VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council
Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

Village Manager
John C. Gilbert

DATE: February 28, 2012

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Amendment to the Village Code: Soil Erosion, Fugitive Dust, and Sediment Control

RECOMMENDATION

It is recommended that Village Council approve the attached Ordinance at second reading which establishes regulations dealing with soil erosion, fugitive dust, and sediment control. The Ordinance was approved at first reading on February 7, 2012.

BACKGROUND

The National Pollutant Discharge Elimination System (NPDES) regulates the discharges of water from a point source (pipes, ditches, or channels) into a waterbody. Our MS4 Phase I NPDES permit requires the Village to adopt additional standards and regulations regarding water quality, including standards to provide for erosion, fugitive dust and sediment control. The attached Ordinance establishes regulations that address:

1. activities occurring on land that cause excessive runoff and accelerate the process of soil erosion causing a reduction in water quality.
2. particulate matter during construction or demolition that may trespass on neighboring properties or reduce air quality.

At first reading, the Council reviewed the Ordinance with changes that address situations that are relevant to the Key. The changes are highlighted in yellow on the attached Ordinance. The Ordinance is recommended by our consultant Tetra Tech and has been reviewed by the Village Attorney and the Building, Zoning and Planning Director.

ORDINANCE NO. 2012 - ____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 8 "ENVIRONMENT" TO CREATE ARTICLE VIII "SOIL EROSION, FUGITIVE DUST AND SEDIMENT CONTROL" TO PROVIDE FOR SOIL EROSION AND SEDIMENT POLLUTANT MANAGEMENT AND CONTROL REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, under the National Pollutant Discharge Elimination System (NPDES) program, all municipal, industrial and commercial facilities that discharge wastewater directly from a point source (a discrete conveyance such as a pipe, ditch or channel) into a receiving waterbody (lake, river, ocean) are issued an NPDES permit; and

WHEREAS, in compliance with the renewed MS4 Phase I NPDES permit issued to the Village of Key Biscayne (the "Village"), the Village is required to adopt additional standards and regulations regarding water quality, including standards to provide for erosion, fugitive dust and sediment control; and

WHEREAS, the Village Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. **Village Code Amended.** The Village Council hereby creates Article VIII "Soil Erosion, Fugitive Dust and Sediment Control," of Chapter 8 "Environment" as follows:[1]

Article VIII. Soil Erosion, Fugitive Dust and Sediment Control.

Sec. 8-423. Purpose and intent.

(a) Land ~~d~~Disturbing ~~a~~Activities can cause excessive runoff and accelerate the process of soil erosion, resulting in the damage and loss of natural resources, including the degradation of water quality.

(b) In addition, emissions of particulate matter during construction and demolition, including but not limited to incidents caused by vehicular movement, transportation of materials, construction, alteration, demolition or wrecking of buildings or structures, or the stockpiling of particulate substances, may trespass on neighboring properties and degrade air quality.

(c) The Village finds that:

(1) Excessive quantities of soil may erode from areas undergoing development due to ~~l~~Land ~~d~~Disturbing ~~a~~Activity.

(2) Soil erosion can result in the degradation of valuable shoreline resources, such as ~~d~~Dunes and lagoonal shoreline communities.

(3) Sediment from soil erosion can clog storm sewers and swales, and silt navigational channels.

(4) Sediment and ~~s~~Sediment-~~r~~Related ~~p~~Pollutants degrade wetland systems, resulting in the destruction of aquatic life and degradation of water quality.

[1] Revisions following first reading of the Ordinance are shown as follows: additions are indicated by highlighted underlined text, and deletions are indicated by highlighted underlined and ~~strike through~~ text.

(5) Airborne ~~s~~Sediments can constitute a nuisance for adjacent property owners, and degrade the quality of the air.

Sec. 8-424. Purpose.

The purpose of this article is to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity which disturbs or otherwise results in the movement on earth of land situated in the ~~v~~Village.

Sec. 8-425. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director means the ~~director of public works~~ Village Manager or designee.

Dune means a hill or ridge of windblown sand and marine deposits formed by action of the wind and water, often stabilized by vegetation indigenous to this formation.

Erosion and sediment control plan means a plan for the control of soil erosion, sedimentation of waters and ~~s~~Sediment-~~r~~Related ~~p~~Pollutants, and stormwater runoff resulting from ~~l~~Land ~~d~~Disturbing ~~a~~Activity. ~~The village may require the party responsible for carrying out the plan to submit monitoring reports, as deemed necessary, to determine whether the measures required by the approved plan are being properly performed.~~

~~*Ground cover* means plants, other than turf grass, normally reaching an average maximum height of not more than 24 inches at maturity.~~

Land disturbing activity means any land change that may result in soil erosion from water or wind and the movement of ~~s~~Sediments and ~~s~~Sediment ~~r~~Related ~~p~~Pollutants in waters, including but not limited to clearing, grading, excavating, transporting and filling of land, and tree removals.

~~*Planting* means the placing on or setting into the ground of live plant material.~~

Sediment means the mineral or organic particulate material that is in suspension or has settled in ~~s~~Surface ~~w~~Waters or groundwaters.

Sediment related pollutants means substances such as nutrients, pesticides, pathogens, and organic materials that are transmitted with, or in association with, ~~s~~Sediment.

Surface water means water above the surface of the ground whether or not flowing through definite channels.

~~*Turf* means continuous plant coverage consisting of grass species suited to growth in the county.~~

~~*Wetlands* means those lands defined by F.S. § 373.019(25) as wetlands, as may be amended.~~

Sec. 8-426. Erosion and sediment control plan and standards.

No person ~~may~~ shall engage in ~~l~~Land ~~d~~Disturbing ~~a~~Activity until an Erosion and Sediment Control ~~p~~Plan has been submitted ~~for erosion and sediment control~~ and the plan has been approved by the ~~d~~Director. The Erosion and Sediment Control Plan shall comply with the erosion control standards provided in ~~this article~~ the latest edition of the Florida Stormwater Erosion and Sediment Control Inspector's Manual published by the Florida Department of Environmental Protection Nonpoint Source Management Section

~~shall be incorporated~~ as determined to be applicable by the Director at the time of permit application ~~into the erosion and sediment control plan~~. The Director shall require the party responsible for carrying out the Erosion and Sediment Control Plan to submit monitoring reports, as deemed necessary, to determine whether the measures required by the approved Erosion and Sediment Control Plan are being properly performed.

~~**Sec. 8-427. Standards.**~~

~~(a) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to wetlands or the shoreline of Biscayne Bay unless a 25-foot buffer zone is provided along the margin of the watercourse.~~

~~(b) The angle for graded slopes and fills shall not be greater than the angle that can be retained by vegetative cover, or other adequate erosion control, devices or structures (generally 4:1 or less). Slopes left exposed will, within ten working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.~~

~~(c) Groundcover sufficient to restrain erosion must be planted or otherwise provided on portions of cleared land upon which further construction activity is not being undertaken within 15 days of clearing.~~

~~(d) Vegetative cover or other erosion control devices or structures used to meet these requirements shall be properly maintained during and after construction.~~

~~(e) Temporary seeding or sodding, adequate covering, or chemical application shall be used on exposed soils, including stockpiles of topsoil, sand or other construction fill, where delays in construction of more than one day are anticipated.~~

Sec. 8-~~428~~ 427. Exemptions.

Minor ~~l~~Land ~~d~~Disturbing ~~a~~Activit~~y~~ies, such as home gardens and individual home landscaping, repairs, maintenance work, and other related activities, shall be exempt from the requirements of this article, provided that such activities do not contribute to any on-site generated erosion, or degradation of lands or water beyond the boundaries of the property involved.

Sec. 8-~~429~~ 428 . Enforcement.

~~(a) *Injunctive relief.* Any violation of any provision of this article, or of any regulation or order issued hereunder, shall be subject to injunctive relief if necessary to protect the public health, safety or general welfare.~~

~~(b) *Continuing violation.* A person shall be deemed guilty of a separate violation for each day during any continuing violation of any provision of this article, or of any regulation or permit issued hereunder.~~

~~(c)~~ (a) *Enforcement actions.* The ~~d~~Director ~~may~~ shall take all actions necessary, including the issuance of notices and violations, the filing of court actions, and/or referral of the matter to the board of special magistrates in accordance with Article III of Chapter 2 of this code, to require fines and enforce compliance with the provisions of this article and with any regulation or permit issued hereunder.

~~(d)~~ (b) *Stop work orders.* In addition to other remedies for violation as provided in this section, violation of this article shall constitute grounds for the issuance of a stop work order by the building official in accordance with the provisions of the building code.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Conflicts.** All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading

PASSED AND ADOPTED on first reading this ____ day of _____, 2012.

PASSED AND ADOPTED on second reading this ____ day of ____, 2012.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

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VILLAGE ATTORNEY