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**VILLAGE OF ESTERO, FLORIDA**

**ORDINANCE NO. 2019 - 24**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ADOPTING AN AMENDMENT TO THE VILLAGE OF ESTERO COMPREHENSIVE PLAN TO CHANGE THE TEXT OF FUTURE LAND USE POLICY 1.2.3. RELATING TO WETLANDS; PROVIDING FOR TRANSMITTAL OF THE AMENDMENT TO THE STATE OF FLORIDA AND OTHER REVIEWING AGENCIES AS REQUIRED BY STATUTE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council, at a duly noticed public hearing held on June 13, 2018, adopted its Comprehensive Plan on second reading; and

**WHEREAS**, the Plan contains numerous policies protecting wetlands; and

**WHEREAS**, this Comprehensive Plan Amendment proposes a change to Future Land Use Policy 1.2.3. to clarify the policy and, as a result of an administrative challenge to the Village's Comprehensive Plan; and

**WHEREAS**, the change to the Policy below will clarify the parameters allowing density transfer from preserved wetlands; and

**WHEREAS**, the Amendment also allows for Residential Planned Development zonings approved by Lee County prior to October 20, 2010 to allow transfer of density to impacted wetlands, upon a finding by the Village Council that the development has satisfactorily addressed adverse impacts to its wetlands; and

**WHEREAS**, the Village Planning and Zoning Board, at a duly noticed public hearing held on June 18, 2019, recommended that the Comprehensive Plan Amendment be adopted by the Village Council on first reading for transmittal pursuant to Section 163.3184 of the Community Planning Act; and

**WHEREAS**, the Village Council, at a duly noticed meeting, held a first reading on this Ordinance on July 24, 2019, considered the recommendation of the Village Planning and Zoning Board and the comments of the public, and voted to transmit the Amendment to the State Land Planning Agency and other reviewing agencies as provided in Section 163.3184, Florida Statutes; and

45           **WHEREAS**, the Village’s adopted Comprehensive Plan is not yet effective, and once  
46 it is effective, the Village intends that the adopted Amendment then shall become effective.

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48           **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,  
49 Florida:

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51           **Section 1.   Recitals.**

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53           The foregoing “Whereas” clauses are hereby ratified and incorporated as a part of this  
54 Ordinance.

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56           **Section 2.   Adoption of the Comprehensive Plan Amendment for Transmittal.**

57  
58           The Village Council adopts on first reading the Comprehensive Plan Amendment as  
59 proposed below for purposes of transmittal to the State Land Planning Agency and other  
60 reviewing agencies as provided by Section 163.3184(4)(e), Florida Statutes.

61  
62           FLU-1.2.3 WETLANDS. Wetlands are those lands that are identified as  
63 Wetlands on the Future Land Use Map in accordance with Florida Statute  
64 Section 373.019(27). If a Wetlands boundary on the Future Land Use Map is  
65 incorrect due to a clear factual error, or if an exact boundary is established per  
66 jurisdictional determination or Florida Statute Section 373.019, an  
67 administrative process may be used to establish the precise boundary of the  
68 Wetland.

69           A. Uses: Permitted land uses in Wetlands consist of very low density residential  
70 uses and recreational uses that will not adversely affect the ecological functions  
71 of wetlands, open space, and conservation that are compatible with wetland  
72 functions.

73           B. Development type: Development in Wetlands must not adversely affect the  
74 ecological functions of wetlands.

75           C. Density: The maximum density on Wetlands is one dwelling unit per twenty  
76 acres (1 du/20 acre).

77           D. Notwithstanding C. above, to encourage the preservation of lands  
78 designated Wetlands in Planned Developments, density may be transferred  
79 from preserved Wetlands to uplands ~~any Wetlands area that is preserved may~~  
80 ~~be calculated to yield dwellings at three-fourths (or 75%) of the standard density~~  
81 ~~as allowed for adjacent land~~ under common ownership within the Planned  
82 Development that are designated Village Neighborhood 1, Village  
83 Neighborhood 2, Transitional Mixed Use, or Urban Commercial. ~~(formerly~~

84 ~~Intensive Development, Central Urban, Urban Community, Suburban, and~~  
85 ~~Outlying~~

86 ~~Suburban areas). Density transferred from Wetlands as provided herein shall be~~  
87 ~~calculated at three-fourths (75%) of the designated density for the uplands to~~  
88 ~~which the density is transferred. Uplands to which density is transferred shall~~  
89 ~~not include any impacted wetlands which are filled or otherwise converted into~~  
90 ~~uplands pursuant to an Environmental Resource Permit issued by the South~~  
91 ~~Florida Water Management District. The number of dwellings calculated as~~  
92 ~~yield from the preserved Wetlands may be transferred and incorporated in the~~  
93 ~~development of the adjacent land under common ownership.~~

94 ~~2. Any wetlands designated area that is impacted will be calculated at the~~  
95 ~~standard Wetlands density of 1 dwelling unit per 20 acres.~~

96 ~~Further, a Residential Planned Development approved by Lee County prior to~~  
97 ~~October 20, 2010 may be superseded by a Residential Planned Development to~~  
98 ~~allow transfer of density from preserved wetlands to impacted wetlands within~~  
99 ~~the Residential Planned Development at the standard density for uplands~~  
100 ~~designated Village Neighborhood 1, conditioned upon the Village's finding that~~  
101 ~~the development has sufficiently addressed adverse impacts to wetlands on the~~  
102 ~~property.~~

103 **Section 3. Transmittal.**

104

105 The Village Manager or his designee shall transmit the Comprehensive Plan  
106 Amendment and other materials as required by statute to the State Land Planning Agency and  
107 other reviewing agencies as provided by Section 163.3184, Florida Statutes.

108

109 **Section 4. Severability.**

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111 If any provision of this Ordinance or its application to any person or circumstance is  
112 held invalid, the invalidity does not affect other provisions or applications of this Ordinance  
113 which can be given effect without the invalid provision or application, and to this end the  
114 provisions of this Ordinance are severable.

115

116 **Section 5. Conflict.**

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118 All ordinances, resolutions, official determinations or parts thereof previously adopted  
119 or entered by the Village or any of its officials and in conflict with this Ordinance are hereby  
120 repealed to the extent inconsistent herewith.

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**Section 6. Effective Date.**

This Ordinance shall take effect upon adoption at second reading, except that the effective date of the Comprehensive Plan Amendment shall be thirty-one (31) days after the State Land Planning Agency notifies the Village that the plan amendment package is complete or, if timely challenged, thirty-one (31) days after the State Land Planning Agency or the Administration Commission enters a final order determining the adopted Plan Amendment to be in compliance, and only after the Comprehensive Plan adopted June 13, 2018 becomes effective.

**PASSED** on first reading this \_\_\_\_ day of \_\_\_\_\_. 2019.

**PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this \_\_\_\_ day of \_\_\_\_\_, 2019.

Attest:

**VILLAGE OF ESTERO, FLORIDA**

By: \_\_\_\_\_  
Kathy Hall, MMC, Village Clerk

By: \_\_\_\_\_  
Bill Ribble, Mayor

Reviewed for legal sufficiency:

By: \_\_\_\_\_  
Nancy Stroud, Esq., Village Land Use Attorney

Vote:	AYE	NAY
Mayor Ribble	_____	_____
Vice Mayor Errington	_____	_____
Councilmember Batos	_____	_____
Councilmember Boesch	_____	_____
Councilmember Levitan	_____	_____
Councilmember McLain	_____	_____
Councilmember Wilson	_____	_____