



Proposed New Standards and Guidelines for Consultant Archaeologists:

Important Information for Property Developers

 Ontario
Ministry of Culture

*Presentation to BILD's Urban Land Council
October 22, 2009*



Overview of Presentation

- ❑ Provincial legislation, archaeology and land development
- ❑ The drivers for developing new *Standards and Guidelines for Consultant Archaeologists*
- ❑ Overview of the new *Standards and Guidelines (S&G)*
- ❑ Expected impacts of the new S&G
- ❑ The Ministry of Culture's role
- ❑ Roll-out plans



Overview of Ontario Heritage Act and Archaeology

- ❑ Archaeologists are regulated (licensed) by the Minister of Culture under the authority of the *Ontario Heritage Act* (OHA)
- ❑ O.Reg.8/06 establishes three classes of archaeological licences and criteria archaeologists must meet to be licensed
 - Professional (Consultant)
 - Applied Research
 - Avocational
- ❑ Archaeological fieldwork is governed by licence Terms and Conditions. As a term of their licence, consultant archaeologists must comply with any standards and guidelines released by the Minister
- ❑ The OHA requires licensed archaeologists to file reports of their work with the ministry, and establishes a Register of reports for public access
- ❑ The OHA provides the ministry with powers to inspect that a licensee is complying with the Act and the regulations, and that they remain entitled to a license
- ❑ The OHA also provides for penalties of up to \$1 million for those found guilty of violation of the Act or related regulations
- ❑ Ontario has over 20,000 known (i.e., discovered) archaeological sites and it is estimated that these represent a small share of the provincial total



Consultant Archaeology in Land Use & Development

- ❑ Developers hire licensed consultant archaeologists to assess and mitigate potential impacts of their land and resource development projects on archaeological resources
- ❑ The triggers for these assessments are contained in key pieces of provincial legislation (e.g., *Planning Act*, *Environmental Assessment Act*, *Green Energy Act*), which identify archaeology as a matter of provincial interest
- ❑ When MCL's Archaeological Review Officers review and accept the report of the work in the provincial register, they send an acceptance letter
- ❑ Approval authorities await this acceptance letter in advance of approving a project
- ❑ In 2008, 1,870 archaeological assessments were initiated in Ontario, a greater than 400% increase since 1996 (see Appendix 1)



Drivers for Proposed New Standards and Guidelines

- ❑ The Ministry is developing new S&G to replace current standards for consultant archaeologists (*Archaeological Assessment Technical Guidelines, 1993*)
- ❑ The 1993 Technical Guidelines:
 - Have never been updated
 - Do not ensure adequate protection
 - Are vague, creating a wide variability of standards of practice and, consequently, uncertainty for proponents
 - Are silent on Stage 4 (Mitigation), requiring contact with ministry staff for each instance requiring mitigation of development impacts
 - Do not address the interests of Aboriginal communities
- ❑ The Ministry has been criticized for a lack of transparency about how it reviews reports
- ❑ The development of the proposed new S&G has evolved on the basis of consultation with the professional archaeological community beginning in 1996 and continuing through the pilot/review period which just concluded
- ❑ Observations made over the course of thousands of report reviews has aided the Ministry's appreciation of evolving industry practice and has informed the development of the proposed new S&G



Overview of the Proposed New Standards and Guidelines

The new S&G will:

- ❑ Formalize existing practices and modern sector standards to create consistency in archaeologists' practices
- ❑ Include both mandatory standards and optional guidelines
 - **Standards** set out the basic technical requirements for conducting and reporting on archaeological fieldwork; they establish a measurable baseline
 - **Guidelines** give guidance or advice on good practice
- ❑ Accommodate regional physiographic differences (e.g., Canadian Shield) and special conditions (e.g., urban brownfields) through provision of acceptable alternative fieldwork strategies
- ❑ Provide flexibility based on the professional judgement a consultant archaeologist brings to each stage of a project
- ❑ Require Aboriginal engagement in archaeology for the first time



Overview of the Proposed New Standards and Guidelines, cont'd

The new S&G will:

- ❑ Be accompanied by bulletins providing additional information or guidance to consultant archaeologists:
 - Engaging Aboriginal Communities in Archaeology
 - Forest Operations on Crown Land
 - Administration (i.e., information about the Ministry's review processes, timelines, etc.)
- ❑ Reduce the risk that we will continue to lose irreplaceable pieces of Ontario's heritage



Aboriginal Engagement

- ❑ *Guidelines* for Aboriginal engagement in Stages 1 and 2 provide suggestions for good practice; they are optional
- ❑ *Standards* (requirements) for Aboriginal engagement in Stage 3 apply to:
 - certain, specified types of Aboriginal archaeological sites only
 - the end of Stage 3, when determining whether a site requires Stage 4 mitigation and when developing that mitigation strategy
- ❑ Standards for reporting on Aboriginal engagement require that, at a minimum, the consultant document:
 - who was engaged and why
 - how they were engaged
 - when they were engaged
 - strategies used to incorporate input into the fieldwork
 - the process of reporting results of engagement to the community engaged
- ❑ As has been past practice, the Ministry of Culture will stand by their letters of acceptance if projects are later challenged by Aboriginal communities (or others)
 - Exceptions would be if the challenge is accompanied by clear evidence that the acceptance letter was issued on the basis of incomplete or false information



Artifact Documentation and Analysis

Some points of clarification on Section 6 of the proposed S&G:

- ❑ The standards for artifact documentation and analysis establish the minimum requirements (baselines) for different types of Aboriginal and non-Aboriginal artifacts and floral and faunal specimens
 - Most of the standards relate to simple counts
 - Specialist studies (floral and faunal analysis) are only required in the context Stage 4 Excavation
- ❑ Professional discretion is expected to inform application of the guidelines
- ❑ The ministry is currently conducting a final review of the proposed baselines in the draft S&G, although very little specific, written feedback on this section has been received in successive rounds of consultation with the archaeological community
- ❑ The Ministry is aware of one case going to an OMB hearing soon where the absence of sufficiently detailed faunal analysis will likely become a substantial First Nations issue
- ❑ Because the proposed new S&G include a provision for the submission of a preliminary excavation report once archaeological fieldwork is complete, artifact documentation and analysis will not delay the Ministry's issuance of an acceptance letter re: archaeological concerns



Expected Impacts for the Development Sector

- ❑ The new S&G are intended to:
 - Make the process and costs more predictable, providing greater economic certainty for developers
 - Ensure that developers receive a standardized level of service from all archaeologists using current archaeological practices
 - Allow archaeologists to tailor their fieldwork approach to special conditions, such as forestry context, urban context, very large sites, etc.
 - Provide transparency as to what the ministry considers acceptable archaeological practice
- ❑ 80% of the standards in the new S&G were either in the 1993 Technical Guidelines, expand upon the 1993 requirements (i.e., are more specific), or codify what has become accepted industry practice
- ❑ The other 20% reflect technological advances, new public policy, and best practice policy shifts
- ❑ The new S&G do not change the point at which archaeology is carried out in the development process; they shift the focus of assessment up front to expedite and make the costs of later stages more predictable
- ❑ Many consultant archaeologists are already using the 2006 and 2009 draft *Standards and Guidelines*



Time/Cost Impact Study (2009 draft S&G)

- Ministry of Culture analysed a representative sample of archived archaeological fieldwork reports from residential development projects across South-west, South-central and Eastern Ontario
 - No impact in Stage 1 (Background Study)
 - Minimal impact in Stage 2 (Property Assessment)
 - Average = 0.5 additional fieldwork days
 - Moderate impact in Stage 3 (Site-specific Assessment)
 - Average = 5.6 additional fieldwork days
 - Additional fieldwork in Stage 3 will lead to better understanding of site characteristics and site limits, resulting in efficiencies in Stage 4
 - Variable impact in Stage 4 (Mitigation of Development Impacts)
 - 1993 Technical Guidelines lack any direction re: Stage 4
 - Median = 3 additional days
 - Additional Stage 4 fieldwork time will be offset by reduced need to discuss proposed mitigation strategy with ministry staff
- Analysis was limited to the four stages of archaeological fieldwork, and could not measure time/cost impacts of:
 - Aboriginal engagement (required in Stage 3 for certain site types only)
 - Floral/faunal analysis (required for Stage 4 excavation projects only)



Additional Analysis and Context

- A ministry review of 113 archived project files from Planning Act development projects in York, Peel, Halton, Simcoe and Hamilton (2005-2009) indicates:
 - 100% went to Stage 2
 - 80.5% (91) were complete after Stage 2
 - 7.1% (8) were complete after Stage 3
 - 12.4% (14) went to Stage 4

- Of the 14 projects that went to Stage 4, only three would have required Aboriginal engagement (as per the criteria in the 2009 draft S&G)

- Note: Hamilton is one of two regions (Niagara is the other) with the highest density of sites in the province
 - Therefore, province-wide, the overall % of projects that are complete after Stage 2 will likely be higher than the figure above, and the % of projects that go to Stage 4 will likely be lower



Additional Analysis and Context

- Two of Ontario's most experienced consulting firms have undertaken their own costing analysis, the results of which match the ministry's conclusions:
 - Either no or nominal cost increases in Stages 1 and 2
 - Cost increases possible in Stage 3 resulting from additional fieldwork requirements
 - Additional work in Stage 3 results in savings and/or other benefits in Stage 4

"Any additional costs at Stage 3 will be recouped at Stage 4, since more of the site would already be excavated. In addition, the additional work done at Stage 3 will permit better decision making if the landowner decides on site preservation, since the site limits and area to be protected will be more clearly defined."

"If Stage 3 is poor, the likelihood for both under-budgeting Stage 4 and cost over-runs for the developer is very high"

Timmins Martelle Heritage Consultants
London, Ontario

"Stage 3 costs are the ones that have increased, but I think with just cause. It is definitely in the interest of the proponent to have a better understanding of the site, especially in situations where properties are changing hands and there is a need for the new owner to complete the archaeology... Also, of course, that level of work is necessary to properly assess the nature and extent of a site for future protection, and the First Nations are not interested in sub-par work in that regard."

Ron Williamson, Ph.D., CAHP
Archaeological Services Inc.
Toronto, Ontario



Ministry of Culture's Role

- ❑ Modernizing and transforming the report review process
 - Investing in updated technology
 - Piloting an expedited review process
- ❑ Increasing human resources in the Programs Unit
- ❑ Working with licensees to improve quality of reports
- ❑ Developing guidance materials to provide best practice information to licensees on reporting
- ❑ Considering ways to resolve differences in interpretation between licensee and MCL staff
- ❑ Establishing a mechanism for post-implementation review of S&G
- ❑ Developing a strategy to address non-compliance
- ❑ Implementing an aggressive strategy to reduce the backlog
- ❑ Open for Business
 - Important driver for new S&G, report review process

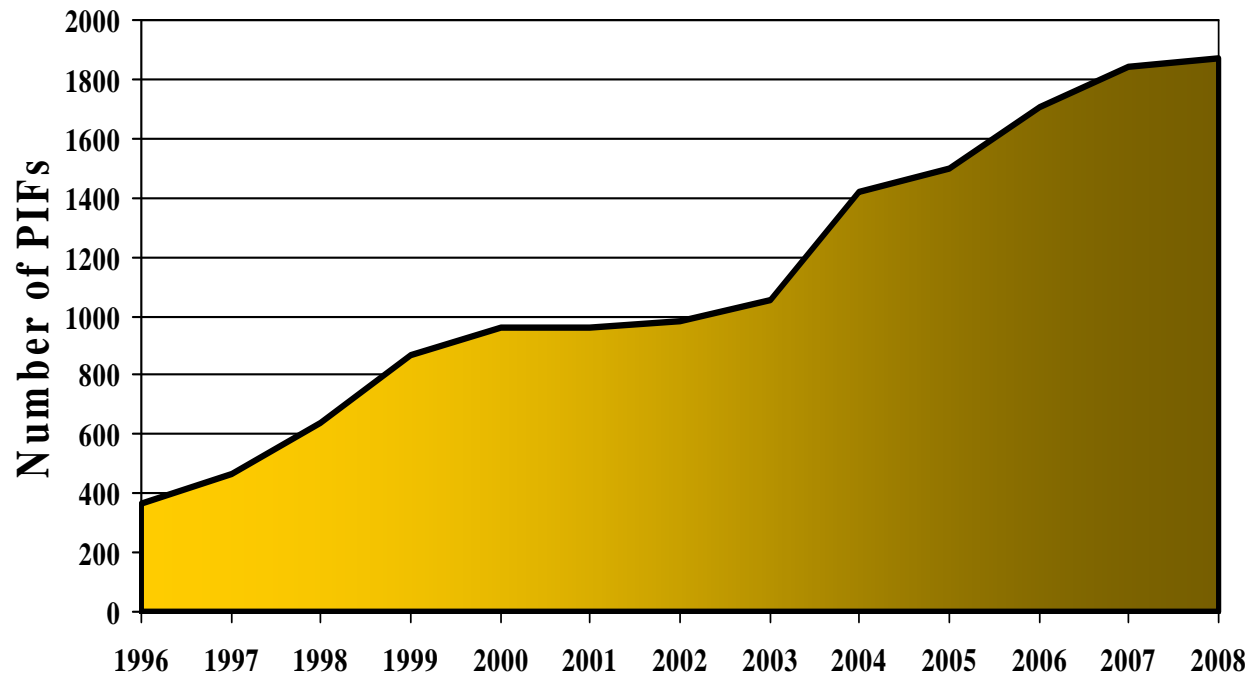


Roll Out Plans

- ❑ Pilot period concluded September 30, 2009
- ❑ Currently reviewing pilot period feedback on the 2009 draft S&G from:
 - archaeologists
 - development and forestry sectors
 - approval authorities
 - Aboriginal communities
 - other provincial ministries
- ❑ Finalizing document in fall 2009
- ❑ 60-day informational posting to MCL website prior to implementation for mandatory compliance
- ❑ Implementation in early 2010, in time for 2010 field work season
- ❑ Information sessions will be held across the province to support implementation
- ❑ MCL will establish a review process for the new S&G



Appendix 1: Archaeology By the Numbers



Project totals

1996 – 364

1997 – 466

1998 – 635

1999 – 865

2000 – 964

2001 – 962

2002 – 979

2003 – 1,055

2004 – 1,421

2005 – 1,499

2006 – 1,706

2007 – 1,842

2008 – 1,870