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TOWNSHIP OF LEELANAU
COUNTY OF LEELANAU, STATE OF MICHIGAN

ORDINANCE NO. 2

ADOPTED: MAY 11, 2010

EFFECTIVE: 1 DAY AFTER PUBLICATION
FOLLOWING ADOPTION

PHRAGMITES ORDINANCE

An ordinance, in accordance with Act 246 of the Public Acts of 1945, as amended, to provide procedures to identify Township properties infested with *Phragmites Australis*; to prescribe eradication and treatment procedures for the management of *Phragmites Australis* in the Township consistent with federal and state due process requirements; and to repeal all ordinances or parts of ordinances in conflict herewith.

THE TOWNSHIP OF LEELANAU,
LEELANAU COUNTY, MICHIGAN

ORDAINS:

SECTION 1. TITLE.

This Ordinance shall be known as the Leelanau Township Phragmites Ordinance.

SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE OF ORDINANCE.

A. The Leelanau Township Board bases its adoption of this Ordinance on its findings that *Phragmites Australis* is an invasive species whose spread is not halted by traditional legal boundaries between parcels. Although *Phragmites Australis* seeds can cause a small amount of spread, most reproduction is accomplished through runners growing along the ground. A single stand of *Phragmites Australis* can spread 30-50 feet per year through these runners. If left unchecked, dense *Phragmites Australis* stands can block views of Lake Michigan, the Grand Traverse Bay and Northport Bay, make beaches inaccessible and can ultimately lead to a decline in tourism and property values. In addition, the spread of *Phragmites Australis* can drive out native plant species, thereby destroying beneficial wildlife habitat.

B. The purpose of this Ordinance is to provide procedures to eliminate or reduce the adverse impacts associated with the *Phragmites Australis* infestation in the Township. Such procedures

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will include identifying Township properties infested with *Phragmites Australis* and prescribing eradication and treatment procedures for the management of *Phragmites Australis* in the Township in a manner consistent with due process.

SECTION 3. DEFINITIONS.

As used in this Ordinance:

“Bottomland” means lands in Grand Traverse Bay, Northport Bay and in Lake Michigan, including the bays and harbors thereof, lying below and lakeward of the ordinary high water mark.

“Ordinary high water mark” means, as to Lake Michigan, Northport Bay and the Grand Traverse Bay, the elevation above sea level, International Great Lakes datum of 1955 established for Lake Michigan by Section 32502 of Part 325 of the Natural Resources and Environmental Protection Act of 1984, as amended, being MCL 324.32502, as amended, as revised in the International Great Lakes datum of 1985 established for Lake Michigan, 580.5 feet, as referenced in Division Guidance Memo Admin-01-01 (dated 4/23/01) of the Land and Water Management Division of the Michigan Department of Environmental Quality (now Michigan Department of Natural Resources and Environment).

“Person” means an individual, firm, corporation, association, partnership, limited liability company, or other legal entity.

“Phragmites” or “Phragmites plant” means the invasive plant species with the scientific name *Phragmites Australis*, also known as the common reed, which is a large perennial grass native to wetland sites throughout temperate regions of the world.

“Phragmites administrator” means the person(s) appointed by the Township Board to administer this Ordinance.

“Phragmites eradication zone” means the bottomland within the Township with a Phragmites infestation that the Township Board has determined is subject to Phragmites treatment.

“Phragmites infestation” means the presence of one or more seed heads in a Phragmites plant.

“Phragmites treatment” means the application of necessary herbicide chemicals by a person authorized to do so under a permit issued by the Michigan Department of Natural Resources and Environment. (MDNRE)

“Township Board” means the Leelanau Township Board.

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SECTION 4. PHRAGMITES INSPECTION; PHRAGMITES REPORT, RIGHT TO ACCESS PROPERTY; CONSENT; ADMINISTRATIVE SEARCH WARRANT.

A. As directed by the Township Board, the Phragmites administrator may annually conduct an inspection of all Grand Traverse Bay shoreline properties, Northport Bay shoreline properties, and Lake Michigan shoreline properties for the purpose of identifying parcels on which a *Phragmites Australis* infestation is present. The Township Board may, in its discretion, allow the Phragmites administrator to utilize inventories, reports or other studies of a Phragmites infestation within the Township prepared by other parties such as the Michigan Department of Natural Resources and Environment (MDNRE) or the Leelanau Conservation District in lieu of or in supplementation of any inspections conducted by the Phragmites administrator.

B. The Phragmites administrator shall annually submit a written report of his or her findings regarding Phragmites infestation within the Township by such date as the Township Board shall specify.

C. In conducting inspections hereunder, the Phragmites administrator shall have the right to access all Grand Traverse Bay shoreline properties, Northport Bay shoreline properties and Lake Michigan shoreline within the Township for the purpose of conducting such inspections. Before entering onto any Township parcel to conduct an inspection, the Phragmites administrator shall obtain written consent from the property owner for any such inspection. If the property owner fails to provide written consent to the Phragmites administrator for the physical inspection of the parcel, the Phragmites administrator shall not enter onto the parcel, unless authorized to do so by an administrative search warrant issued by a court of competent jurisdiction.

D. In the event the Phragmites administrator determines that Phragmites is growing consistently, even on an intermittent basis, along the entire Grand Traverse Bay shoreline, the entire Northport Bay shoreline and/or along the Lake Michigan shoreline, the administrator may recommend in his/her report that the entire shorelines of one or more of these bodies of water shall constitute the Phragmites eradication zone. In such case, all such shoreline parcels shall be provided notice of the hearing described in Section 5. The notice shall explain to property owners that only those properties actually containing Phragmites will be treated, and that properties containing Phragmites may also be excluded from the Phragmites eradication zone in accordance with the provisions set forth under Section 6 of this Ordinance.

SECTION 5. PUBLIC HEARING TO SHOW CAUSE WHY PROPERTY SHOULD NOT BE INCLUDED IN PHRAGMITES ERADICATION ZONE; NOTICE OF PUBLIC HEARING

After receiving the written report from the Phragmites administrator identifying all parcels in the Township on which a *Phragmites Australis* infestation is present, the Township Board shall schedule a public hearing giving the owners of the property identified by the Phragmites administrator in his or her written report, submitted to the Township Board under Section 4 of this Ordinance, an opportunity to show cause why their property should not be included in the Phragmites eradication zone for that year. A written notice of the public hearing specifying the time, date, and place of the hearing and stating that the parcel has been tentatively identified for inclusion in the Phragmites eradication zone and the basis for exclusion of the parcel from the

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eradication zone under Section 6, shall be sent by first-class mail to all owners of record or other parties in interest whose names and mailing addresses are on the Township assessment records no less than twenty (20) days before the hearing. Notice of the public hearing shall also be published twice in a newspaper of general circulation in the Township with the first publication being no less than twenty (20) days before the hearing.

SECTION 6. PARCELS TO BE INCLUDED IN THE PHRAGMITES ERADICATION ZONE.

A. Following the public hearing required under Section 5 of this Ordinance, the Township Board shall determine which parcels identified by the Phragmites administrator in his/her written report submitted to the Township Board under Section 4 of this Ordinance shall be included in the Phragmites eradication zone.

B. The Township Board may exclude a parcel identified by the Phragmites administrator in his/her written report based upon the following:

(i) Due to the isolation of the parcel in relation to other parcels, the minor nature of the Phragmites infestation on the parcel, or other factors, the exclusion of the parcel from the Phragmites eradication zone will not have a significantly detrimental impact on the effectiveness of Phragmites treatment in the Township

(ii). The owner of the parcel (or multiple owners of parcels) has applied for a permit from the Michigan Department of Natural Resources and Environment (MDNRE) or other appropriate state or county agency for Phragmites treatment of the parcel(s). Before a property is excluded from the Township program on this basis, however, the property owner(s) shall provide confirmation that the property owner(s) has obtained the necessary permit from the MDNRE for treatment, or from any other appropriate state or county agency, or has confirmation from the MDNRE or other appropriate agency that a permit is not required.

SECTION 7. PHRAGMITES TREATMENT PERMIT

After the Township Board has determined which parcels shall be included in the Phragmites eradication zone for that year, the Phragmites administrator shall, if so directed by the Township Board, make application for any needed state or county permits authorizing Phragmites treatment on the parcels within the Phragmites eradication zone. Any fee charged for such a Phragmites treatment permit shall be paid for as determined by the Township Board.

SECTION 8. PHRAGMITES TREATMENT; COST

Following receipt of all legally required permits, the Township shall, if the Township Board determines in its sole discretion that there are adequate monies available to the Township to pay the cost thereof, make arrangements for a qualified professional to perform Phragmites treatment in the Phragmites eradication zone. The cost of the Phragmites treatment shall be paid for as determined by the Township Board.

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SECTION 9. SEVERABILITY

Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared to be invalid.

SECTION 10. REPEAL

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 12. EFFECTIVE DATE.

This Ordinance shall become effective one (1) day following its publication, after adoption.

Deborah VanPelt, Clerk
Township of Leelanau

ORDINANCE DECLARED ADOPTED.

Leelanau Township

By: James P. Neve
James P. Neve, Supervisor

I, the undersigned, the Clerk of the Township of Leelanau, Leelanau County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Leelanau Township Board of said County at its regular meeting held on May 11, 2010, relative to adoption of the ordinance therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be made available by said Act; this ordinance was published in the Leelanau Enterprise on May 20, 2010.

Dated: 5-12-2010

Deborah K. Van Pelt
Deborah K. Van Pelt, Clerk

PUBLICATION IN LEELANAU ENTERPRISE: THURSDAY, MAY 20, 2010
ADOPTED: MAY 11, 2010
EFFECTIVE DATE: MAY 21, 2010