

ORDINANCE NO. 2003-_____

A COUNTYWIDE ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROVIDING FOR A SHORT TITLE, PURPOSE, APPLICABILITY AND AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROTECTION OF NATURAL AREAS; PROVIDING FOR REMOVAL OF PROHIBITED INVASIVE NON-NATIVE VEGETATION; PROVIDING FOR INCENTIVES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, certain species of prohibited invasive non-native vegetation are spreading rapidly into natural areas in Palm Beach County, displacing native vegetation, destroying wildlife habitat and creating undesirable vegetative monocultures; **and**

WHEREAS, certain species of prohibited invasive non-native vegetation have a variety of noxious qualities, including, but not limited to, adverse effects on human health, hazards to public safety, and undesirable aesthetics in Palm Beach County; **and**

WHEREAS, the 1989 Comprehensive Plan, as amended, mandates that Palm Beach County shall continue efforts to eradicate prohibited invasive non-native vegetation; **and**

WHEREAS, Section 9.5, Vegetation and Preservation Ordinance, of the Unified Land Development Code, requires the removal of nine prohibited invasive non-native plants species from only the unincorporated areas of Palm Beach County; **and**

WHEREAS, these nine prohibited invasive non-native plant species are also found in the incorporated areas of Palm Beach County and have the potential to spread to the unincorporated areas of the County; **and**

WHEREAS, eradication of prohibited invasive non-native vegetation will require the combined efforts of the municipalities and Palm Beach County to stop their spread; **and**

WHEREAS, the Board of County Commissioners has determined that natural areas should be protected from unwanted seed sources; **and**

WHEREAS, the Board of County Commissioners has determined an incentive program should be developed to offset costs to parcel owners; **and**

WHEREAS, the Board of County Commissioners has determined that a canopy replacement option be provided to parcel owners.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

Section 1. SHORT TITLE, PURPOSE, APPLICABILITY AND AUTHORITY:

- 1.01 This Ordinance shall be known as the “Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance”.
- 1.02 It is the intent of this Ordinance to require removal and control of prohibited invasive non-native vegetation.
- 1.03 It is the intent of this Ordinance to protect natural areas from unwanted seed sources from outside the natural areas.
- 1.04 It is the intent of this Ordinance to provide incentives for prohibited invasive non-native vegetation removal in advance of the required removal time frames and provide replacement vegetation for canopy loss.
- 1.05 It is the intent of this Ordinance to concentrate efforts and funding on buffers around natural areas.
- 1.06 All provisions of this Ordinance shall be effective within the unincorporated and incorporated areas of Palm Beach County, Florida, except to the extent of conflict with a municipal ordinance, in which case the municipal ordinance will prevail over this Ordinance in accordance with Article 1, Section 1.3 of the Charter of Palm Beach County.
- 1.07 Incentive funds for use within municipalities shall be contingent upon this Ordinance being fully enforced or the adoption and enforcement of an equally stringent or more stringent ordinance by a municipality. Funding determinations

shall be based on Palm Beach County Department of Environmental Resources Management (ERM) review and acceptance or rejection of a municipality's replacement ordinance including the requirement of eradication of prohibited invasive non-native vegetation prior to the certificate of occupancy for improved parcels.

- 1.08 This Ordinance is adopted under the authority of Chapter 125, Florida Statutes, (F.S.), the Charter of Palm Beach County, and the Palm Beach County Comprehensive Plan, as amended. ERM shall administer the requirements of this Ordinance. The provisions of this Ordinance are intended to be supplemental to those provisions of the Unified Land Development Code that regulate prohibited invasive non-native vegetation.

Section 2. DEFINITIONS:

- 2.01 **Buffer Area** means an area outside the perimeter of a designated natural area drawn by geographical information system reference which determines what is to be protected from unwanted seed source, prohibited invasive non-native vegetation removed, incentives provided and canopy replaced.
- 2.02 **Improved Parcel** means real property which has undergone an alteration from its original, natural state, including but not limited to; removal or relocation of native vegetation, mining and excavation, construction of infrastructure including utilities, canals, swales, roadways or paths, or construction of other permanent features or structures.
- 2.03 **Natural Area** means all public or private parcels as approved under this Ordinance containing high quality native ecosystems that are under or assigned to a public entity for management, maintenance, and operation; or private parcels legally described in an applicable deed restriction, plat, restricted covenant, conservation easement, or a separate instrument recorded pursuant to Section 704.06, Florida Statutes and

operating under a management plan approved or accepted by ERM.

- 2.04 **Parcel** means a unit of land with a legally established property line.
- 2.05 **Qualified Parcel** means for unincorporated County, a parcel improved prior to April 28, 1986. For incorporated areas, a qualified parcel is a parcel improved prior to the effective date of a municipal ordinance requiring removal of prohibited invasive non-native vegetation.

Section 3. PROTECTION OF NATURAL AREAS:

- 3.01 The County will establish by geographical information system reference, a 500 foot buffer area around all natural areas listed on Attachment A. Changes to Attachment A and the size of the buffer area may be amended as needed by the Board of County Commissioners.
 - A. Within five years of adoption of this Ordinance , the County shall implement a program to evaluate the effectiveness of the 500 foot buffer for protecting natural areas from reinfestation of prohibited invasive non-native vegetation from nearby parcels.
 - B. Should the County find the 500 foot buffer is ineffective at preventing reinfestation, the County, using best available scientific information, shall determine if an expanded buffer is appropriate.
- 3.02 Natural areas acquired by the Board of County Commissioners using the Conservation Lands Bond Fund shall automatically be added to Attachment A at the time of acquisition.
- 3.03 Any individual, organization, or governmental entity may request an addition to Attachment A by petitioning ERM. The petition shall include a description and map of the proposed addition, written justification for listing and a copy of the management plan, if available. Upon receipt of a petition to add a natural area that meets the criteria of Subsection 2.03 of this Ordinance, ERM shall notify the owner of such natural area

and parcel owners within the proposed buffer, of the petition and any public hearings regarding the petition.

C. For public natural areas, there is no minimum size for listing.

- D. For private natural areas, there must be a minimum of 10 acres of natural area unless determined by ERM to be a highly significant natural area including scrub, wetlands or mangrove communities and maintained under a management plan approved or accepted by ERM.

Section 4. REMOVAL OF PROHIBITED INVASIVE NON-NATIVE VEGETATION:

- 4.01 By January 1, of the applicable year provided on Attachment B, a parcel owner shall remove or caused to be removed or eradicated, the prohibited invasive non-native vegetation as listed on Attachment B unless an exemption is provided under Section 6. of this Ordinance.
- 4.02 Upon removal of prohibited invasive non-native vegetation under this Ordinance or any other ordinance requiring removal of this nuisance vegetation, the parcel owner shall maintain the parcel free of prohibited invasive non-native vegetation.
- 4.03 Qualified parcel owners who receive incentives under this Ordinance shall maintain the parcel free of prohibited invasive non-native vegetation.
- 4.04 Complete removal or eradication of all prohibited invasive non-native vegetation as listed on Attachment B, shall be completed for an entire parcel prior to the certificate of occupancy. Planting or installation of this vegetation is prohibited.

Section 5. INCENTIVES:

- 5.01 The incentive program is available to all qualified parcels and unimproved parcels within the buffer area, subject to availability of funding and annual appropriation of funds by the Board of County Commissioners.
- 5.02 The incentive program may be provided to parcels that are not qualified parcels if it is determined that the prohibited invasive non-native vegetation to be removed under the incentive program was not required by the County or municipality to be removed at the time of parcel improvement.
- 5.03 The initial incentive program is listed in Attachment C. It may be amended as

needed by the Board of County Commissioners.

Section 6. EXEMPTIONS:

- 6.01 Except for the required removal of old-world climbing fern and air potato vine, the following parcels are exempt from Section 4. of this Ordinance:
- A. Parcels with a landscape plan that includes prohibited invasive non-native vegetation, approved by a jurisdictional agency prior to the effective date of this Ordinance, unless the parcel falls within a buffer area. If the parcel or portion of the parcel is located within a buffer area, the parcel is exempt from the time lines for eradication set forth in Attachment B for prohibited invasive non-native vegetation included in the landscape plan provided the parcel owner agrees to participate in an incentive program established to remove that vegetation from the parcel. For purposes of this Ordinance, agreement to participate means the execution of a written agreement with ERM on behalf of the Board of County Commissioners for this purpose, and compliance with said agreement.
 - B. Unimproved parcels, other than those located in buffer areas.
 - C. For improved and unimproved parcels or portions of parcels within buffer areas, time lines set forth in Attachment B for eradication of melaleuca and Australian pine will be suspended if the parcel owner executes an agreement with ERM to participate in an incentive program established to remove that vegetation from the parcel.
 - D. For parcels or portions of parcels outside of buffer areas, removal or eradication of melaleuca and Australian pine is encouraged but not required unless the parcel was improved in the unincorporated area of the County on or after April 28, 1986, or the parcel was improved within a municipality on or after the effective date of a municipal ordinance requiring the removal of those species.

- 6.02 For parcels impacted by greater than 30% coverage of prohibited invasive non-native vegetation or parcels containing 100 acres or greater in size, a management plan may be approved by ERM to space the eradication rate over an extended period. To be eligible for this approval, the management plan must be provided to, and approved by ERM, and eradication begun prior to the required date for removal or eradication of the prohibited invasive non-native vegetation addressed in the plan.
- 6.03 For parcels or portions of parcels that necessitate phased removal or eradication of prohibited invasive non-native vegetation in response to a documented need for maintenance of existing wildlife values, a management plan may be approved by ERM to extend the time for removal.

Section 7. ENFORCEMENT:

- 7.01 Violations of this Ordinance shall be:
- A. Failure of a parcel owner to remove or eradicate Prohibited Invasive Non-Native Vegetation in accordance with Subsection 4.01 of this Ordinance.
 - B. Failure of a parcel owner to maintain non-exempt parcels free of prohibited invasive non-native vegetation in accordance with Subsection 4.02 of this Ordinance.
 - C. Failure of a parcel owner to comply with a non-compliance or notice of violation time frame as described in Subsections 7.02 C and 7.02 D of this Ordinance.
- 7.02 The following are procedures which are to be followed for compliance and enforcement with this Ordinance:
- A. Inspection of a parcel to determine the possible location of prohibited invasive non-native vegetation.
 - B. Preparation and provision of an information notice informing the parcel owner of prohibited invasive non-native vegetation on the parcel and instructions for the removal or eradication of the vegetation and

a time frame provided for compliance. A follow up inspection is conducted.

- C. Preparation and provision of a non-compliance notice to the parcel owner concerning the possible violation of this Ordinance, including a stated time frame of 30 days for compliance. A follow up inspection is conducted.
- D. Preparation and provision of a notice of violation to the parcel owner concerning the possible violation of this Ordinance and failure to comply with the non-compliance notice, including a stated time frame of 30 days for compliance. A follow up inspection is conducted.
- E. Preparation and provision of a Notice of Hearing to the parcel owner concerning the possible violation of this Ordinance, failure to comply with a notice of violation, and an order to appear before the Groundwater and Natural Resources Protection Board (GNRPB).
- F. The decision of the GNRPB, which may include corrective actions and civil penalties in the maximum amount of \$1000.00 per day, per violation, shall be the final administrative action on behalf of ERM and the County. Any person who is a party to the proceeding before the GNRPB may appeal to the Circuit Court of Palm Beach County in accordance with applicable Florida Appellate Rules.

7.03 Additional remedies for enforcement are the civil remedies provided for in Chapter 125, F.S.

7.04 In order to provide an expeditious settlement that would be beneficial to the enforcement of this Ordinance and be in the best interest of the citizens of Palm Beach County, the Director of ERM is authorized to enter into voluntary consent (settlement) agreements with alleged violators. Any such agreement shall be a formal written consent agreement between ERM on behalf of Palm Beach County, by and through its Director, and any such alleged violators, and shall be approved

as to form and legal sufficiency by the County Attorney's Office. The agreement can be entered into at any time prior to the hearing before the GNRPB.

A. Conditions. Such consent agreements may be conditioned upon a promise by the alleged violator to:

1. Remove or eradicate prohibited invasive non-native vegetation and maintain the parcel free of this vegetation, and
2. Remit payment of a monetary settlement not to exceed the maximum amount allowed per violation, as set forth in this Ordinance, and
3. Remit payment for costs and expenses of the County for investigation and enforcement, and
4. Any other remedies and corrective action deemed necessary and appropriate by the Director of ERM to ensure compliance with this Ordinance.

B. The consent agreement shall not serve as evidence of a violation of this Ordinance and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprized of the right to have the matter heard by the GNRPB in accordance with the provisions of this Ordinance, and that execution of the agreement is not required.

C. The consent agreement shall be valid and enforceable in a court of competent jurisdiction in Palm Beach County and shall abate any enforcement proceedings available to ERM for so long as the terms and conditions of such agreement are complied with. In the event the alleged violator fails to comply with the terms and conditions set forth in the executed agreement, the Director of ERM may either:

1. Consider the consent agreement void and pursue any remedies

available for enforcement of the applicable provisions of this Ordinance; or

2. Initiate legal proceedings for specific performance of the consent agreement.

7.05 All monies collected pursuant to violations of this Ordinance whether from consent agreement or the GNRPB shall be deposited in the Palm Beach County Pollution Recovery Trust Fund.

Section 8. REPEAL OF LAWS IN CONFLICT:

Except for applicable provisions of the Unified Land Development Code, all County laws and ordinances applying to the incorporated and unincorporated area of Palm Beach County in conflict with any provision of this Ordinance are hereby repealed to the extent of any conflict.

Section 9. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish such, and the work “ordinance” may be changed to “section”, “article”, or other appropriate word.

Section 11. EFFECTIVE DATE

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on the _____ day of _____, 2003.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY _____
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 2003

ATTACHMENT A

NATURAL AREAS

MUNICIPALITY

Boca Raton:	Blazing Star Preserve Blue Lake Preserve Cypress Knee Slough Preserve Florida Atlantic University Ecological Site Gopher Tortoise Preserve Gumbo Limbo Environmental Complex Hillsborough/El Rio Preserve Rosemary Ridge Preserve Serenoa Glade Preserve Yamato Scrub Natural Area
Boynton Beach:	Ocean Ridge Hammock Rosemary Scrub Natural Area Seacrest Scrub Natural Area
Delray:	Delray Oaks Natural Area Leon Weeks Preserve
Highland Beach:	Highland Beach Mangrove Preserve
Hypoluxo:	Overlook Scrub Natural Area
Juno:	Juno Dunes Natural Area
Jupiter:	Jonathan Dickinson State Park-Palm Beach County portion Jupiter Inlet Natural Area Jupiter Ridge Natural Area Limestone Creek Natural Area North Jupiter Flatwoods Natural Area Sims Creek Preserve
Lake Park:	Lake Park Scrub Natural Area
North Palm Beach:	John D. MacArthur Beach State Park
Ocean Ridge:	Ocean Ridge Natural Area
Palm Beach:	Palm Beach Island Sanctuaries
Palm Beach Gardens:	Frenchman's Forest Natural Area Hungryland Slough Natural Area Loxahatchee Slough Natural Area -includes Sandhill Crane Prosperity Oaks Natural Area
Royal Palm Beach:	Royal Palm Beach Pines Natural Area
West Palm Beach:	Winding Waters Natural Area Grassy Waters Preserve

UNINCORPORATED PALM BEACH COUNTY

Acreage Pines Natural Area
Arthur R. Marshall Loxahatchee NWR
C-18 Triangle Natural Area
Daggerwing Nature Center Preserve
Donald Ross Road at the ICW
Dupuis Reserve
High Ridge Scrub Natural Area
J.W. Corbett Wildlife Management Area
Loxahatchee River Natural Area
North County Airport Preserve
Okeehetee Nature Center Preserve
Osprey Pond Natural Area
Pal-Mar Natural Area
Palms West Hospital Preserve
Pine Jog Environmental Education Center
Pond Cypress Nature Center
Royal Palm Beach Pines Natural Area
Strazzulla Tract
Trump Golf Course Preserve

ATTACHMENT B

Common Name	Scientific Name	Year
Old-world climbing fern	<i>Lygodium microphyllum</i>	2004
Air Potato vine	<i>Dioscorea bulbifera</i>	
Melaleuca, Punk Tree	<i>Melaleuca quinquenervia</i>	2006
Brazilian pepper	<i>Schinus terebinthifolius</i>	2008
Carrotwood	<i>Cupaniopsis anacardioides</i>	
Earleaf acacia	<i>Acacia auriculiformis</i>	2010
Schefflera	<i>Schefflera actinophylla</i>	
Australian pine	<i>Casuarina spp.</i>	2012
Kudzu	<i>Pueraria montana var. lobata</i>	

ATTACHMENT C

AUSTRALIAN PINE AND MELALEUCA REMOVAL PROGRAM

Under this program, the County would pay to remove or eradicate Australian pine and melaleuca on all qualified and unimproved parcels in these buffer areas with permission of the parcel owner. Treatment on unimproved land would be similar to methods used on natural areas with some prohibited vegetation being potentially treated with herbicide in place and not removed from the site. For improved properties, the prohibited vegetation would be removed in its entirety.

COST SHARE PROGRAM FOR OTHER PROHIBITED PLANT SPECIES

The cost share program is being recommended to facilitate the removal of the remaining seven of the nine prohibited invasive non-native plant species on an accelerated schedule to prevent reseeding of the natural areas. As it is necessary that buffer area parcels are cleared of this noxious vegetation in conjunction with the adjacent natural area, the parcel owners within these buffer areas will have the chance to share cost of removal as an incentive to remove the vegetation on an accelerated schedule. Parcel owners in the buffer areas will be offered the opportunity to allow County vendors to remove the remaining seven of the nine prohibited invasive non-native plant species with a very minimal cost share provided by the parcel owners. The work would be accomplished along with the Australian pine and melaleuca removal mentioned in the above program. Parcel owners within the buffer areas will be required to pay some of the costs associated with the removal of the remaining seven plants so they shoulder some of the same financial burden borne by parcel owners outside the buffer areas. The cost-sharing will be based upon the following scale with any single parcel cost limited to no more than \$500.

<u>Canopy Area Removed (Sq. Ft.)</u>	<u>Citizen Cost</u>
1 - 499	\$100
500 - 999	\$200
1000 - 1499	\$300
1500 - 1999	\$400
2000 +	\$500

Under the cost share program, ERM shall notify a parcel owner within a buffer area of prohibited invasive non-native vegetation located on the parcel, the requirement for removal of the vegetation and information concerning any available incentive programs. The offer to the parcel owner to participate in the cost share program shall terminate 60 days after notification of eligibility by ERM. The parcel owner will have to enter into an agreement with the County to have the vegetation removed under the cost share program. The cost share program will remain available for the removal of prohibited invasive non-native vegetation in the buffer areas as long as the vegetation is being removed on an accelerated schedule.

CANOPY REPLACEMENT PROGRAM

ERM recommends a Canopy Replacement Program as an incentive for qualified parcel owners to remove the prohibited vegetation prior to regulatory deadlines. This approach will help to minimize the loss of canopy associated with the removal of prohibited vegetation.

In order to receive replacement vegetation, the qualified parcel owner must sign-up for the program and submit to an initial inspection to verify the extent of the prohibited vegetation. After the owner removes the vegetation, staff will reinspect the parcel to verify removal. If removal is complete, the qualified parcel owner will be given a voucher to be redeemed at participating nurseries for a list of approved trees. If the owner wishes, the trees can be delivered for a small fee and/or planted also for an additional fee. This fee will be paid by the qualified parcel owner directly to the participating vendor.

Due to the potential number of trees that may be required in addition to ensuring a standard tree size, tree availability may be limited during the first 2-3 years of the program. The vendors will be required to provide Florida Grade #1 or better trees according to the most current version of the Florida Department of Agriculture and Consumer Services Florida Grades and Standards For Nursery Plants.

A maximum of five replacement trees per qualified parcel will be allowed. A breakdown of the number of replacement trees per prohibited vegetation canopy area removed is as follows:

<u>Canopy Area Removed (Sq. Ft.)</u>	<u># of Replacement Trees</u>
1 - 499	1
500 - 999	2
1000 - 1499	3
1500 - 1999	4
2000 +	5

PUBLIC LANDS GRANT PROGRAM

As ambitious as the County plan is to remove these invasive plant species, without the cooperation of public entities in removing these plants from their own properties, the goal of reducing the seed source of these plants will not be accomplished. However, some of these public entities may lack the resources or the technical knowledge to effectively control and manage the prohibited vegetation.

This incentive proposal includes the establishment of a matching grant program made available to the public entities for the removal of non-native invasive vegetation on publicly-owned lands. The project will target all County prohibited plant species. A project selection process will be established which prioritizes potential projects based upon such factors as; removal of the nine (9) Palm Beach County prohibited plant species, matching funds, revegetation with native plant species, and proximity to natural areas. Public entities will be required to provide fifty-percent matching funds.

INVASIVE VINE STRIKE FORCE

The Invasive Vine Strike Force proposal is a quick response strike force that would treat and kill Lygodium and Air Potato vines from public and private properties. Lygodium is an invasive vine spreading at an alarming rate. It’s a relative newcomer to the world of invasive plants, and spreading at a rate unmatched by any other invasive species. It quickly engulfs and kills native vegetation by blocking out sunlight and providing a means for wildfires to spread into tree canopies. Though not spreading as fast, air potato vine is similar in its characteristic to Lygodium in that it quickly engulfs underlying trees and vegetation, eventually killing the plants. Removal of both of these vines is somewhat difficult and tedious for the average parcel owner. A quick response strike force would assist parcel owners in controlling these vines on their parcel while at the same time slowing the spread of this vine by reducing the seed source.

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