



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	February 23, 2024
<b>SUBJECT/REPORT NO:</b>	Request for Direction to Proceed with Appeal of Committee of Adjustment Decision to Approve Consent Application FL/B-20:01 and Minor Variance Application FL/A-20:04, for Lands Located at 177 Highway 8, Flamborough (PED24043) (Ward 13)
<b>WARD AFFECTED:</b>	Ward 13
<b>PREPARED BY:</b>	Joe Buordolone (905) 546-2424 Ext. 7856
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That Council gives approval to the following actions, as detailed in Report PED24043, respecting Committee of Adjustment Consent application FL/B-20:01 and Minor Variance application FL/A-20:04 submitted by A.J. Clarke and Associates, on behalf of 330113 Ontario Incorporated, for the lands located at 177 Highway 8, Flamborough, as shown on Appendix “A” attached to Report PED24043, granted by the Committee of Adjustment but recommended for denial by the Planning and Economic Development Department:

- (a) That Council of the City of Hamilton proceed with the appeal to the Ontario Land Tribunal against the decision of the Committee of Adjustment to approve Consent application FL/B-20:01 and Minor Variance application FL/A-20:04.
- (b) That Council directs appropriate Legal Services and Planning staff to attend the future Ontario Land Tribunal hearing in opposition to the decision of the Committee of Adjustment to approve Consent application FL/B-20:01 and Minor Variance application FL/A-20:04.

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**EXECUTIVE SUMMARY**

The applicant, A.J. Clarke and Associates Ltd., on behalf of 330113 Ontario Incorporated (owner), submitted Consent application FL/B-20:01 and Minor Variance application FL/A-20:04 to permit the severance of a parcel of land and to vary the required minimum lot frontage for future residential purposes on lands municipally known as 177 Highway 8 in Flamborough, as shown in the Location Map attached as Appendix “A” to Report PED24043.

The applications were originally heard by the Committee of Adjustment on October 21, 2021, where the applications were tabled. Planning staff recommended that the applications be tabled to allow for the applicant to prepare the required technical materials to support the application. This included an Environmental Impact Statement and Tree Protection Plan to evaluate the Core Areas identified on, and adjacent to the site, and an Archaeological Assessment to evaluate the archaeological potential of the lands. The applications were subsequently tabled multiple times to allow the proponent sufficient time to complete the required technical studies to support the evaluation of the Consent application. Staff indicated that these studies would need to be prepared, submitted, and approved for the Consent and Minor Variance applications to be supported by staff. The studies were never completed to staff’s satisfaction, nor were they approved by staff. After multiple requests to receive updated studies per staff comments, staff recommended that the Consent and Minor Variance applications be denied at the November 16, 2023, Committee of Adjustment hearing as the proposal did not have sufficient regard for Section 51(24) of the *Planning Act* nor did it comply with the policies of the Rural Hamilton Official Plan (refer to Appendix “B” attached to Report PED24043 for staff comments).

The Committee of Adjustment granted approval of Consent application FL/B-20:01 and Minor Variance application FL/A-20:04 at the November 16, 2023, hearing without the recommended conditions identified by staff in the staff comments.

On November 30, 2023, Development Planning staff appealed the decision of the Committee of Adjustment to the Ontario Land Tribunal. Staff recommend proceeding with the appeal. A hearing date has been not yet been set.

**Alternatives for Consideration – See Page 13**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: Planning has submitted the required fee of \$800 to the Minister of Finance to begin the appeal process. Other than this one-time fee, the costs for

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the Hearing are covered by the respective Departmental Work Programs/Budgets.

Staffing: One representative from Legal Services, one representative from the Development Planning Section, and one representative from the Heritage and Urban Design Section would be required for the preparation and attendance at the Ontario Land Tribunal hearing.

Legal: No legal implications are expected.

## **BACKGROUND**

The applicant, A.J. Clarke and Associates Ltd., on behalf of 330113 Ontario Incorporated (owner), submitted Consent application FL/B-20:01 and Minor Variance application FL/A-20:04 to permit the severance of a parcel of land and to vary the required minimum lot frontage for future residential purposes. The severed lands, identified as Part 2 on the submitted Severance Sketch (Appendix “C” attached to Report PED24043), have an irregular shape with a frontage of approximately 20 metres along Oak Avenue and an area of 8.0 hectares. The retained lands, identified as Part 1 on the submitted Severance Sketch, are an irregular shape with frontage of approximately 111 metres along Highway No. 8 and approximately 24 metres along Oak Avenue and an area of 10.4 hectares. Both the severed and retained lands are currently vacant with heavy vegetation and identified significant natural heritage features.

The Consent and Minor Variance applications were originally heard by the Committee of Adjustment on October 21, 2021. Planning staff recommended that the proposed Consent and Minor Variance applications be tabled until the requested Tree Protection Plan and Environmental Impact Statement (EIS) could be submitted, reviewed, and approved by City staff. Additionally, staff noted that the submitted Archaeological Assessment was only completed for a portion of the subject lands, whereas staff required it to be completed for the entire property. Staff recommended that a revised Archaeological Assessment be submitted for the entirety of the subject lands.

Staff noted in their recommendation that the purpose of the requested studies was to determine whether the establishment of a suitable building envelope would cause any negative impacts to the Core Areas that were identified on the subject lands. Staff indicated that it may not be possible to develop either the retained or severed lands should negative impacts to the Core Areas be created. It was staff’s opinion that the viability of the lot for the purposes of constructing a single detached dwelling should be evaluated in this regard prior to the approval of the proposed Consent and Minor

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Variance applications. The Consent and Minor Variance applications were tabled at the October 21, 2021, Committee of Adjustment hearing.

The applications were brought back to the October 5, 2023, Committee of Adjustment hearing where staff again recommended that the applications be tabled until the requested studies could be reviewed and approved by staff. Staff noted that an Environmental Impact Statement dated May 2021, was submitted as part of the Consent application and Natural Heritage staff were able to complete a review. Staff noted that the submitted Environmental Impact Statement did not provide a fulsome analysis of the woodlot to the north on Part 1 (retained lands); whereas Part 2 (severed lands) were the only portion of the subject lands that were studied in the report. Natural Heritage staff did not approve the submitted Environmental Impact Statement and recommended that the applicant complete an Environmental Impact Statement for the entire property prior to proceeding with the Consent application. The Consent and Minor Variance applications were again tabled.

The applications were heard at the November 16, 2023, Committee of Adjustment hearing. Planning staff noted that the supporting materials for the Consent application still did not adequately demonstrate whether the establishment of a suitable building envelope would cause no negative impacts on the natural heritage feature. Staff noted that Draft Plan of Subdivision application 25T-93012, which was draft approved on the adjacent lands to the west of the subject lands, shows a future road connection and extension of Oak Avenue in the location where the proposed single detached dwelling is to be constructed. The applicant did not demonstrate to staff how this issue had been addressed and how the proposal constitutes orderly development, which is a criterion under Section 51(24) (g) of the *Planning Act*.

Furthermore, the applicant again failed to provide the revised recommended studies to the satisfaction of staff, including an Archaeological Assessment of the entire property, an updated Environmental Impact Statement for the northern portion of the subject lands, and a satisfactory Tree Protection Plan.

Subsequently, Planning Staff recommended that the applications be denied due to the applicant not providing the studies requested by staff, therefore not meeting the criteria under Section 51(24) of the *Planning Act*, and the policies of the Rural Hamilton Official Plan. Staff noted that if the applications were to be approved by the Committee of Adjustment that conditions should be added to address staff's concerns from a natural and cultural heritage perspective. The Committee of Adjustment granted the applications without the recommended conditions (refer to the Decision included as Appendix "D" attached to Report PED24043).

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Under the *Planning Act*, Consent appeals must be filed within 20 days of the date of giving notice of the decision while Minor Variance appeals must be filed within 20 days of the date of decision. As such on November 30, 2023, Planning and Economic Development staff submitted an appeal letter, and the required fee to the Secretary-Treasurer of the Committee of Adjustment to initiate the appeal process, subject to Council's approval/ratification.

**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENT**

***Planning Act***

The application has been reviewed with respect to the criteria of the *Planning Act*.

**Powers of Committee**

“44(1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

**Plan of Subdivision Approvals**

- 51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,
- (b) Whether the proposed subdivision is premature or in the public interest;
  - (c) Whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
  - (g) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
  - (h) Conservation of natural resources and flood control;
  - (k) The area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

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- (i) The adequacy of utilities and municipal services.

**Consents**

- 53(1) An owner, chargee or purchaser of land, or such owner's, chargee's or purchaser's agent duly authorized in writing, may apply for a consent as defined in subsection 50(1) and the council or the Minister, as the case may be, may, subject to this section, give a consent if satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. 2021, c. 25, Sched. 24, s. 4 (1).
- 53(12) A council or the Minister in determining whether a provisional consent is to be given shall have regard to the matters under subsection 51 (24) and has the same powers as the approval authority has under subsection 51 (25) with respect to the approval of a plan of subdivision and subsections 51 (26) and (27) and section 51.1 apply with necessary modifications to the granting of a provisional consent. 1994, c. 23, s. 32."

Through a review of the submitted Consent application, staff noted that the application did not take into consideration the future road extension of Oak Avenue, which is identified in a previously approved Draft Plan of Subdivision on the neighbouring lands to the west (Draft Plan of Subdivision application 25T-93012). The applicant has not demonstrated to staff how the future access to the lands from the west will be maintained through the proposed development, consistent with the principles of orderly development. Based on the foregoing, the Consent application does not have sufficient regard for the criteria for the subdivision of land under the *Planning Act*.

**Provincial Policy Framework**

The Provincial planning policy framework is established through the *Planning Act* (Section 3) and the Provincial Policy Statement (2020). The *Planning Act* requires that all municipal land use decisions affecting planning matters be consistent with the Provincial Policy Statement (2020).

The mechanism for the implementation of the Provincial plans and policies is through the Official Plan. Through the preparation, adoption and subsequent Ontario Land Tribunal approval of the City of Hamilton Official Plans, the City of Hamilton has established the local policy framework for the implementation of the Provincial planning policy framework. As such, matters of provincial interest (e.g., efficiency of land use, balanced growth, cultural heritage and natural heritage) are reviewed and discussed in the Rural Hamilton Official Plan analysis below.

## **Rural Hamilton Official Plan**

The Rural Hamilton Official Plan designates the property as “Greenville Rural Settlement Area” and “Open Space” on Schedule D - Rural Land Use Designations and “Settlement Residential” and “Natural Open Space (Hazard Lands)” on Map 8a: Greenville Rural Settlement Area. The following policies, amongst others, apply to the proposal.

### **Volume 1 – Parent Policies**

- “B.3.4.4.4 In areas of archaeological potential identified on Appendix F-2 – Rural Archaeological Potential, an archaeological assessment:
- b) May be required for the following planning matters under the *Planning Act* when they involve soil disturbance or site alteration:
    - i) Minor variances; and,
    - ii) Consents / severances.
- B.3.4.4.5 Prior to site alteration or soil disturbance relating to a Planning Act application, any required archaeological assessment must be approved, in writing by the City, indicating that there are no further archaeological concerns with the property or concurring with the final resource management strategy to be implemented. The City may require a higher standard of conservation, care and protection for archaeological resources based on prevailing conditions and circumstances within the City and the results of any dialogue with First Nations and their interests.
- C.2.2.3 The boundaries of Core Areas are shown on Schedule B – Natural Heritage System and key natural heritage features, key hydrologic features and any associated vegetation protection zones, provincially significant and local natural areas are shown on Schedules B-1 to B-8 – Detailed Natural Heritage Features. Minor refinements to such boundaries may occur through Environmental Impact Statements, watershed studies or other appropriate studies accepted by the City without an amendment to this Plan. Major changes to boundaries, the removal or addition of Core Areas identified on Schedule B – Natural Heritage System, and Schedules B-1 to B-8 – Detailed Natural Heritage Features require an amendment to this Plan.

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- C.2.3.3 Any development or site alteration within or adjacent to Core Areas shall not negatively impact their environmental features or ecological functions.
- C.2.3.4 New development or site alteration shall not be permitted within provincially significant wetlands, significant coastal wetlands, or significant habitat of threatened or endangered species, except in accordance with applicable provincial and federal regulations with respect to significant habitat of threatened or endangered species.
- C.2.4.6 New development or site alteration subject to Sections C.2.4.1, C.2.4.2, C.2.4.3, C.2.4.5, C.2.4.7, C.2.4.8 and C.2.4.9 requires, prior to approval, the submission and acceptance of an Environmental Impact Statement, which demonstrates to the satisfaction of the City in consultation with the relevant Conservation Authority that:
- a) There shall be no negative impacts on the Core Areas or their ecological functions;
  - b) Connectivity between Core Areas shall be maintained, or where possible, enhanced for the movement of surface and ground water, plants and wildlife across the landscape;
  - c) The removal of other natural features shall be avoided or minimized by the planning and design of the proposed use or site alteration wherever possible; and
  - d) The disturbed area of a site shall not exceed 25 percent of the total developable area, except for golf courses, where permitted, for which the disturbed area shall not exceed 40 percent of the site. Impervious surfaces to be established in such disturbed areas shall not exceed 10 percent of the total developable area.
- C.2.4.9 New development and site alteration within the Protected Countryside of the Greenbelt Plan Area that is proposed to take place within or adjacent to any other Core Area identified on Schedule B – Natural Heritage System, through a consent, Plan of Subdivision, Zoning By-law, Site Plan approval, Official Plan amendment or Site Alteration By-law permit shall require an Environmental Impact Statement in accordance with Sections C.2.4.6 of this Plan.
- C.2.4.11 Where vegetation protection zones have not been specified by watershed and sub-watershed plans, Secondary or Rural Settlement Area Plan

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policies, Environmental Assessments and other studies, the following minimum vegetation protection zone width objectives shall be evaluated and addressed by Environmental Impact Statements:

- e) Significant Woodlands: a minimum 30-metre vegetation protection zone measured from the drip line of trees at the woodlands edge;

C.5.1.1 No draft conditional, or final approval of development proposals shall be granted by the City for any development in the rural area that could impact existing private services or involves proposed private services until the development proposal has complied with all of the following:

- a) The existing or proposed water supply system shall include a well with sufficient quantity of water to sustain the use. A cistern system that meets current accepted standards, may, to the satisfaction of the City, be an additional component of the water supply system.

F.1.14.2.4 Within designated Rural Settlement Areas all proposed severances that create a new lot and proposed lot additional shall:

- a) Comply with the policies of this Plan including a rural settlement area plan where one exists;
- b) Be compatible with and not hinder surrounding agricultural operations;
- c) Conform to the Zoning By-law;
- d) Be permitted only when both severed and retained lots have frontage on a public road;
- e) Meet Minimum Distance Separation requirements; and,
- f) Meet the requirements of Section C.5.1, Private Water and Wastewater Services, except as permitted in F.1.14.2.7 d). (OPA 18)”

**Volume 2 – Greensville Rural Settlement Area**

“A.3.5.3.6 New *development* shall conform to Section C.2, Natural Heritage System policies in Volume 1 of this Plan.

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- A.3.5.5.3 The predominant form of residential *development* shall continue to be the single detached dwellings.
- A.3.5.5.6 The division of land by consent may be considered when it is clear that a Plan of Subdivision is not necessary. When the severance of land by consent is deemed appropriate, regard shall be had to the other policies of this Rural Settlement Area Plan and Volume 1 of this Plan.
- A.3.5.9.1 It is intended that Natural Open Space (Hazard Lands) will be conserved and that land uses or activities which could be affected by prevailing hazardous conditions such as flooding or erosion, will be prohibited in and adjacent to these areas.
- A.3.5.9.2 No *development*, including the placing or removal of fill shall be permitted without the written approval of the Hamilton Region Conservation Authority.
- A.3.5.9.4 Natural Open Space (Hazard Lands) shall be appropriately identified in the Zoning By-law, All lots which abut a watercourse or its tributaries shall be subject to specific Zoning By-law regulations regarding lot area and setbacks from the watercourse and its tributaries. These requirements may be reduced, by amendment to the Zoning By-law, subject to the requirements of the Hamilton Regional Conservation Authority, the Niagara Escarpment Commission, the Province and the City.
- A.3.5.13.4 Residential development, by Plan of Subdivision or by consent to sever, shall be based upon a professional hydrogeologic and soils study, prepared and reported to the satisfaction of the Province, the City, and the Niagara Escarpment Commission. Such a hydrogeologic study shall include, but not necessarily be limited to, the percolation rate and grain size distribution of the soil, the amount of overburden to the depth of at least seven feet, the depth of the water table if less than 10 feet, and an impact assessment of the proposed subdivision or consent on the local water resources. The assessment must consider both on-site and off-site impacts related to the quantity and quality of water. All development shall be permitted only in accordance with the results of the study and on lots capable of accommodating a Class 4 (septic tank and tile bed) or Class 6 (aerobic) septic system including an area equal to the original tile bed area which is left free of development or hard surfaces to provide for a replacement tile bed in the event of failure to the original system, as determined by the City. Residential development is subject to conformity

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with policies in Sections A.3.5.12.5 to A.3.5.12.9 inclusive, and A.3.5.13, Volume 2 of this Plan.”

Based on Natural Heritage staff comments, the subject lands contain a Significant Wildlife Habitat, which was identified through the Mid-Spencer Creek Greenville Rural Area Sub-Watershed Study. Significant Wildlife Habitats are considered Core Areas under Rural Hamilton Official Plan policy. Furthermore, Natural Heritage Staff also noted that there is a wetland and a watercourse going through the northern woodlot on the subject lands. These features provide evidence that the woodlot should be considered a Significant Woodland, which are also considered Core Areas under the Rural Hamilton Official Plan.

Per Rural Hamilton Official Plan policy, development is only permitted within, or adjacent to Core Areas, if it can be demonstrated that there are no negative impacts on the natural heritage feature or their ecological function. The applicant has not demonstrated this through an approved Environmental Impact Statement to the satisfaction of Natural Heritage staff. Further, the submitted Tree Protection Plan shows the removal of 41 trees, which has not been approved by staff as the vegetation protection zone adjacent to the Core Area has not sufficiently been justified.

Staff note that the submitted Environmental Impact Statement did not include a fulsome analysis with respect to the woodlot to the north as this area does not appear to have been studied completely as Part 2 (the severed lands) were the only area subject to study. As such, the report has not been approved by Natural Heritage Planning staff. In addition, the Tree Protection Plan prepared by North-South Environmental Inc. dated February 17, 2022, has not been approved by staff.

Staff note that the proposed development is to create a lot for residential purposes and will thus involve site alteration and soil disturbance. Accordingly, an Archaeological Assessment is required for the entirety of the subject lands, per Rural Hamilton Official Plan policy. The previous Archaeological Assessment that was submitted for approval was only completed for a portion of the subject lands; whereas staff require it to be completed for the entire property.

Staff note that the required hydrogeological study was not submitted, nor was it included as a condition of approval per Policy A.3.5.13.4 of the Greenville Rural Settlement Area Plan. Staff require the completion of the study to demonstrate that adequate services are being provided for the future residential dwelling.

Staff also note that the application did not take into consideration the future road extension of Oak Avenue, which is identified in a previously approved Draft Plan of Subdivision on the neighbouring lands to the west (Draft Plan of Subdivision application

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25T-93012). The applicant has not demonstrated to staff how the future access to the lands from the west will be maintained through the proposed development, consistent with the principles of orderly development.

Finally, staff are of the opinion that the Minor Variance application to permit a lot frontage of 24.0 metres for the retained lands and a lot frontage of 28.0 metres for the severed lands does not meet the four tests of the *Planning Act*. Staff are of the opinion that the variance does not maintain the general intent of the Official Plan as staff are unable to assess the potential negative impacts that the creation of the lot may have on the subject site and its natural heritage features. Furthermore, staff are of the opinion that the variance is not desirable for the use of the development as the development may lead to negative impacts to the subject site through the creation of the two parcels of land.

Accordingly, staff are of the opinion that the Consent and Minor Variance applications are premature and do not comply with the policies of the Rural Hamilton Official Plan related to lot creation, natural heritage, cultural heritage, and servicing.

**Town of Flamborough Zoning By-law No. 90-145-Z**

The subject lands are zoned Settlement Residential R2-24(H) Zone which permits single detached dwellings. The proposed lot sizes comply with the Zoning By-law, however, Minor Variance application FL/A-20:04 is required to address the deficiency in lot width. The lands are also subject to an 'H' Holding Provision. The proponent will be required to remove the Holding Provision on the subject lands prior to development proceeding.

**Hamilton Zoning By-law No. 05-200**

The southern portion of the lands are zoned Conservation/Hazard Land Rural (P6) Zone. New buildings and structures are not permitted on a vacant lot. There are no residential uses permitted on the portion of the lot zoned (P6) Zone.

**RELEVANT CONSULTATION**

- Corporate Services Department, Legal Services Division; and,
- Source Protection Planning.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The proposed Consent application and associated Minor Variance application to permit the conveyance of two parcels of land for future residential purposes does not have

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sufficient regard for the criteria of Section 51(24) of the *Planning Act* as the applicant has not demonstrated how access to the lands to the west will be maintained through the proposed development, consistent with the principles of orderly development. Staff are also of the opinion that the proposal does not comply with the policies of the Rural Hamilton Official Plan related to natural heritage, cultural heritage, and adequate services, as demonstrated through the policy analysis above. Staff further note that the applicant did not demonstrate that the proposal was able to meet the policies of the Official Plan through recommended conditions which were not applied to the approval of the applications.

Based on the forgoing, it is appropriate for the City to appeal the Committee of Adjustment's approval of Consent application FL/B-20:04 and Minor Variance application FL/A-20:04 to the Ontario Land Tribunal.

**ALTERNATIVES FOR CONSIDERATION**

Council may direct staff to withdraw the appeal letter, which was filed by staff against the decision of the Committee of Adjustment to the Ontario Land Tribunal. Provided that no further appeals are filed; this option would allow the Committee of Adjustment's decision to approve the Consent application and associated Minor Variance application.

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix "A" to Report PED24043 – Location Map
- Appendix "B" to Report PED24043 – Staff Comments for FL/B-20:01 and FL/A-20:04
- Appendix "C" to Report PED24043 – Severance Sketch
- Appendix "D" to Report PED24043 – FL/A-20:04 and FL/B-20:01 Committee of Adjustment Decision
- Appendix "E" to Report PED24043 – FL/B-20:01 Consent Application
- Appendix "F" to Report PED24043 – FL/A-20:04 Minor Variance Application

JB/sd