can afford to pay, as our members can no longer deliver new housing and commercial/industrial spaces at purchase prices or rents that British Columbians and businesses can afford. One of our members noted that in the District of North Vancouver, the cost to deliver a new multi-family housing project – assuming no land costs or profit – was \$900 per ft<sup>2</sup>.

These costs have been driven by labour shortages, supply chain constraints, and a trade war. However, most of the increases are due to government imposed through fees/charges, and new requirements. Metro Vancouver has passed Development Cost Charges that will increase for apartment in the Vancouver Sewerage District from \$1,988 to \$20,906 per unit between 2022 and 2027 – an increase of 952%. One builder has [reviewed their project proformas](#) over the past 15 years. Construction costs have soared to over \$562.59/ft<sup>2</sup> from under \$204.19/ft<sup>2</sup>, which is well beyond the Consumer Price Index rate of inflation. These costs will increase by 10% to 20% on many sites in the Lower Mainland and Southern Vancouver Island because of [new seismic building code standards](#) that came into effect in March.

New requirements not only add costs, but they also cause approval delays and increase the complexity of projects, which is particularly challenging for builders who are facing real capacity

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<sup>2</sup> <https://storeys.com/metro-vancouver-most-expensive-transactions-2024/>.

<sup>3</sup> <https://dailyhive.com/vancouver/metro-vancouver-condo-housing-sale-start-forecast-2025-rennie>.

<sup>4</sup> <https://storeys.com/bcfsa-redma-18-months-vancouver-presale-market/>.



constraints. Our members and their design/construction teams cannot keep up with the myriad of ever-changing policy requirements. This is best exemplified by the new seismic provisions in the *2024 BC Building Code*. Currently, it is not clear how our members are going to actually construct buildings for many sites in Southern Vancouver Island. At a recent UDI webinar, the seismic consultant for the Provincial Costing Report noted above stated “*Conventional Buildings will not be possible for ... (Victoria), we are entering new territory.*”

We are very concerned that in this already challenging and high-cost environment, additional requirements and processes are going to be imposed on development through an expanded *HCA* regulatory framework. Added costs, risks, delays, and permitting risks could further undermine project viability at a time when pro-formas are already collapsing.

## Conclusion

The Ministry refers to this initiative as the *Heritage Conservation Act Transformation Project*. Even though substantive changes are being planned for the *HCA* and consultation has been underway with First Nations since 2021, there had been no discussions with other stakeholders, businesses, landowners and builders until this Summer. In fact, it was highlighted at the recent UBCM Conference that “*The Province’s engagement on the legislation with local governments consisted of a single, three-hour webinar in the middle of August.*” We understand the consultation has been extended. However, we are concerned the Ministry will still be seeking approval for legislation for the Spring Session.

The legislation will likely have substantial implications and unintended consequences for the development sector when it is already facing obstacles in initiating and financing housing projects. The projects that proceed will likely be faced with much longer approval timeframes due to added requirements and inadequate capacity of regulators and professionals to meet those requirements.

***UDI and the GVBOT are calling on the Ministry to not proceed with any changes to the Heritage Conservation Act until more meaningful consultation can be conducted with the development sector and other key industries, and robust testing and economic analysis can be completed to ascertain the cost, risk and time impacts on housing and development. While the Ministry has extended the consultation period until November 14, we do not believe that this is enough time to address the myriad of industry concerns associated with the proposals.***

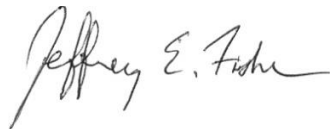
Finally, there is also a heightened sensitivity to any changes that impact fee simple sites due to the recent British Columbia Supreme Court decision in the [Cowichan Tribes v Canada \(Attorney General\)](#) case. The Court concluded “... that the Cowichan Tribes (Cowichan) hold Aboriginal title to a portion of their lands – including private lands held in fee simple ...,” and:

- “*Aboriginal title is a senior interest to fee simple title interests; and*

- *provisions of the Land Title Act do not shield or protect fee simple estates from Aboriginal title claims, as 'Aboriginal title lies beyond the land title system in British Columbia'.*<sup>5</sup>

Given the uncertainties that this decision has raised for landowners and investors regarding the legal protections for fee simple sites, this is not an opportune time to bring forward changes that further decrease the business community's confidence. Banking institutions and bond analysts are asking questions, and there are discussions across the country about the risk of transacting land and doing business in BC.

Yours sincerely,



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<sup>5</sup> [Aboriginal Title Supersedes Fee Simple: Landmark Ruling in Cowichan Tribes v Canada Creates Significant Uncertainty for Private Landowners in BC | Cassels.com.](#)