

March 31, 2009

The Hon. George Smitherman
Government of Ontario
Minister of Energy & Infrastructure
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Re: Recommendation to amend the Condominium Act via the Green Energy & Economy Act (Bill 150)

Dear Minister Smitherman:

I'm writing to you on behalf of Harry Herskowitz, DelZotto, Zorzi LLP, Cliff Goldfarb, Gardiner Roberts LLP, Tim Stoate, Associate Director, Mandate Related Finance, Toronto Atmospheric Fund, Greg Nevison, Senior Vice-President, Tridel Corporation and Leo DelZotto, President, Tridel Corporation.

Congratulations on Bill 150: The Green Energy & Economy Act. Through new mandates and amendment of existing legislation, this law offers the opportunity to advance solutions to the climate change and air pollution problems which face Ontario and the planet.

Various developers, engineers, legal experts and others involved in the rapidly-growing condominium sector have identified a missed opportunity to advance this purpose. Although Bill 150 makes consequential amendments to many relevant Acts, the Condominium Act is not included. **We recommend you advance an additional provision to amend the Condominium Act for the purposes of advancing energy efficiency and green energy projects and investments.** Minor modifications in language and scope could have substantial and immediate impact on the number of green projects and the amount and nature of energy use in this important market sector.

Section 112 of the Condominium Act allows the board of a newly-created condominium to terminate any of the following types of contracts within 12 months of being elected to replace the board appointed by the developer:

1. An agreement for the provision of goods or services on a continuing basis.
2. An agreement for the provision of facilities to the corporation on other than a non-profit basis.
3. A lease of all or part of the common elements for business purposes.

This provision was included in the CA to prevent developers from entering into non-arms' length and "sweetheart" deals at the expense of the condominium's future occupants and owners. However, it has the unintended consequence of eliminating investment by third parties in green energy systems and assets that require long-term amortization. The effect of this restriction, together with the omission from the enforcement provisions of the CA of certain remedies for the benefit of creditors of a condominium, has affected third party financing for energy efficiency projects to such an extent that banks and other private

sector commercial lenders are not willing to participate in energy-efficiency projects, such as geothermal systems, or in making secured loans for energy-efficiency enhancements to new developments.

Buildings account for over one-third of all greenhouse gas emissions, and nearly two-thirds of all electricity use. By modifying Section 112 of the Condominium Act to exclude contracts related to green energy systems, Bill 150 can confer the following benefits: 1) long-term financial savings for condominium homeowners; 2) reductions of more than 2 tonnes per dwelling of greenhouse gas emissions per year; 3) 25% to 50% reductions in overall energy use in new mid- and highrise residential construction projects; 4) additional reductions in peak electricity demand; 5) an increase in the overall amount of green energy produced in the Province of Ontario; and 6) substantial increase in capital investments in green energy projects.

Language for recommended changes to the Condominium Act is attached. This recommendation has been developed by TAF; the Tridel Corporation, Ontario's leading developer of condominiums; DelZotto Zorzi LLP, a pre-eminent condominium real estate law firm and Gardiner Roberts LLP, TAF's legal counsel.

The Toronto Atmospheric Fund strongly supports Ontario's vigorous and progressive commitments to green energy and the green economy and sees additional opportunities to expand Bill 150's effectiveness and achieve co-benefits in the real estate development sector. We urge the Government to move such an amendment to Bill 150 during the Committee review process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julia Langer', is positioned above the typed name.

for

Julia Langer
Executive Director

PROPOSED AMENDMENTS TO THE CONDOMINIUM ACT, 1998

In an effort to facilitate and promote more environmentally-friendly and energy-efficient condominium projects, as well as the development of renewable energy sources in the context of new or existing condominiums, it is proposed that the Green Energy Act be used as the vehicle for implementing the following amendments to the Condominium Act 1998 R.S.O. 1998, c.19, as amended, namely:

1. Amending section 112 of the *Condominium Act*, by adding a new subsection (3) which would expressly clarify that:
 - a) a loan to a condominium corporation which has been fully advanced to the corporation (or to whomsoever it may direct) is not within the purview of subsection (1) [and therefore the loan cannot be terminated or rescinded by the post-turnover condominium corporation]; and
 - b) any agreement, easement or lease involving the development of a green energy system for a condominium corporation (including the provision of any equipment, labour, materials, supplies and/or services in connection therewith) that is entered into by or on behalf of the condominium corporation with one or more third parties (e.g., geothermal, solar photovoltaic, wind turbine or other types of systems, where the third party will have to invest significant funds prior to registration in order to ensure that the system is installed, operative, and functioning properly when people move in) is not within the purview of subsection (1) [and therefore such an agreement, easement or lease cannot be terminated or rescinded by the post-turnover condominium corporation];

In an effort to remove other barriers in the Condominium Act that deter or restrict the supply of financing for green energy projects to new or existing condominium projects, it is also recommended that:

2. Each of sections 130, 131 and 134 shall be amended in order to expressly give a creditor of a condominium corporation (i.e., the lender of a green loan to a condominium) the legislative standing to make a summary application to the court under each of the foregoing sections, in order to exercise any of the respective remedies otherwise available thereunder [i.e., so that the green lender can apply to court for a compliance order, or for the appointment of an inspector, or for the appointment of an administrator, if the post-turnover condominium corporation defaults in repayment of the green loan].

Comment:

We suggest the proposed amendments track the provisions of Part II of the *Green Energy Act*, particularly Section 3, dealing with promotion of energy conservation, and Section 4, dealing with renewable energy sources and projects.