

**CPA2010-07  
MINUS FORTY  
TECHNOLOGY CORPORATION  
PRIVATELY SPONSORED  
AMENDMENT TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

Privately Sponsored Amendment and  
Staff Analysis

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**BoCC Adoption Document**

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**September 28, 2011**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2010-07**

Text Amendment

Map Amendment

<b>This Document Contains the Following Reviews</b>	
✓	<b>Staff Review</b>
✓	<b>Local Planning Agency Review and Recommendation</b>
✓	<b>Board of County Commissioners Hearing for Transmittal</b>
✓	<b>Staff Response to Review Agencies' Comments</b>
✓	<b>Board of County Commissioners Hearing for Adoption</b>

STAFF REPORT PREPARATION DATE: May 18, 2011

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT/REPRESENTATIVES:**

Minus Forty Technologies Corporation. USA / Veronica Martin, TDM Consulting

**2. REQUEST:**

Amend the Future Land Use Map Series, Map 1, to change approximately 15.56 acres of land designated Suburban to Industrial Development and Conservation Lands Uplands and Conservation Lands Wetlands.

**B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

**1. RECOMMENDATION:**

Staff recommends that the Board of County Commissioners *adopt* the proposed amendment to Map 1, the Future Land Use Map of the Lee Plan.

## **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Minus Forty Comprehensive Plan Amendment was filed by Minus Forty Technologies Corporation as a 4.94 acre small scale amendment on September 30, 2010. The application was re-filed on May 9, 2011 as a large scale amendment, which included additional 10.62 acres proposed to be included in the Conservation Lands future land use category.
- The proposed Lee Plan amendment is an effort by the applicant to resolve the violations of case # VIO2010-20402
- To legitimize the existing industrial uses on the subject site, the applicant must also receive an Environmental Resource Permit from South Florida Water Management District, replat the I-75/Bayshore Industrial Park, obtain approval for an Industrial Planned Development (DCI2010-00031), and receive a Development Order for the existing/proposed development.
- The subject site was required, through an industrial rezoning, resolution Z-79-48 on November 19, 1979, to act as a buffer between the proposed industrial zoning and the existing Colonial Acres Subdivision.
- The subject site has been previously platted as part of the I-75/Bayshore Industrial Park (PB 34, PAGE 42) as two tracts. These tracts include the 10.61 acre “Park” tract, and the 28.17 acre “Drainage Retention” tract that contains a stormwater management lake for the industrial development areas.
- The proposed 10.62 acre portion of the site proposed to be redesignated as Conservation Lands future land use category is consistent with the intent of the buffer required in zoning resolution Z-79-48.
- The proposed 10.62 acre portion of the site proposed to be redesignated as Conservation Lands future land use category is consistent in size with the “Park” tract in the I-75/Bayshore Road Industrial Park plat.
- Lee Plan Table 1(b), Year 2030 Allocations, allocates 554 acres for Industrial use in the North Fort Myers Planning Community. Of the allocated acres 173 have been developed with industrial uses so that 381 acres that are remaining for development. The Lee Plan allocates adequate industrial areas to accommodate the proposed industrial use.
- The proposed amendment will not affect on Lee County’s population accommodation capacity.

## **C. PROJECT SUMMARY DISCUSSION:**

The Minus Forty Comprehensive Plan Amendment was originally filed by Minus Forty Technologies Corporation USA on September 30, 2010. Based on application materials, the applicant proposes to re-designate 15.56 acres of land from the Suburban future land use category to the Industrial Development and Conservation Lands future land use category. The applicant is not proposing any text amendments. The subject site is located at 17630 and 17650 East Street, North Fort Myers Florida, in the North Fort Myers Planning Community. The subject site is included in the I-75/Bayshore Industrial Park plat.

The previous owner cleared 4.94 acres of the subject property for light industrial uses, which under the provisions of the Suburban future land use category is not permitted. This has resulted in code enforcement action (case # VIO2010-20402, for improvements without a Development Order). To resolve the violation, the applicant has been ordered to remove the industrial uses and restore the property or get the required permits which require a change to the future land use category. The applicant had originally submitted an application for a Small Scale Comprehensive Plan Amendment to redesignate the 4.94 acres from the Suburban future land use category to the Industrial Development future land use category. Discussions with staff resulted in an amended application to also include redesignating 10.62 acres of Suburban lands to the Conservation Lands future land use category that would provide the dual purpose of a buffer to the residential uses to the east and protection of wetlands associated with the Bayshore Creek.

#### **D. BACKGROUND INFORMATION**

##### **1. EXISTING CONDITIONS:**

**SIZE OF PROPERTY:** 15.56 Acres.

**PROPERTY LOCATION:** The subject site is located north of Bayshore Road, directly east of the existing I-75/Bayshore Industrial Park, and south of Interstate 75, near the I-75 and Bayshore Road interchange.

**EXISTING USE OF LAND:** A portion of the parcel is being used for open storage, the majority is contains an existing stormwater management lake for the I-75/Bayshore Industrial Park.

**CURRENT ZONING:** AG-2

**CURRENT FUTURE LAND USE CATEGORY:** Suburban and Wetlands

##### **2. INFRASTRUCTURE AND SERVICES:**

**FIRE:** Bayshore Fire Protection and Rescue Service District.

**EMS:** Lee County EMS.

**LAW ENFORCEMENT:** Lee County Sheriff's Office.

**SOLID WASTE:** The subject site is located in solid waste Service Area 5. Solid waste disposal will be accomplished at the Lee County Resource Recovery Facility and the Lee-Hendry Regional Landfill.

**MASS TRANSIT:** LeeTran currently does not provide service to the subject site.

**WATER:** The subject site is within the Lee County Water Future Service Areas as identified on Maps 6 of the Lee Plan.

**SEWER:** The subject site is within the North Fort Myers Utilities area.

### **3. BACKGROUND DISCUSSION:**

The subject property was originally included in the Suburban future land use category on the 1984 Future Land Use Map. The industrial properties to the west of the subject site were rezoned to IL on November 19<sup>th</sup>, 1979 by resolution Z-79-48. Although not included in the 1979 rezoning, a condition required that the subject site “shall be a buffer zone in which no structure shall be placed” the condition also required that the property should be deeded to Lee County for future use as a park area. On September 25<sup>th</sup>, 1981 the industrial property to the west and the subject property were platted. The subject property was platted as “Drainage Retention” (28.17 acres) and “Park” (10.61 acres), consistent with the conditions of resolution Z-79-48. The “Park” area was not deeded to Lee County.

On June 19, 2007 a Comprehensive Plan Amendment application, CPA2007-03, was submitted to amend the future land use map from Suburban to Industrial Development for a ±7.5 acre parcel. During the site inspection for CPA2007-03, Environmental Science Staff noted that the site had been cleared of vegetation and partially filled. Staff also noted an indigenous wetland adjacent to and under the same ownership as the subject parcel. Upon inspection of the wetland, staff noted that the southern portion had been cleared along both sides of a natural creek. To protect the wetland and creek from additional impacts, staff requested that the previous owner include this wetland in the application and place it into Conservation Lands. The previous owner did not agree with placing the wetland system into conservation lands and application CPA 2007-00003 was withdrawn.

Subsequently the previous owner cleared the 4.94 acre portion of the subject for outdoor storage and parking. The 4.94 acres being used for industrial purposes is within the “Drainage Retention” tract. The actions noted during review of CPA2007-03, and the clearing of the site and development of the industrial use has resulted in code enforcement actions.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

To address the violation, the applicant has been ordered to remove the industrial uses and restore the property, or get the required permits, which among other required remedies, requires a change to the future land use category.

The original Comprehensive Plan Amendment application for CPA2010-07 was for a small scale amendment, including only the 4.94 acre industrial portion of the current proposal. The proposed small scale amendment concerned staff because over the past five years portions of the site have been gradually cleared and filled, causing impacts to Bayshore Creek, the adjacent wetlands and surrounding uplands. The 4.94 acres proposed for industrial use has been cleared and filled, and is being used for industrial purposes. A ditch has been constructed on the southern portion of the cleared area that diverts stormwater away from the stormwater lake and conveys it directly to Bayshore Creek. This creates the potential of pollution or turbidity in Bayshore Creek that could impact downstream residence. In the southeastern portion of the 39-acre tract the wetland and a portion of uplands has been cleared and a portion of Bayshore Creek has been channelized causing impacts and potential flooding to downstream properties.

Staff has concerns with additional/continued clearing of the wetland and indigenous vegetative communities. Lee County GIS shows that the creek and wetland area is located within a FEMA Floodway. The creek receives heavy runoff during rainy season and the associated wetland assists in water retention and filtration for downstream residents. Additional impacts to the creek and associated wetlands have the potential to increase velocity during major storm events causing flooding and water quality concerns for downstream property-owners.

Staff's concerns were expressed to the applicant on several instances. Due to these discussions, the application materials, as submitted on May 9, 2011, also included a request to redesignate 10.62 acres of the property from the Suburban future land use category to the Conservation Lands future land use category. The areas that are proposed to be designated as Conservation Lands include wetlands, some surrounding uplands, and a 50 foot buffer on both sides of Bayshore Creek as it crosses the property.

The past violations should not be ignored, but the applicant's revised amendment request does provide opportunities and benefits that should be considered. The benefits that arise from the inclusion of the request to redesignate 10.62 acres to Conservation Lands include environmental benefits to the Bayshore Creek and assured visual screening between the single-family residences to the east and the existing I-75/Bayshore Industrial Park to the west. Placing the wetlands into the Conservation Lands future land use category will assure that the wetlands can continue to filter Bayshore Creek's waters before being discharged into the Caloosahatchee River.

The 1979 zoning case, Z-79-48, conditioned that the subject site should act as a buffer to the Colonial Acres Subdivision to the east. This condition was recognized in the 1981 plat for the I-75/Bayshore Road Industrial Park, which identified a 10.61 acre "Park" tract that was to provide the buffer to the Colonial Acres Subdivision. The previous owner has impacted and cleared portions of the "Park" track, violating the 1979 zoning resolution and the 1981 plat. However, as

part of the proposed comprehensive plan amendment the applicant is proposing that 10.62 acres would become Conservation Lands.

There are three significant factors when considering the benefits of the proposed Conservation Lands future land use category designation. First, the area proposed by the applicant for the Conservation Lands, 10.62 acres, is consistent with the 10.61 acre "Park" tract identified on the 1981 plat and provides an adequate buffer to the residents east of the industrial park. Second, as proposed the 10.62 acres to be redesignated to the Conservation Lands future land use category is better aligned with the Bayshore Creek and associated wetlands. The "Park" tract in the I-75/Bayshore Industrial Park plat was not aligned in a similar fashion. Therefore the new Conservation Lands area proposed will provide better protection to environmentally sensitive features on the subject site. Third, the Conservation Lands future land use category that is proposed will provide greater protection from future impacts than the current Suburban future land use category and AG-2 zoning. Properties in Agriculture zoning districts can apply to clear land for agricultural purposes. Agriculture uses are not permitted in the Conservation Lands future land use category which only permits the following:

*wildlife preserves; wetland and upland mitigation areas and banks; natural resource based parks; ancillary uses for environmental research and education, historic and cultural preservation, and natural resource based parks (such as signage, parking facilities, caretaker quarters, interpretive kiosks, research centers, and quarters and other associated support services); and water conservation lands such as aquifer recharge areas, flowways, flood prone areas, and well fields.*

In addition to the comprehensive plan amendment application, the applicant has also filed a rezoning request to legitimize the industrial development on the 4.94 acres. The Master Concept Plan for the rezoning, DCI2010-00031, must be consistent with the Lee Plan. To accomplish this, the 10.62 acres that are proposed to be in the Conservation Lands future land use category must be shown as Indigenous Preserve on the Master Concept Plan.

#### **FUTURE APPROVALS NEEDED**

To address the violation, the applicant has been ordered to remove the industrial uses and restore the property, or get the required permits to have the desired development.

Legitimizing the industrial development on the subject site will take additional approvals from Lee County. Future approvals needed from Lee County include:

- Rezoning to IPD. The applicant has filed this application.
- Replat of the 39 acre subject site, which is part of the The I-75/Bayshore Industrial Park subdivision. The replat of the 39 acres will have to show a modified Drainage Retention tract, a Preserve tract, and there will also be separate Tracts for Industrial, Lake Maintenance and Future Development area.
- A Development Order to approve the final site plan.
- Other approvals may be needed as well depending on any unforeseen facts related to this case.

In addition to the Lee County approvals the applicant must apply for and receive an Environmental Resource Permit Modification from the South Florida Water Management District (SFWMD). The applicant has contacted the SFWMD to apply for the ERP Modification. If the applicant is unsuccessful in obtaining any one of the above mentioned required approvals the existing industrial uses on the site may have to be removed.

The applicant has also mentioned the possibility of seeking approvals for residential development on the south and southeast portions of the property within the portion of the subject site that is to remain in the Suburban future land use category, with AG-2 zoning. Any residential development on this site would take additional permit approval and would have to be examined in greater detail. This staff report does not address the future possibility of residential development.

### **APPLICANT JUSTIFICATION**

The applicant has provided a justification discussion concerning the proposed amendment. This discussion is reproduced below:

*As stated previously, the subject property is part of the existing plat for the I-75/Bayshore Road Industrial Park. The majority of the Industrial Park has an appropriate Future Land Use of Industrial Development. The subject parcel and the lake to the south of the subject parcel lie within the Suburban Future Land Use designation. The lake is currently the site of a recreational facility – a cable water-ski park. The land to the immediate east is a wetland. Development of the subject parcel with uses compatible to the adjacent properties is not possible.*

*Changing the Future Land Use to Industrial Development will achieve many goals. The property owner will be able to utilize the property as it was originally intended – for light industrial use. An Industrial Planned Development rezoning will be possible, limiting the Schedule of Uses, providing appropriate buffers to the wetland and the recreation facility/lake, and providing water quality through a stormwater management plan. Any wetlands that exist on site will be preserved, as required by the Land Development Code. The proposed development promotes a compact, contiguous and compatible growth pattern – Goal 2 of the Lee Plan.*

*Approval of this Small Scale Comprehensive Plan Amendment application will be the first step in addressing many of the detrimental issues facing the site. The property owner is making every effort to bring the subject parcel into compliance with the Lee Plan, the Land Development Code, and requirements of the South Florida Water Management District. The exhibits included with this submittal, “Internal Consistency with the Lee Plan” and “Existing and Future Conditions Analysis” clearly demonstrate that approval of this proposed amendment is justified.*

*It is the opinion of the applicant that the amendment, if approved, will benefit all involved. The final development will meet County standards and be an asset to the community. The proposed development will not be detrimental to the safety, health, or well-being of the general public and surrounding neighborhood.*



Staff's analysis of the application is provided below.

### **SURROUNDING ZONING, LAND USES, AND FUTURE LAND USE DESIGNATIONS**

The subject property is bordered on the north by Interstate 75. Across the I-75 right-of-way is Colonial Pines, a single-family residential subdivision with AG-3 zoning, within the Sub-Outlying Suburban future land use category. These properties will be buffered from the activities that occur on the subject site by more than 300 feet of I-75 right of way. The residential properties to the north are connected to the subject property by Bayshore Creek, and could benefit from the designation of the proposed Conservation Lands. The Conservation Lands future land use category will help assure that there are no impacts to the Bayshore Creek. Properties to the west contain light industrial uses and are part of the I-75/Bayshore Road Industrial Park. These industrial uses are compatible with the proposed industrial uses on the subject site. The lake to the south was originally created as a Stormwater retention/detention lake for the industrial park, but remained within the Suburban future land use category. The lake continues to be used for stormwater management, but is now also used for recreation purposes – as a cable-ski water park. A Special Exception (SEZ2004-00035) was approved to permit the water park in the AG-2 zoning category.

The parcels south of the lake are single-family residential parcels in the R.H. Howell's Subdivision. These parcels are in the RS-1 zoning district and Suburban future land use category. The stormwater lake will provide a sufficient buffer from the proposed Industrial future land use category. The land to the southeast is in the Colonial Acres Subdivision. These parcels are single-family residential lots zoned AG-2 and are in the Suburban future land use category. Land to the east is within the RS-3 zoning district and is also within the Suburban future land use category. The wetlands that are proposed to be protected by the Conservation Lands future land use category will act as a buffer between the proposed Industrial future land use category and the single-family residential uses to the east.

### **INTERNAL CONSISTENCY WITH THE LEE PLAN**

The Lee County Division of Planning has reviewed the proposed map amendment for consistency with the Lee Plan and offers the following assessments:

According to Policy 1.1.7, "the Industrial Development area is to be reserved mainly for industrial activities per se, as well as for selective land use mixtures such as combined uses of industrial, manufacturing, research, properly buffered recreational uses and office complexes." Industrial developments also have special locational requirements, including transportation needs. As stated above, SR 78/Bayshore Road provides access to the site, with I-75 within 3/4 miles. Additionally the Seaboard Coast Line Railroad (also known as Seminole Gulf Railway) bisects the western edge of the Industrial Park. The proposed development will incorporate Light Industrial uses, compatible with the surrounding uses, and is consistent with Lee Plan Policy 1.1.7.

Lee Plan Objective 2.1 Development Location, promotes contiguous and compact growth patterns in an effort to contain urban sprawl, minimize energy costs, and conserve land, water, and natural resources. Objective 2.2 Development Timing, directs new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. The subject parcel is located

within a designated Future Urban Area and is adjacent to the existing industrial area. This location assures that a contiguous and compact development pattern can be created.

The proposed amendment is also consistent with Policy 2.2.2. as the Industrial Development will (1) not place undue burdens on existing public facilities, (2) encourages compact and efficient growth patterns, and (3) will not exceed the acreage limitations contained in the Acreage Allocation Table 1 (b) as discussed above. Any development of the subject site will comply with Goal 11 of the Lee Plan concerning potable water and sanitary sewer services.

The Lee Plan promotes opportunities for well-planned industrial development at suitable locations within the county through Goal 7: Industrial Land Uses. The policies for Industrial Development as set forth in Objective 7.1 of the Lee Plan will be complied with as required for rezoning and development order applications. The applicant has also submitted an application for a Planned Development, which includes a Master Concept Plan detailing the project’s development parameters. Development of the subject parcel for Industrial use is consistent with Policy 7.1.3, locational standards and compatibility with neighboring uses, consistent with Policy 7.1.4, industrial acres as available per Table 1(b) Planning Community Year 2030 Allocations, and has public services and facilities available, consistent with Policy 7.1.5. The proposed Conservation Lands, in conjunction with the existing stormwater management lake will provide adequate buffers and screening from adjacent residential areas as required by Policy 7.1.8. requires. The proposed amendment is consistent with Lee Plan Goal 7 Industrial Land Uses.

The proposed amendment must also be reviewed for consistency with the North Fort Myers Community Plan. The Goal for the North Fort Myers community plan is “to improve the community’s livability and economic vitality by promoting compact, mixed use development...” The proposed amendment is adjacent to an existing industrial park, and will accommodate a contiguous development pattern.

**NEEDS ANALYSIS**

The most recent Commercial/Industrial Land Use Analysis for Lee County was conducted in 2007-2009 by Basile Baumann Prost & Associates, Inc. The report analyzes the demand for commercial/industrial land projected to Year 2025. Although Lee Plan Table 1(b) establishes Year 2030 Planning Community allocations, the report is still relevant in 2011. The Basile Baumann Prost & Associates report states that “More than 3,400 acres in the industrial zoning category are used for other purposes that make them unlikely to be converted to industrial uses. This leaves 2,343 acres in the industrial zoning category not yet developed.” (See Table below)

<b>Lee County, Florida</b>			
<b>Comparison: Industrial and Commercial Office Zoning and Land Use</b>			
	<i><b>Industrial</b></i>		<i><b>Commercial</b></i>
Currently Zoned Acres	5,972	Currently Zoned Acres	11,150
Less Res., Comm., Public Use	2,510	Less Res., Comm., Public Use	3,136
Remaining Zoned Acres	3,462	Remaining Zoned Acres	8,014
Zoned and Used Industrial	1,119	Zoned and Used Commercial	3,147
Remaining Zoned Acres	2,343	Remaining Zoned Acres	4,867
Current Industrial Use	1,614	Current Commercial Use	4,640

Source: Lee County Planning Division

The report concludes that the deficit in industrial acreage available and industrial acreage that's potentially viable for industrial use is significant. The report utilized several different methods to make their analyses and summaries to forecast demand of Commercial/Industrial lands. The Commercial/Industrial Land Use Analysis shows that an additional 988 industrial acres would need to be developed by Year 2025. In addition to the existing shortfalls Lee County Industrial Lands are also susceptible to annexation. The report finds that:

*“Annexation has reduced unincorporated Lee County by approximately 28,000 acres. The most significant recent example was the annexation by the City of Ft. Myers of the Arborwood property north of Daniels Parkway and east of I-75. This large land parcel, approximately 2,500 acres, was designated Tradeport under the Comprehensive Plan which was designed to accommodate light industrial, warehousing, distribution and office uses that would benefit from close proximity to the International Airport, but no residential uses. The DRI that was approved for Arborwood in 2004 permitted a significant residential and retail development, but no office and no industrial.”*

The 4.94 acre area that is proposed to be included in the Industrial Development future land use category is part of the existing and mostly developed I-75/Bayshore Road Industrial Park Plat. However, the Future Land Use of said parcel is Suburban. Changing the Future Land Use to Industrial Development will increase the amount of land that is available and suitable for industrial development.

#### **TRANSPORTATION/TRAFFIC CIRCULATION IMPACTS**

The subject site is accessed through the I-75/Bayshore Road Industrial Park. Bayshore Road, an arterial roadway, is accessed from the industrial park by East Street, a local road. The subject site is granted a 40 foot wide ingress/egress easement (Instrument # 2011000009225) across a portion of lot 9 in the I-75/Bayshore Road Industrial Park plat to East Street. The proposed development will not cause industrial traffic to access residential streets.

Lee County Department of Transportation provided a memorandum to the Lee County Planning Division on May 12, 2011, providing a recommendation to transmit the proposed amendment. The complete Lee County Department of Transportation memorandum is attached to this staff report. A summary is provided below:

*The Department of Transportation has reviewed the above-referenced privately-initiated comprehensive plan amendment request, to change the land use designation of approximately 4.9 acres within a larger 36-acre parcel in North Fort Myers north of Bayshore Road adjacent to I-75 from “Suburban” to “Industrial Development”, and to change another approximately 10.62 acres of wetlands (including Bayshore Creek) from “Suburban” to “Conservation Lands”. Access is off of East Street through an existing industrial park, and East Street connects to Bayshore Road at a full median opening. The applicant’s traffic analysis indicates that the change would result in 50,000 square feet of mixed light industrial uses at buildout.*

*Based on the applicant’s short-range analysis using growth rates, all of study area roadway segments are anticipated to operate at or better than their adopted level of service standard in 2015. For the long range analysis, DOT staff added the 95 industrial employees that*

would be associated with 50,000 square feet of industrial uses into the ZDATA2 file for TAZ 1224, and ran the 2030 FSUTMS model on the MPO's Financially Feasible Plan network. In examining the results of the analysis for a three mile radius, a section of Bayshore Road from Samville Road to I-75 (which is the part that East Road connects to) is projected to fail in 2030 both without the additional development from this plan amendment request.

While the projected roadway failure in 2030 both with and without the CPA would normally be a cause for concern and could lead to a recommendation of non-transmittal absent a financial commitment to make the necessary improvements, DOT staff recognizes that this is a relatively small-scale amendment with minimal traffic impact, and that it provides some public benefit in the form of expanding our limited industrial lands in an area that is appropriate for it, and by designating 10+ acres of conservation lands. DOT staff would also note that despite the projected failure using the 2030 model, in comparing to the MPO's new 2035 plan the projected conditions don't appear so bad because there is no improvement to this section of Bayshore Road called for in either the 2035 Needs Plan or Financially Feasible Plan. Finally, this development will be subject to the County's concurrency regulations as it moves forward. For these reasons, DOT staff recommends transmitting this amendment.

A Traffic Circulation Analysis for Long Range (20-year Horizon) and Short Range (5-yr CIP) is included with the application materials, as required by Standard 11.3: Traffic. There will be minimal impacts to the existing roadway system with the addition of the proposed industrial development.

#### **LEE COUNTY PORT AUTHORITY COMMENTS**

The proposed amendment will not impact operations of the Lee County Port Authority.

#### **SOILS**

The applicant has provided a description of the soils that are found on site. For a detailed description please see the application materials

#### **POPULATION ACCOMMODATION**

The proposed amendment will positively impact the population carrying capacity of the Future Land Use Map. This is calculated by multiplying the anticipated density of the Suburban future land use category in North Fort Myers (3.5 units per acre), by the number of acres of the proposed industrial development area (4.9), by the occupancy rate (0.79), by the people per unit value (2.25).

$$3.5 * 4.9 * 0.79 * 2.25 = 30.48$$

The proposed Industrial Development and Conservation Lands future land use categories do not permit residential development. The proposed amendment will reduce the carrying capacity of the Lee County Future Land Use Map by approximately 30 people.

#### **TABLE 1(b) – YEAR 2030 ALLOCATION**

Lee Plan Table 1(b), Year 2030 Allocations, allocates 554 acres for Industrial use in the North Fort Myers Planning Community. Of the allocated acres 173 have been developed with industrial uses so that 381 acres that are remaining for development. The available allocation for

industrial development in the North Fort Myers Planning Community is adequate to support the proposed amendment. The proposed amendment to the Future Land Use Map does not create a need to amend Table 1(b) of the Lee Plan.

## **ENVIRONMENTAL CONSIDERATIONS**

Lee County Division of Environmental Sciences provided a memorandum to the Lee County Planning Division on May 13, 2011, providing a recommendation to transmit the proposed amendment. The complete Environmental Sciences memorandum is attached to this staff report. Environmental Sciences Staff arrived at the following conclusion:

*Allowing the applicant to amend the ±4.9 acre parcel without offering to offset the increased intensity of uses or mitigate for the ongoing impacts would not be consistent with the Goals Objectives and Policies of this plan. However, incorporating ±10.62 acres of wetlands, surrounding uplands and associated creek into Conservation Lands land use category in addition to the proposed amendment to Industrial Development is consistent with the Goals, Objectives and Policies of the Lee Plan. Furthermore, including the ±10.62 acres in the rezoning request would ensure protection for the Conservation Lands depicted in Exhibit I and buffering for the adjacent subdivision Colonial Acres.*

*Therefore, placing the wetlands, associated creek and surrounding uplands into a Conservation Lands, land use category and including the ±10.62 acres of Conservation Lands with the zoning request, will provide assurances that the remaining wetland and indigenous vegetative communities will be preserved, increasing water quality for Bayshore Creek and reducing potential flooding for downstream residences. This meets the requirements of Lee Plan Objective 114.1 and other Lee Plan Goals, Objectives, and Policies as described above. With the addition of Conservation Lands to the amendment request ES Staff is recommending approval and transmittal of CPA2010-00007.*

## **FEMA FLOODWAY ISSUE**

A small portion of the northeast corner of the parcel was illegally filled and impacts a FEMA designated Floodway. This area is in the 4.94 acres proposed for industrial use. To rectify this floodway encroachment, the applicant must either remove the fill or obtain an approval of “No Rise Certification” from the Lee County Flood Plain Coordinator. The applicant may also apply directly to FEMA to change the boundaries of the regulatory Floodway through a Letter of Map Revision (LOMR), which also must be approved by the Lee County Flood Plain Coordinator. Because of the illegal floodway encroachment, one of the options should be pursued as early as possible, and Lee County should be informed of any action involving FEMA regardless of the status of Lee’s rezoning or development processes.

The area that is proposed for the Conservation Lands future land use category is substantially covered by a FEMA designated Floodway. Redesignating this area to Conservation Lands is consistent with the Floodway designation.

## **HISTORIC RESOURCES**

Portions of this site are within the level 2 sensitivity areas for archeological and historic resources. Prior to development a Certificate to Dig will be required.

## **SCHOOL IMPACTS**

The Lee County School District provided correspondence to the applicant dated September 23, 2010 and provided the following response: "This project should have no impact in classroom needs based on the applicant's indication that it is only to change to future land use from Suburban to Industrial Development."

## **EMERGENCY MEDICAL SERVICES (EMS)**

Lee County EMS provided correspondence to the applicant dated September 19, 2010 concerning the proposed Lee Plan amendment and stated that they did not have any initial concerns regarding the proposed project.

## **SOLID WASTE**

The Lee County Solid Waste Division provided correspondence to the Planning Division of December 15, 2010 stating that they had no objections to the Lee Plan Amendment.

## **MASS TRANSIT**

Lee County Transit provided the applicant a letter dated September 28, 2010 stating that "Lee County does not currently provide public transportation services to the subject property," and that "Planning studies have not identified the need to extend local bus service to the subject site anytime within the existing Lee County Transit Development Plan, which goes through 2015 or in the Lee County Long Range Transportation Plan, which has a planning horizon through 2030."

## **POLICE**

The Lee County Sheriff's Office provided a letter to the applicant on October 5, 2010 stating that the proposed Lee Plan amendment "would not affect the ability of the Lee County Sheriff's Office to provide core services as this time. Law enforcement services will be provided from our district office in North Fort Myers."

## **FIRE**

The Bayshore Fire Protection and Rescue Service District provided a letter to the applicant dated September 28, 2010, stating that services were available, and that the proposed amendment would not "impact the response and fire services within the proposed area.

## **UTILITIES**

Lee County Utilities provided a letter to the applicant dated October 25<sup>th</sup>, 2010 stating that there is adequate capacity to provide potable water service to the subject site for the anticipated industrial development.

The application materials show that the proposed industrial development will consist of approximately 50,000 square feet of gross leasable floor area and will connect to potable water, as required by Standard 11.1: Water.

Policy 56.1.5 of the Lee Plan states that industrial developments that generate more than 5,000 gallons of sewage per day must connect to sanitary sewer service if it's available anywhere within ¼ mile of the development. Florida Governmental Utility Authority (FGUA), which serves the general area of the subject site, has a 12" force main located on the north side of

Bayshore Road, near First Street. The 12" force main is more than ¼ mile from the subject site. Connection to sanitary sewer lines will be reviewed in greater detail during future Lee County approvals included in the rezoning and development order applications consistent with Standard 11.2: Sewer. Any development of the subject site will comply with Goal 11 of the Lee Plan concerning potable water and sanitary sewer services.

## **B. CONCLUSIONS**

Staff notes that there have been past violations on the subject site and finds that the proposed amendment to the Future Land Use Map, with the inclusion of the 10.62 acres of Suburban land to Conservation Lands is a fair way to resolve these past violations. The proposed amendment, as submitted on May 9, 2011, which includes the Conservation Lands will also help to assure increased environmental protections and continued compatibility for the adjacent residents. However, two areas of the parent property are not being addressed through this amendment. They will be addressed through the processes discussed in the "Future Approvals Needed" section of this report. Traffic analysis shows that surrounding road segments are projected to fail with and without development. However, DOT staff notes that "there will be minimal impacts to the existing roadway system with the addition of the proposed industrial development," and recommends transmittal. Lee County service providers such as the Sheriff's Office, the local fire district, and Lee County EMS have indicated that the proposed amendment will not adversely impact services in the area. The site has access to potable water, and is identified on the Future Water Service area as shown on Lee Plan Map 6. The site does not have access to public sewerage facilities; however, the proposed development is not required to connect to sanitary sewer and will provide an on-site septic system, consistent with Lee Plan Standard 11.2. Table 1(b) of the Lee Plan shows that there are adequate areas remaining for the proposed industrial development in the North Fort Myers Planning Community.

## **C. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners *transmit* the proposed Lee Plan amendment.

**PART III - LOCAL PLANNING AGENCY  
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: May 23, 2011

**A. LOCAL PLANNING AGENCY REVIEW**

Staff provided a brief summary of the proposed amendment. The applicant's consultant also addressed the LPA, and provided an update of the code violations and the other approvals that are being sought to address the code violations. One member of the LPA asked for clarification that Environmental Sciences staff was satisfied with the environmental protections that would be provided with the proposed Lee Plan amendment. Staff responded that Environmental Sciences staff was satisfied. No members of the public appeared to address the LPA concerning the proposed Lee Plan amendment.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

**1. RECOMMENDATION:**

The LPA recommends that the Lee County Board of County Commissioners *transmit* the proposed Lee Plan amendment.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The LPA accepted the basis and recommended findings of fact as advanced by staff.

**C. VOTE:**

<b>NOEL ANDRESS</b>	<u><b>AYE</b></u>
<b>CINDY BUTLER</b>	<u><b>AYE</b></u>
<b>JIM GREEN</b>	<u><b>AYE</b></u>
<b>MITCH HUTCHCRAFT</b>	<u><b>AYE</b></u>
<b>RONALD INGE</b>	<u><b>AYE</b></u>
<b>JACK MEEKER</b>	<u><b>AYE</b></u>
<b>CAROL E. NEWCOMB-JONES</b>	<u><b>ABSENT</b></u>



**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: June 13<sup>th</sup>, 2011

**A. BOARD REVIEW:**

The proposed amendment was included as part of the consent agenda. The Board of County Commissioners pulled the proposed amendment from the consent agenda to be considered separately. One member of the Board of County Commissioners requested that a condition should be placed on future development to require an elevated roadway if the roadway was to cross the area proposed to be in the Conservation Lands future land use category. Staff responded that a discussion has been had with the applicant advising them that a bridge would be required to cross Bayshore Creek and the Conservation Lands on either side of the creek. No member of the public appeared or provided comments concerning the proposed amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

The Board voted to *transmit* the proposed amendment.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board accepted the findings of fact as advanced by staff and the Local Planning Agency.

**C. VOTE:**

<b>BRIAN BIGELOW</b>	<u>    <b>AYE</b>    </u>
<b>TAMMARA HALL</b>	<u>    <b>AYE</b>    </u>
<b>RAY JUDAH</b>	<u>    <b>AYE</b>    </u>
<b>FRANK MANN</b>	<u>    <b>AYE</b>    </u>
<b>JOHN MANNING</b>	<u>    <b>AYE</b>    </u>

**PART V – REVIEWING AGENCIES’ OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS**

DATE OF DCA COMMENTS: July 29<sup>th</sup>, 2011

**A. COMMENTS FROM REVIEWING AGENCIES:**

One comment was received from the Florida Department of Transportation (FDOT) concerning this proposed amendment. The comment and Lee County staff’s response are provided below:

Florida Department of Transportation Comment:

*Consistent with the applicant’s request, the department recommends that the CPA 2010-07 be accompanied with a site specific text amendment limiting the development in this parcel to 50,000 SF of mixed light industrial uses at buildout.*

Staff Response

The applicant and staff are in agreement that 50,000 square feet is the approximate maximum development intensity that the proposed 4.97 acre industrial area will support. The applicant has filed a concurrent application for an Industrial Planned Development that would limit industrial uses in the proposed industrial area to 50,000 square feet. House Bill 7207 amended Section 163 of the Florida Statutes to provide for concurrent zoning and states that “a local government shall consider an application for zoning changes that would be required to properly enact any proposed plan amendment.” In this case the proposed zoning is conditioned to properly limit development intensity of the proposed industrial development area to 50,000 square feet as requested by FDOT. The comment from the FDOT does not require any modifications to the proposed Lee Plan amendment as the property is concurrently being rezoned.

**B. STAFF RECOMMENDATION:**

Staff recommends that the Board of County Commissioners adopt the proposed amendment as transmitted.

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: September 28<sup>th</sup>, 2011

**A. BOARD REVIEW:**

The proposed amendment was heard as part of the consent agenda. The Board of Commissioners provided no comment concerning the amendment. No member of the public appeared or provided comments concerning the proposed amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

The Board voted to *adopt* the proposed amendment as part of the Consent Agenda.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board accepted the findings of fact as advanced by staff and the Local Planning Agency.

**C. VOTE:**

<b>BRIAN BIGELOW</b>	<u>    <b>AYE</b>    </u>
<b>TAMMARA HALL</b>	<u>    <b>AYE</b>    </u>
<b>RAY JUDAH</b>	<u>    <b>AYE</b>    </u>
<b>FRANK MANN</b>	<u>    <b>AYE</b>    </u>
<b>JOHN MANNING</b>	<u>    <b>AYE</b>    </u>