

ISSUE DATE:

February 21, 2014



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL110331

PL090779

PL101381

PL120574

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Hamilton to approve Official Plan Amendment No. 35 to the Region of Hamilton-Wentworth Official Plan

OMB File No. PL090779 (See Schedule "1")

OMB Case No. PL090779

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Hamilton to approve Official Plan Amendment No. 128 to the Town of Ancaster Official Plan (PL090780); Official Plan Amendment No. 18 to the Town of Dundas Official Plan (PL090781); Official Plan Amendment No. 118 to the Town of Flamborough Official Plan (PL090782); Official Plan Amendment No. 75 to the Township of Glanbrook Official Plan (PL090783); Official Plan Amendment No. 220 to the City of Hamilton Official Plan (PL090784); Official Plan Amendment No. 149 to the City of Stoney Creek Official Plan (PL090785)

OMB File Nos. PL090780-PL090785 (See Schedule "1")

OMB Case No. PL090779

The Ontario Municipal Board has received appeals under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan

OMB File No. PL101381 (See Schedule "2")

OMB Case No. PL101381

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the decision of the Minister of Municipal Affairs and Housing to approve the new City of Hamilton Urban Official Plan

OMB File No. PL110331 (See Schedule "3")

OMB Case No. PL110331

Auburn Developments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 17 Ewen Road from "J" (Light and Limited Heavy Industrial, etc.) District to the "E-3" (High Density Multiple Dwellings) District to permit a 10 storey student residential building

Approval Authority File No. ZAC-07-062

OMB File No. PL120574

OMB Case No. PL120574

Auburn Developments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate land at 17 Ewen Road from "Industrial" to "High Density Residential" to permit a 10 storey student residential building
Approval Authority File No. OPA-07-016
OMB File No. PL120575
OMB Case No. PL120574

Schedule "1"

Appellants to the amendments to the in-force Official Plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek (OMB Case No. PL090779)

OMB FILE NO.	APPELLANT NAME
PL090784	Shawcor Ltd.

Schedule "2"

Appellants to the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan (OMB Case No. PL101381)

OMB FILE NO.	APPELLANT NAME
PL101381	A. DeSantis Developments Ltd.
	LIUNA Group Corp.
	St. Joseph's Villa

Schedule "3"

Appellants to the new City of Hamilton Urban Official Plan (OMB Case No. PL110331)

OMB FILE NO.	APPELLANT NAME
PL110331	2000963 Ontario Inc.
	2051206 Ontario Inc.
	2084696 Ontario Inc.
	2188410 Ontario Inc.
	456941 Ontario Ltd., 1263339 Ontario Ltd., and Lea Silvestri
	909940 Ontario Inc.
	Artstone Holdings Limited
	Carmen Chiaravelle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd., and Elaine Vyn
	City of Hamilton

	Corpveil Holdings Limited
	Flamborough Power Centre Inc., Flamborough South Centre Inc., Clappison Five Six Properties Inc.
	Freeland Developments Limited
	Gino and Olindo DalBello
	Lynmount Developments Limited
	Mondelēz Canada Inc. (formerly Kraft Canada Inc.)
	Mud and First Inc.
	Multi-Area Developments Inc.
	Norman Vartanian
	Paletta International Corporation
	Paletta International Corporation (re: Elfrida)
	Spallacci & Sons Limited
	Sullstar Twenty Limited
	Twenty Road Developments Inc.
	Upper Centennial Developments Ltd.
	Waterdown Bay Ltd.

APPEARANCES:

Parties

City of Hamilton

2000963 Ontario Inc., 2084696 Ontario
Inc., 2188410 Ontario Inc., Mud and First
Inc., Multi-Area Developments Inc. and
Paletta International Corporation (known
as Elfrida Landowners)

Artstone Holdings Limited, Corpveil
Holdings Limited, Paletta International
Corporation, Waterdown Bay Ltd., LIUNA
Group Corp., St. Joseph's Villa, A.
DeSantis Developments Ltd., Shawcor
Ltd. and Larry Freeman

Carmen Chiaravalle, 1694408 Ontario
Ltd., John Edward Demik, Peter Demik,

Counsel*/Agent

M. Minkowski*, M. Kovacevic*,
L. Magi* and N. Smith*

J. Drake*

S. Snider*

S. Rosenthal*

Demik Brothers Hamilton Ltd. and Elaine
Vyn (known as Twenty Road East
Landowners)

1507565 Ontario Inc.

D. Tang*

Domenico Bozzo, Carmine Bozzo,
Frank Veltri
and Giuseppe Gervasi;
Stephen Carlo Morelli and
Jessie May Morelli;
English Properties Ltd.,
Johan Voortman and Aledia Voortman;
Herbert Fisher, Manfred Fischer and
Eugenie Fischer;
Bruce Allen Stam and Valeria Florence
Stam;
Ilona Skeba and Christopher Mario
Skeba;
Braun Nursery Ltd. And Braun Farm
Properties Inc.;
John Joseph Lindley and Ann Katharine
Lindley;
Ingrid Elise Irene Bartels;
Akke Lodewyks, Jan Lodewyks, Jack
Lodewyks, Ronald John Lodewyks, Brian
Edward Lodewyks and David Christopher
Lodewyks;
Vyn Flowers Inc., Ralph Vyn and Joyce
Vyn;
Charlotte Eleanor Powell, Frederick David
Bristol and Marilyn Bristol;
Itala Silvestri-Trulli;
Hendrik Wilhelm Holzel and Leonie
Jacoba Holzel;
Charles Reginald James Pottruff and
Dorothy Harriet Pottruff;
Grasal Holdings Inc.;
Marian Bick and Brian Bick

B. Stam

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

[1] The matters before the Board are appeals related to the new City of Hamilton (“City”) Urban Hamilton Official Plan (“UHOP”) adopted by the City on July 9, 2009, and approved by the Minister of Municipal Affairs and Housing (“MMAH”) with modifications on March 16, 2011, appeals of the failure of the MMAH to make a decision regarding the UHOP, prior to March 16, 2011, and appeals related to amendments to the in-force official plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek.

[2] Also before the Board are appeals by Auburn Developments Inc. (“Auburn”) regarding a proposed official plan amendment and associated zoning by-law amendment to permit a 10 storey student residence on lands zoned and designated for industrial uses.

[3] At the parties’ request, the Board agreed to divide the hearing into several segments. Each hearing segment will deal with one or more specific topic areas. Pre-hearing conferences to deal with motions, settlements, procedural orders for various hearing segments, and so on, have been, and will continue to be, interspersed between hearing segments to move matters along in an efficient manner.

[4] The matters before the Board at this appearance are:

1. a partial settlement of the Paletta International Corporation (“Paletta”) appeal related to land use designations and schedules for the West Mountain Area (Heritage Green) Secondary Plan,
2. a settlement of the Paletta appeal related to policies dealing with residential intensification,
3. a settlement of the Paletta appeal dealing with transportation policies,
4. a settlement of the Paletta and Twenty Road East Landowners appeals of policies dealing with implementation,

5. a settlement of the Twenty Road East Landowners appeal related to the Schedule E community node in the area of Upper James Street and Rymal Road, and
6. a review and update of certain other procedural matters.

[5] The Board heard from Joanne Hickey-Evans, qualified previously in these proceedings to give the Board expert opinion evidence in land use planning matters.

[6] The Board also heard from Tom Nugent, a participant concerned with policies relating to implementation.

WEST MOUNTAIN AREA (HERITAGE GREEN) SECONDARY PLAN

[7] In its decision of November 3, 2010, the Board approved subdivision plan 25T200908. The UHOP was adopted by the City in 2009, with requested modifications sent to the province by the City in April 2010. Given the timing, the Board's decision was not reflected in the City-requested modifications and not captured in the UHOP as approved by the province.

[8] The proposal before the Board is to modify Map B.7.6-1 to reflect and implement the plan of subdivision approved by the Board.

[9] No one appeared in opposition to this modification, filed as Exhibit 35 in these proceedings and found at Attachment 1 to this decision.

[10] The Board finds that this is a technical modification to ensure consistency between the land use schedule and the Board's earlier decision.

RESIDENTIAL INTENSIFICATION POLICIES

[11] Section B.2.2.4.1.4 sets out the criteria for evaluating residential intensification developments.

[12] Ms. Hickey-Evans testified that it is the City's practice to evaluate residential intensification proposals against each of the criteria without attaching priority to some of the criteria over others. She further testified that the proposed modification to this

section would clarify this approach and assist members of the public to understand better the City's intention with this set of criteria.

[13] The proposed modification is to insert a new subsection B.2.2.4.1.4(a), renumbering the existing subsections accordingly such that subsection (a) would read:

a) a balanced evaluation of the criteria in b) through g) as follows:

[14] No one appeared in opposition to this proposed modification.

[15] The Board finds that the proposed modification simply provides some additional clarity and does not change the criteria for evaluation.

TRANSPORTATION

[16] Policy C.4.5.3.3 deals with heritage roads and sets out features to be protected. Subsection (b) refers to "existing trees and treelines within the road right-of-way".

[17] The proposed modification removes the phrase "within the road right-of-way" from this subsection and inserts it in the main body of policy C.4.5.3.3 so the last sentence of the introductory section would read:

In particular, within the road right-of-way, the City shall endeavour to retain and protect...

[18] No one appeared in opposition to this proposed modification.

[19] Ms. Hickey-Evans testified that the City intended this section to refer to the named features within the road right-of-way and did not intend to limit that solely to trees and treelines.

[20] The Board finds that this proposed modification introduces greater clarity into the section on heritage roads and better reflects the City's intention to preserve and protect heritage road features that are within the road right-of-way.

[21] Policy C.4.5.13 deals with roundabouts. The proposed modification would recognize that roundabouts should be used where appropriate. Policy C.4.5.13 would be modified to read:

C.4.5.13 Roundabouts shall be the preferred method of traffic control where they are appropriate and advantageous in terms of traffic capacity, traffic calming, community design and environmental considerations. Design of roundabouts shall consider pedestrian and cycling safety and driveway access.

IMPLEMENTATION

[22] The issues in issue group 8 all deal with matters relating to implementation. Chapter F in the UHOP sets out the policies that relate to implementation.

[23] The parties have now reached a settlement on all the issues raised in this group. The settlement involves a series of small modifications to policies in Chapter F. In some cases the modification involves a deletion of language, in some cases there is the addition of language, and in some cases the location of language is changed. In all cases, the proposed modifications are designed to remove duplication or redundancy and are designed to improve clarity for the reader.

[24] No one appeared in opposition to these modifications.

[25] The Board finds that the proposed modifications to Chapter F of the UHOP, filed as Exhibit 38 in these proceedings and found at Attachment 2 to this decision, introduce greater clarity into this Chapter and are appropriate.

[26] The Board also heard from Tom Nugent, a named participant in these proceedings.

[27] Mr. Nugent did not object to the settlement and did not seek any further modification.

[28] Mr. Nugent testified that he owns land that is within the boundary of the Rural Hamilton Official Plan ("RHOP"). Mr. Nugent believes his lands have been inappropriately placed outside the urban boundary of the UHOP.

[29] Mr. Nugent further testified that he understood that the principal reason for the boundary location rested with the Greenbelt Plan. Mr. Nugent's evidence is that he was told by provincial officials that his property would not be included in the Greenbelt Plan

and was surprised to find that, in the final iteration of the Greenbelt Plan, that his property was inside its boundaries.

[30] Mr. Nugent further testified that provincial officials acknowledged that the inclusion of his property within the Greenbelt Plan was an error that would be corrected at the time of a general review of the Greenbelt Plan.

[31] Mr. Nugent is not satisfied with this answer and sees no reason why, if an error was made, that it is not now corrected. Mr. Nugent asked the Board to utilize its mediation efforts to secure a correction to the Greenbelt Plan for his property.

[32] While the Board appreciates both the depth of concern Mr. Nugent has regarding what he feels is unjust and inappropriate action by provincial officials, and while the Board also appreciates the confidence Mr. Nugent has expressed in the Board's mediation services, Mr. Nugent's concerns regarding the Greenbelt Plan are beyond the scope of the Board's jurisdiction in these proceedings. As such, the Board makes no finding on the question of the inclusion of Mr. Nugent's land within the boundaries of the Greenbelt Plan.

COMMUNITY NODE

[33] Schedule E of the UHOP identifies a community node on Upper James Street between Stone Church Road West and a point just south of Rymal Road West.

[34] The boundaries of the community node are suggestive only and indicated by an oval on the map. The proposed modification elongates the southern end of the oval slightly to better reflect the intersection between Upper James Street and Rymal Road West and to better reflect the existing uses along Upper James Street.

[35] No one appeared in opposition to this proposed modification.

[36] The Board finds that this proposed modification to Schedule E, filed as Exhibit 42 in these proceedings and found at Attachment 3 to this decision, improves the clarity of Schedule E by better reflecting the existing uses along Upper James Street south of Rymal Road West.

MOTION FOR CONSOLIDATION

[37] A hearing into certain appeals before the Board in these proceedings was deferred at an early pre-hearing conference because the issues related to these appeals might be impacted by the Board's decision in a separate matter. That separate matter is the proposed secondary plan known as the Airport Expansion Growth District ("AEGD") in Board case PL101300.

[38] Similar deferrals occurred with certain matters in the RHOP hearing, which is case PL090114.

[39] Decisions have now issued for phase 1 and phase 2 of the AEGD case and a pre-hearing will now be necessary to organize matters for phase 3 of that case.

[40] The Board was advised that the City wishes to bring forward a motion to consolidate certain of the deferred matters from these UHOP proceedings, deferred matters from the RHOP proceedings and phase 3 of the AEGD proceedings.

[41] The Board has set aside May 7, 2014 and May 8, 2014 to hear the consolidation motion and then to deal with any matters appropriate to the further hearing of the various appeals as a result of the Board's decision on the motion for consolidation.

[42] This hearing event will be held on **Wednesday, May 7, 2014 at 10 a.m. at:**

**Hamilton Convention Centre
Albion Room A & B
1 Summers Lane
Hamilton, ON L8P 4Y2**

[43] The Board's directions regarding notice in these matters will issue separately.

ORDER

[44] The Board orders that:

1. The appeal by Paletta International Corporation regarding Map B.7.6-1 West Mountain Area (Heritage Green) Secondary Plan is allowed in part and Map

- B.7.6-1 is modified in accordance with Attachment 1 to this decision and, as so modified, is approved.
2. The appeal by Paletta International Corporation regarding policy B.2.2.4.1.4 is allowed in part and policy B.2.2.4.1.4 is modified by:
 - i. inserting a new subsection (a) to read:
 - a) a balanced evaluation of the criteria in b) through g) as follows:
 - ii. renumbering the previous (a) through (f) as (b) through (g) and, as so, modified is approved.
 3. The appeal by Paletta International Corporation regarding policy C.4.5.3.3 is allowed in part. Policy C.4.5.3.3 is modified by:
 - i. deleting the phrase “within the road right-of-way” from subsection (b).
 - ii. inserting that same phrase into the last sentence of the introductory paragraph of Policy C.4.5.3.3 such that this sentence shall read:

In particular, within the road right-of-way, the City shall endeavour to retain and protect...and, as so modified, is approved.
 4. The appeal by Paletta International Corporation regarding policy C.4.5.13 is allowed in part. Policy C.4.5.13 is modified to read:
 - iii. C.4.5.13 Roundabouts shall be the preferred method of traffic control where they are appropriate and advantageous in terms of traffic capacity, traffic calming, community design and environmental considerations. Design of roundabouts shall consider pedestrian and cycling safety and driveway access.and, as so modified, is approved.
 5. The appeal by Paletta International Corporation and the appeals by Carmen Chiaravalle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd. and Elaine Vyn (known as the Twenty Road East Landowners in these proceedings) regarding Chapter F are allowed in part

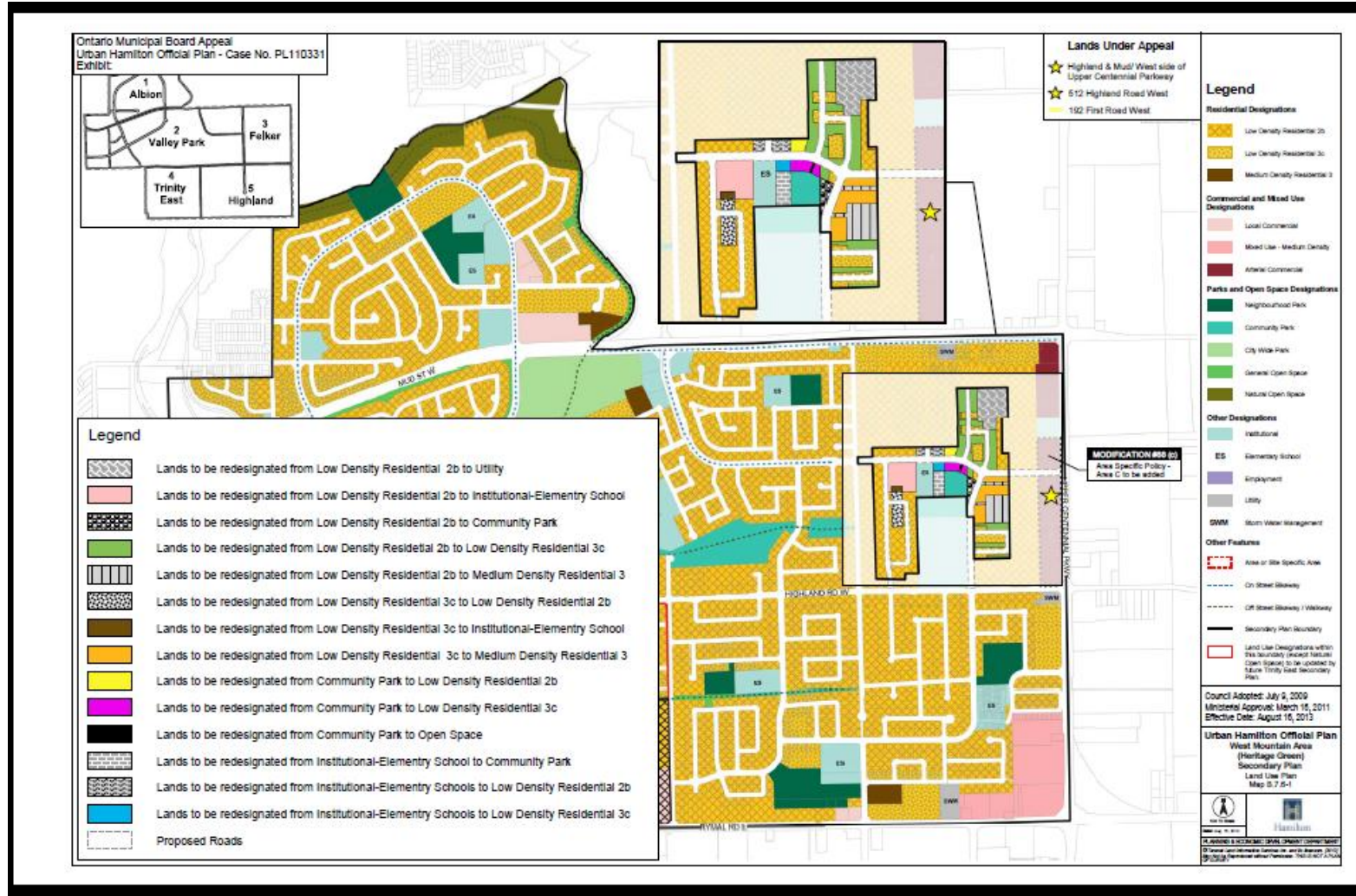
and Chapter F is modified in accordance with Attachment 2 to this decision and, as so modified, is approved.

6. The appeals by Carmen Chiaravalle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd. and Elaine Vyn (known as the Twenty Road East Landowners in these proceedings) regarding Schedule E are allowed in part and Schedule E is modified in accordance with Attachment 3 to this decision and, as so modified, is approved.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR

ATTACHMENT 1



ATTACHMENT 2

PL110331: Exhibit ____

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**Settlement: Twenty Road East Land Owners
Paletta International Inc.
Group 8 – Implementation Policies
Clean Copy of Settled Policies
February 3, 2014**

Volume 1, Chapter F – Implementation

- F.1.1.3 Amendments to this Plan, including secondary plans, shall be required to created, modify or expand land use designations and policies which do not comply with this Plan.
- F.1.1.4 Renumbered as F.1.1.5
- F.1.1.4 Amendments to this Plan shall be undertaken by the City:
- a) to update this Plan to reflect new provincial or municipal planning policies at the time of Official Plan Five Year review or other appropriate time through a city initiative; or,
 - b) to update and streamline administration of municipal planning policies.
- F.1.1.5 Deleted.
- F.1.1.6 In the absence of a Municipal Comprehensive Review as defined by Growth Plan for the Greater Golden Horseshoe, there shall be no appeal with respect to the refusal or failure of the City to adopt an Official Plan amendment for:
- a) the redesignation, conversion or addition of non-employment land uses for lands designated Employment Area – Industrial Land, Employment Area – Business Park, Employment Area – Airport Business Park, or Employment Area – Shipping and Navigation on Schedule E-1 – Urban Land Use Designations; and,
 - b) the expansion of all or part of the urban boundary.
- F.1.1.8 Deleted.
(*Subsequent policies renumbered.*)
- F.1.1.11 In addition to the policies of the Growth Plan for the Greater Golden Horseshoe respecting the potential conversion of employment sites, the City may prepare and apply a set of criteria to determine the potential employment conversion sites or identification of regeneration areas.

F.1.5.3 Deleted.
(*Subsequent policies renumbered.*)

F.1.14.1.5 Deleted.

F.1.14.1.7 Renumbered to F.1.14.1.5

F.1.14.3.6 Deleted.
(*Subsequent policies renumbered*)

ATTACHMENT 3

