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August 13, 2013

Mr. Allen P. Hubbard, P.E., Program Administrator  
Florida Department of Environmental Protection  
Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

Dear Mr. Hubbard,

Provided below are the Responses to the FDEP Comments regarding the Town of Cloud Lake Annual NPDES Report (Third Term, Year 2) as part of FDEP's "Year 2 Annual Report Comments".

**Comment re: Stormwater Management Program Resources:** Part II.F. of the MS4 permit requires each permittee to report the SWMP budget in the Annual Report. If program resources have been decreased from the previous year, a discussion of the impacts on the implementation of the SWMP shall be provided. Each permittee shall also have a source of funding for implementing all the other requirements included in this permit.

**Response:** *The major expenses incurred by the Town each year for administration of the NPDES Program are mostly in salary and consultant fees to implement the program. The decrease in the budget amount of \$2694 was primarily due to the fact that no engineering services were needed to meet the permit requirements; thus there were no Engineering Fees incurred during Year 2 of the permit. There were, however, some minor increases to insurance costs, aquatic weed control at the Lake, operation of the drainage pump, and other less significant expenses. These changes account for the difference in program resources reported between Year 1 and 2 of the current permit.*

**Comment re: Florida-Friendly Fertilizer Ordinance:** Part III.A.6. of the MS4 permit requires that if a Florida-Friendly Landscaping Ordinance is not adopted, all local governments within the watershed of a nutrient-impaired water body shall adopt the Department's Model Ordinance for Florida-Friendly Fertilizer Use on

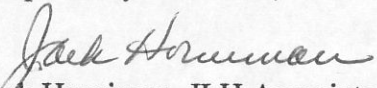


Urban Landscapes or an ordinance that includes all of the requirements set forth in the Model Ordinance. The ordinance is required to be adopted within 24 months of permit issuance.

***Response:*** *The Town of Cloud Lake has scheduled first reading of a Fertilizer-Friendly Use Ordinance for September 12, 2013 and October 10, 2013 for second reading and final adoption of this Ordinance. A copy of the 'Draft' Ordinance is attached for your records.*

I hope these **Responses** provide adequate explanations and/or corrections to the Department's Comment. If you have any questions regarding this matter, please contact me.

Respectfully submitted,



Jack Horniman, JLH Associates  
Town of Cloud Lake Planning Consultant

Cc. Alan Wertepny, PBC NPDES Coordinator  
Dorothy Gravelin, Clerk, Town of Cloud Lake

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CLOUD LAKE, FLORIDA, AMENDING CHAPTER 8 ENVIRONMENT, BY CREATING A NEW ARTICLE IV. FERTILIZER-FRIENDLY USE ORDINANCE, SECTIONS 8-130 THROUGH 8-145, FOCUSING ON EXCESSIVE NUTRIENT LEVELS IN PALM BEACH COUNTY WATER BODIES; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR DOMESTIC ANIMAL WASTE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING AUTHORITY TO CODIFY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, pursuant to Section 303(d) of the federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Palm Beach County as “impaired” as a result of the presence of excessive nutrients; and

**WHEREAS**, Section 403.9337, Florida Statutes, requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to, Section 403.067, Florida Statutes, to adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

1           **WHEREAS**, the Florida Department of Environmental Protection (FDEP) on the  
2           2<sup>nd</sup> day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer  
3           System Permit No. FLS 000018-003 (hereinafter referred to as the “MS4 Permit”) to  
4           forty-one (41) governmental entities including the Town of Cloud Lake; and

5           **WHEREAS**, the MS4 permit requires local governments within the watershed of  
6           a nutrient impaired water body to adopt FDEP’s Model Ordinance for Florida Friendly  
7           Fertilizer Use on Urban Landscapes or an Ordinance that includes all the requirements  
8           set forth in the Model Ordinance; and

9           **WHEREAS**, surface water runoff and base flow runoff leaves residential  
10          neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach  
11          County and enters into natural and artificial stormwater and drainage conveyances and  
12          natural water bodies in Palm Beach County; and

13  
14          **WHEREAS**, phosphorus and nitrogen, the primary nutrients associated with the  
15          degradation of surface water, are commonly the primary components of fertilizer for turf  
16          and landscape application; and

17  
18          **WHEREAS**, the quality of streams, lakes, and wetlands is important to  
19          environmental, economic, and recreational prosperity and to the health, safety, and  
20          welfare of the residents of Palm Beach County; and

21

1           **WHEREAS**, algae blooms and accelerated growth of aquatic weeds in Palm  
2 Beach County's water bodies have heightened community concerns about water quality  
3 and eutrophication of surrounding waters; and  
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5           **WHEREAS**, it is generally recognized that Eastern Palm Beach County soils  
6 naturally have adequate phosphorus content for most vegetative needs and that  
7 additional phosphorus is therefore only occasionally needed to create or maintain a  
8 vibrant landscape; and  
9

10          **WHEREAS**, it has been recognized that proper application of slow-release  
11 nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and  
12

13          **WHEREAS**, this Ordinance is part of a regulatory program to address nonpoint  
14 sources of nutrient pollution which is scientifically based, and economically and  
15 technically feasible; and  
16

17          **WHEREAS**, in the process of adoption of this Ordinance, the Cloud Lake Town  
18 Council has considered scientific information, including input from the Department of  
19 Environmental Protection, the Department of Agriculture and Consumer Services, and  
20 the University of Florida Institute of Food and Agricultural Sciences.  
21

22          **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE**  
23 **TOWN OF CLOUD LAKE, FLORIDA, that:**  
24

**SECTION 1:** Chapter 8 of the Code of Ordinances is hereby amended to create a new Article IV, Sections 8-130 through 8-145 which shall read as follows:

**SECTION 8-130. TITLE.**

This Ordinance shall be known as the Fertilizer-Friendly Use Ordinance.

**SECTION 8-131. DEFINITIONS.**

For this Ordinance, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

1. *“Application”* or *“Apply”* means the actual physical deposition of fertilizer to turf or landscape plants.

2. *“Applicator”* means any person who applies fertilizer on turf and/or landscape plants in Town of Cloud Lake.

3. *“Approved Test”* means a soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.

4. *“Best Management Practices (BMP’s)”* means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practical site-specific means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

5. *“Code Enforcement Officer”, “Official”, or “Inspector”* means any designated employee or agent of the Town of Cloud Lake whose duty it is to enforce codes and ordinances enacted by the Town of Cloud Lake.

1           6.     “Commercial Fertilizer Applicator” except as provided in section  
2 482.1562(9), F.S., means any person who applies fertilizer for payment or other  
3 consideration to property not owned by the person or firm applying the fertilizer or the  
4 employer of the applicators.

5           7.     “Fertilizing”, or “Fertilization” means the act of applying fertilizer to turf,  
6 specialized turf, or landscape plants.

7           8.     “Fertilizer” means any substance or mixture of substances that contains  
8 one or more recognized plant nutrients and promotes plant growth, or controls soil  
9 acidity or alkalinity, or provides other soil enrichment, or provides other corrective  
10 measures to the soil.

11          9.     “Institutional Applicator” means any person, other than a private, non-  
12 commercial or a Commercial Applicator (unless such definitions also apply under the  
13 circumstances), that applies fertilizer for the purpose of maintaining turf and/or  
14 landscape plants. Institutional Applicators shall include, but shall not be limited to,  
15 owners, managers, or employees of public lands, schools, parks, religious institutions,  
16 utilities, industrial or business sites and any residential properties maintained in  
17 condominium and/or common ownership.

18          10. “Landscape Plant” means any native or non-native tree, shrub, or  
19 groundcover (excluding turf).

20  
21          11.     “Person” means any natural person, business, corporation, limited liability  
22 company, partnership, limited partnership, association, club, organization, and/or any  
23 group of people acting as an organized entity.

1           12. "Prohibited Application Period" means the time period during which a  
2 Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or  
3 Warning is in effect for any portion of the Town of Cloud Lake, issued by the National  
4 Weather Service, or if heavy rain (2 inches or more within a twenty-four (24) hour  
5 period) is likely.

6           13. "Saturated Soil" means a soil in which the voids are filled with water.  
7 Saturation does not require flow. For the purposes of this Ordinance, soils shall be  
8 considered saturated if standing water is present or the pressure of a person standing  
9 on the soil causes the release of free water.

10          14. "Slow-Release", "Controlled Release", "Timed Release", "Slowly-  
11 Available", or "Water Insoluble Nitrogen" means nitrogen in a form which delays its  
12 availability for vegetative uptake and use after application, or which extends its  
13 availability to the vegetation longer than a reference rapid or quick release product.

14          15. "Turf", "Sod", or "Lawn" means an area of grass-covered soil held together  
15 by the roots of the grass.

16          16. "Urban Landscape" means pervious areas on residential, institutional,  
17 road rights-of-way, or other nonagricultural lands that are planted with turf or landscape  
18 plants. For the purposes of this section, agriculture has the same meaning as provided  
19 in section 570.02, Florida Statutes.

20  
21 SECTION 8-132. FINDINGS.

22 As a result of the Florida Department of Environmental Protection's determination  
23 that certain water bodies within Palm Beach County are impaired for excessive nutrient  
24 levels, the Town of Cloud Lake finds that the best management practices contained in



1 the most recent edition of the “Florida-Friendly Best Management Practices for  
2 Protection of Water Resources by the Green Industries”, are required in this Ordinance.

3  
4 SECTION 8-133. PURPOSE AND INTENT.

5 This Ordinance regulates the proper use of fertilizers by any applicator; requires  
6 proper training of commercial and institutional fertilizer applicators; establishes training  
7 and licensing requirements; establishes a Prohibited Application Period; and specifies  
8 allowable fertilizer application rates and methods, fertilizer-free zones, and exemptions.

9 This Ordinance requires the use of Best Management Practices to minimize negative  
10 environmental effects associated with excessive nutrients in our water bodies. These  
11 environmental effects have been observed in and on Palm Beach County's natural and  
12 constructed storm-water conveyances, rivers, creeks, canals, lakes, estuaries and other  
13 water bodies. Collectively, these water bodies are an asset important to the  
14 environmental, recreational, cultural and economic well-being of Palm Beach County  
15 residents and the health of the public. Overgrowth of algae and vegetation hinder the  
16 effectiveness of flood attenuation provided by natural and constructed storm-water  
17 conveyances. Regulation of nutrients, including both phosphorus and nitrogen  
18 contained in fertilizer, is anticipated to help improve and maintain water and habitat  
19 quality.

20  
21 SECTION 8-134. APPLICABILITY.

22 This Ordinance shall be applicable to and shall regulate any and all applicators of  
23 fertilizer and areas of application of fertilizer to urban landscapes within the Town of  
24 Cloud Lake, unless such application is specifically exempted by Section XI of this

1 Ordinance. This Ordinance shall be prospective only, and shall not impair any existing  
2 contracts.

3  
4 SECTION 8-135. TIMING OF FERTILIZER APPLICATIONS.

5 1. No applicator shall apply fertilizers containing nitrogen and/or phosphorus  
6 to turf and/or landscape plants during the Prohibited Application Period or to saturated  
7 soils.

8 2. Fertilizer containing nitrogen and/or phosphorus shall not be applied  
9 before seeding or sodding a site, and shall not be applied for the first thirty (30) days  
10 after seeding or sodding, except when hydro-seeding for temporary or permanent  
11 erosion control in an emergency situation (wildfire, etc), or in accordance with the  
12 Storm-water Pollution Prevent Plan for that site.

13  
14 SECTION 8-136. FERTILIZER FREE ZONES.

15 Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector  
16 shield or drop spreader is used, of any pond, stream, water body, lake, canal, or  
17 wetland as defined by the Florida Department of Environmental Protection (Chapter 62-  
18 340), Florida Administrative Code or from the top of a seawall or lake bulkhead. Newly  
19 planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day  
20 period beginning thirty (30) days after planting if needed to allow the vegetation to  
21 become well established. Caution shall be used to prevent direct deposition of fertilizer  
22 into the water.

23  
24 SECTION 8-137. FERTILIZER CONTENT AND APPLICATION RATES.

1           1.     Fertilizers applied to turf within the Town of Cloud Lake shall be applied in  
2 accordance with requirements and directions provided by Rule 5E-1.003(2), Florida  
3 Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under Rule 5E-  
4 1.003(2), Florida Administrative Code, required application rate and frequency  
5 maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or  
6 container.

7           2.     Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape  
8 plants except as provided in section (1) above for turf, or in UF/IFAS recommendations  
9 for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or  
10 tissue deficiency has been verified by an approved test.

11          3.     Fertilizer used for sports turf at golf courses shall be applied in  
12 accordance with the recommendations in “Best Management Practices for the  
13 Enhancement of Environmental Quality on Florida Golf Courses”, published by the  
14 Florida Department of Environmental Protection, dated January 2007, as may be  
15 amended. Fertilizer used at park or athletic fields shall be applied in accordance with  
16 Rule 5E-1.003(2), Florida Administrative Code.

#### 17

18 SECTION 8-138. FERTILIZER APPLICATION PRACTICES.

19          1.     As required in Section VII of this Ordinance, spreader deflector shields  
20 shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be  
21 positioned such that fertilizer granules are deflected away from all impervious surfaces,  
22 fertilizer-free zones and water bodies, including wetlands. Any fertilizer applied, spilled,  
23 or deposited, either intentionally or accidentally, on any impervious surface shall be  
24 immediately and completely removed to the greatest extent practicable.

1           2.     Fertilizer released on an impervious surface must be immediately  
2 contained and either legally applied to turf or any other legal site, or returned to the  
3 original or other appropriate container.

4           3.     In no case shall fertilizer be washed, swept, or blown off impervious  
5 surfaces into storm-water drains, ditches, conveyances, or water bodies.

6           4.     Property owners and managers are encouraged to use an Integrated Pest  
7 Management (IPM) strategy as currently recommended by the University of Florida  
8 Cooperative Extension Service publications.

9  
10 SECTION 8-139. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE  
11 MATTER.

12           In no case shall grass clippings, vegetative material, and/or vegetative debris  
13 intentionally be washed, swept, or blown on to or into storm-water drains, ditches,  
14 conveyances, water bodies, wetlands, sidewalks or roadways. Vegetative material  
15 may be placed within the roadway right-of-way, but not over the storm drains, for pick-  
16 up by the municipality's vegetative waste hauler.

17  
18 SECTION 8-140. EXEMPTIONS.

19           The provisions set forth above in this Ordinance shall not apply to:

20           (a)     bona fide farm operations as defined in the Florida Right-to-Farm Act,  
21 Section 823.14, Florida Statutes.

22           (b)     other properties not subject to or covered under the Florida Right-to-Farm  
23 Act that have pastures used for grazing livestock.

1 (c) any lands used for bona fide scientific research, including, but not limited  
2 to, research on the effects of fertilizer use on urban storm-water, water quality,  
3 agronomics, or horticulture.

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5  
6 SECTION 8-141. TRAINING.

7 1. All commercial and institutional applicators of fertilizer within Palm Beach  
8 County shall abide by and successfully complete the six-hour training program in the  
9 “Florida-Friendly Best Management Practices for Protection of Water Resources by the  
10 Green Industries” offered by the Florida Department of Environmental Protection  
11 through the University of Florida/Palm Beach County Cooperative Extension Service  
12 “Florida-Friendly Landscapes” program or an approved equivalent program.

13 2. Non-commercial and non-institutional applicators not otherwise required to  
14 be certified, such as private citizens on their own residential property, are encouraged to  
15 follow the recommendations of the University of Florida/IFAS “Florida-Friendly  
16 Landscape Program” and label instructions when applying fertilizers.

17  
18 SECTION 8-142. LICENSING OF COMMERCIAL APPLICATORS.

19 1. All businesses applying fertilizer to turf or landscape plants (including, but  
20 not limited to, residential lawns, golf courses, commercial properties, and multi-family  
21 and condominium properties) must ensure that the business owner or his/her designee  
22 holds the appropriate “Florida-Friendly Best Management Practices for Protection of  
23 Water Resources by the Green Industries” training certificate prior to the business  
24 owner obtaining a Local Business Tax Certificate. Owners for any category of

1 occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide  
2 proof of completion of the program to the Town of Cloud Lake Administration Office. It  
3 is the responsibility of the business owner to maintain the “Florida-Friendly Best  
4 Management Practices for Protection of Water Resources by the Green Industries”  
5 certificate to receive their Business Tax Receipt annually.

6       2. After December 31, 2013, all commercial applicators of fertilizer within the  
7 Town of Cloud Lake, shall have and carry in their possession at all times when applying  
8 fertilizer, evidence of certification by the Florida Department of Agriculture and  
9 Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18),  
10 Florida Administrative Code.

11       3. All businesses applying fertilizer to turf and/or landscape plants (including,  
12 but not limited to, residential lawns, golf courses, commercial properties and multi-family  
13 and condominium properties) must ensure that at least one (1) employee has an  
14 appropriate “Florida-Friendly Best Management Practices for Protection of Water  
15 Resources by the Green Industries” training certificate prior to the business owner  
16 obtaining a Local Business Tax Certificate. Standard Business Tax Receipt (BTR and  
17 transaction fees shall apply).

#### 18 19 SECTION 8-143. ENFORCEMENT.

20       The provisions of this Ordinance shall be enforced by (1) the Town of Cloud Lake  
21 Code Special Master pursuant to the authority granted by Section 162.01 et. seq.,  
22 Florida Statutes, (2) the Town of Cloud Lake through its authority to enjoin and restrain  
23 any person violating its Code of Ordinances, or (3) the Town of Cloud Lake through the  
24 provisions of Part II of Chapter 162, Florida Statutes, as may be amended. The Code

1 Enforcement Director may pursue these or any other enforcement remedies available to  
2 and applicable to the Town of Cloud Lake.

3  
4 SECTION 8-144. PENALTIES.

- 5 1. Failure to comply with the requirement of this Ordinance shall constitute a  
6 violation of this Ordinance and shall be punishable by a fine not to exceed \$250,  
7 per incident, for the violation or a fine not to exceed \$500 per incident for a  
8 repeat violation, and, in addition, may include all costs of repairs and remediation  
9 including administrative costs. Each new day the violation exists it is considered  
10 a separate incident.
- 11 2. In determining the amount of fines that should be imposed, the Special Master  
12 shall consider the following factors: (1) the gravity of the violation; (2) any  
13 actions taken by the violator to correct the violation; and (3) any previous  
14 violations committed by the violator. If the Special Master finds the violation is  
15 irreparable or irreversible in nature, a fine not to exceed \$15,000 per violation  
16 may be imposed.
- 17 3. Funds generated by penalties imposed under this Ordinance shall be used by the  
18 Town of Cloud Lake for the administration and enforcement of Section 403.9337,  
19 Florida Statutes, and the corresponding Sections of this Ordinance and to further  
20 water conservation and nonpoint pollution prevention activities.

21 SECTION 8-145. APPEALS.

22 An aggrieved party, including the Town of Cloud Lake, may appeal a final  
23 administrative order of a Special Master to the circuit court. Such an appeal shall not be  
24 a hearing de novo, but shall be limited to appellate review of the record created before

1 the Special Master. An appeal shall be filed within thirty (30) days of the execution of  
2 the order to be appealed.

3  
4 **SECTION 2.** The provisions of this Ordinance shall become and be made a part of the  
5 Town of Cloud Lake Code of Ordinances. The sections of this Ordinance may be  
6 renumbered or re-lettered to accomplish such, and the word “ordinance” may be  
7 changed to “section”, “article”, or other appropriate word.

8  
9 **SECTION 3.** All ordinances or parts of ordinances in conflict herewith are hereby  
10 repealed.

11  
12 **SECTION 4.** If any section, paragraph, sentence, clause, phrase, or word of this  
13 Ordinance is for any reason held by a Court of competent jurisdiction to be  
14 unconstitutional, inoperative, or void, such holding shall not affect the remainder of this  
15 Ordinance.

16  
17 **SECTION 5.** The provisions of this Ordinance shall become effective immediately upon  
18 passage.

19  
20 FIRST READING this \_\_\_\_ day of \_\_\_\_\_, 2013.

21  
22 SECOND READING this \_\_\_\_ day of \_\_\_\_\_, 2013.

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26 TOWN OF CLOUD LAKE, FLORIDA  
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ATTEST:

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Town Clerk