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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 of permissible 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, sitting as the Local Planning Agency, at a duly noticed public hearing held on June 18, 2019, recommended approval of the Comprehensive Plan Amendment; 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

44 **WHEREAS**, the Village intends that the adopted Amendment shall become effective
45 upon the effective date of the Village Comprehensive Plan; and
46

47 **WHEREAS**, the Village held a final public hearing on September 25, 2019 to consider
48 the comments of the State land planning agency and the public.
49

50 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
51 Florida:
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53 **Section 1. Recitals.**
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55 The foregoing "Whereas" clauses are hereby ratified and incorporated as a part of this
56 Ordinance.
57

58 **Section 2. Adoption of the Comprehensive Plan Amendment.**
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60 The Village Council adopts the Comprehensive Plan Amendment as proposed below
61 as provided by Section 163.3184(4)(e), Florida Statutes.
62

63 FLU-1.2.3 WETLANDS. Wetlands are those lands that are identified as
64 Wetlands on the Future Land Use Map in accordance with Florida Statute
65 Section 373.019(27). If a Wetlands boundary on the Future Land Use Map is
66 incorrect due to a clear factual error, or if an exact boundary is established per
67 jurisdictional determination or Florida Statute Section 373.019, an
68 administrative process may be used to establish the precise boundary of the
69 Wetland.
70

71 A. Uses: Permitted land uses in Wetlands consist of very low density residential
72 uses and recreational uses that will not adversely affect the ecological functions
73 of wetlands, open space, and conservation that are compatible with wetland
74 functions.
75

76 B. Development type: Development in Wetlands must not adversely affect the
77 ecological functions of wetlands.
78

79 C. Density: The maximum density on Wetlands is one dwelling unit per twenty
80 acres (1 du/20 acre).
81

82 D. Notwithstanding C. above, to encourage the preservation of lands
83 designated Wetlands in Planned Developments, density may be transferred
84 from preserved Wetlands to uplands under common ownership within the
85 Planned Development that are designated Village Neighborhood 1, Village
86 Neighborhood 2, Transitional Mixed Use, or Urban Commercial. Density
87 transferred from Wetlands as provided herein shall be calculated at three-

fourths (75%) of the designated density for the uplands to which the density is transferred. Uplands to which density is transferred shall not include any impacted wetlands which are filled or otherwise converted into uplands pursuant to an Environmental Resource Permit issued by the South Florida Water Management District.

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

Section 3. Transmittal of Adopted Plan.

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

Section 4. Severability.

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

Section 5. Conflict.

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

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.

132 PASSED on first reading this 24th day of July, 2019.

133

134 PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero,
135 Florida this 25th day of September, 2019.

136

137 Attest:

VILLAGE OF ESTERO, FLORIDA

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139

140 By: Kathy Hall
141 Kathy Hall, MMC, Village Clerk

By: Bill Ribble
Bill Ribble, Mayor

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144 Reviewed for legal sufficiency:

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147 By: Nancy Stroud
148 Nancy Stroud, Esq., Village Land Use Attorney

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151	Vote:	AYE	NAY
152	Mayor Ribble	<u>✓</u>	<u> </u>
153	Vice Mayor Errington	<u>✓</u>	<u> </u>
154	Councilmember Batos	<u>✓</u>	<u> </u>
155	Councilmember Boesch	<u>✓</u>	<u> </u>
156	Councilmember Levitan	<u>✓</u>	<u> </u>
157	Councilmember McLain	<u>✓</u>	<u> </u>
158	Councilmember Wilson	<u>✓</u>	<u> </u>