

BY-LAW NO. 2018-006
of the Waywayseecappo First Nation

**A By-Law for the Destruction and
Control of Noxious Weeds**

WHEREAS the Council of the Waywayseecappo First Nation desires to make a By-Law governing the destruction and control of noxious weeds;

AND WHEREAS the Council of the Waywayseecappo First Nation is empowered to make such By-Law pursuant to paragraphs 81(1)(j), (q) and (r) of the *Indian Act*, 1985, R.S.C. c. I-5;

AND WHEREAS it is considered necessary for the protection of the reserve lands of the Waywayseecappo First Nation to provide for the destruction and control of noxious weeds;

NOW THEREFORE the Council of the Waywayseecappo First Nation hereby makes the following By-Law:

Short Title

1.1 This By-Law may be cited as the "Waywayseecappo First Nation Noxious Weed By-Law".

Interpretation

2.1 In this By-Law,

"*Band*" means the Waywayseecappo First Nation;

"*Community Safety Officer*" means any person appointed by Council or contracted by Council from time to time for the purpose of administering, applying and enforcing this By-Law, and includes any Special or Band Constable, assistant or any person appointed by Council to assist in carrying out the provisions herein and means the Community Safety Officer appointed under section 5;

"*Council*" means the Chief and Council of the Waywayseecappo First Nation;

"*noxious weed*" means a plant that is designated as a noxious weed in Schedule A;

"*reserve*" means the reserves of the Waywayseecappo First Nation and includes the Waywayseecappo Indian Reserve and any other reserve lands under the authority of Council;

"*weed seed*" means the seed of a noxious weed.

Bringing or Placing Noxious Weeds

3.1 No person shall knowingly bring onto the reserve or place or permit to be placed on any part of the reserve any noxious weed or weed seed, or any material or thing containing a noxious weed or weed seed.

Duty to Destroy

4.1 Every person in possession of any land, building, storage unit, vehicle, equipment, tools, fodder or standing or harvested crop located on the reserve shall destroy all noxious weeds or weed seeds growing or located thereon or therein as often as is necessary to prevent the spread, growth, ripening or scattering of noxious weeds or weed seeds.

4.2 Noxious weeds shall be destroyed by means of

- (a) covering the plants with mulch or other substances that prevent the growth of the plants or the ripening of their seeds;
- (b) pulling or otherwise removing the plants from the soil;
- (c) cutting the roots or stalks of the plants before the seeds have developed sufficiently to ripen after the cutting;
- (d) ploughing or cultivating the soil on which the plants are growing; or
- (e) treating with a herbicide, approved under the relevant federal legislation relating to the regulation of herbicide use, that causes the plants to be destroyed or prevents the growth of the plants or the ripening of their seeds.

4.3 Weed seeds shall be destroyed by means of

- (a) removal to locations where the seeds are unable to germinate or, if germination takes place, where the noxious weeds are unable to grow to maturity;
- (b) composting;

- (c) use as silage or other form of fodder in which the weed seeds are consumed by animals;
- (d) grinding;
- (e) crushing; or
- (f) burning.

Community Safety Officer

- 5.1 The Council may contract with or appoint, one or more Community Safety Officers to administer and enforce this By-Law.
- 5.2 The Council may, in the resolution, provide for reasonable remuneration to be paid to a Community Safety Officer.

Powers of Community Safety Officer

- 6.1 For the purpose of searching for noxious weeds or weed seeds, a Community Safety Officer may, at any time between 9:00 a.m. and 6:00 p.m., enter upon any land or building, other than a dwelling house, and inspect the land or building, and any storage unit, vehicle, equipment, tools, fodder or standing or harvested crop found therein or thereon.

Obstruction of Community Safety Officer

- 7.1 No person shall hinder or obstruct a Community Safety Officer in the course of his/her duties, or furnish him with false information, or refuse to furnish him with information that he reasonably requests.

Destruction of Weeds

- 8.1 A Community Safety Officer who finds any noxious weed or weed seed in or on any land, building, storage unit, vehicle, equipment, tools, fodder or standing or harvested crop may order the person in possession thereof to destroy, at that person's expense, the noxious weed or weed seed found therein or thereon.
- 8.2 Where a Community Safety Officer finds any noxious weed or weed seed in or on any land, building, storage unit, vehicle, equipment, tools, fodder or standing or harvested crop of which no one is in apparent possession, the Community Safety Officer shall apply to the Council for authorization to destroy the noxious weed or weed seed at the expense of the Council.

- 8.3 An order made under subsection (1) shall be in the form set out in Schedule B and shall specify the time within which the noxious weed or weed seed shall be destroyed, but no order shall specify a time of less than seven days from the date of service of the order.
- 8.4 An order made under subsection (1) shall be served on the person to whom it is addressed
- (a) by delivering it personally to the person,
 - (b) by leaving it with a person apparently over the age of eighteen years at the dwelling place or place of business of the person to whom it is addressed,
 - (c) by sending it by registered mail to the last known address of the person to whom it is addressed, or
 - (d) if service cannot reasonably be effected under paragraph (a), (b) or (c), by posting it in the Band Council office.

Appeal

- 9.1 Any person who considers:
- (a) that the exemption under section 11 applies; or
 - (b) that the cost to him of destroying a noxious weed or weed seed would significantly outweigh any benefit to the Band or to another resident of the reserve that would be derived from such destruction; may, within five days after service of the order upon him, appeal the order, or any requirement of the order, by filing a notice of appeal with the Council.
- 9.2 A notice of appeal shall be in writing and set out
- (a) the name and address of the appellant,
 - (b) a copy of the order in respect of which the appeal is being taken,
 - (c) the grounds for appeal.
- 9.3 Where a notice of appeal has been filed, the appellant is not required to comply with the order appealed pending the determination of the appeal.
- 9.4 Within fifteen days after receipt of the notice of appeal, the Council shall hear the appeal.
- 9.5 At the hearing of the appeal, the Council shall provide the appellant and the Community Safety Officer with an opportunity to present evidence and to make oral and written submissions.

- 9.6 Within ten days after hearing the appeal, the Council shall confirm, revoke or vary the order appealed from, and the decision shall incorporate written reasons for the decision.
- 9.7 The Council shall send a copy of its decision to the appellant and to the Community Safety Officer.

Failure to Comply with Order

- 10.1 Where an order made under subsection 8(1) is not complied with, a Community Safety Officer may, at the expense of the person to whom the order was addressed and subject to subsection 9(3), cause the noxious weed or weed seed to be destroyed in any manner set out in subsection 4(2) or (3) that is efficient and consistent with good agricultural practice, and at a cost that is reasonable in the circumstances.
- 10.2 A Community Safety Officer, or anyone authorized by a Community Safety Officer, may enter in or on any land, building, storage unit or vehicle to carry out the destruction of any noxious weed or weed seed pursuant to subsection (1).
- 10.3 A Community Safety Officer shall keep a record of the expenses incurred in the discharge of his duties under subsection (1), and shall serve a statement thereof, together with a notice demanding payment, on the person who has failed to comply with the order made under subsection 8(1), whereupon the amount demanded shall become a debt owing to the Council.
- 10.4 Service under subsection (3) shall be effected in a manner referred to in subsection 8(4).

Exemption

- 11.1 Sections 3, 4 and 8 do not apply to noxious weeds or weed seeds that are so far distant from any place used for agricultural or horticultural purposes that the noxious weeds or weed seeds can have no material effect on the agricultural or horticultural use of such place.

Offence and Penalty

- 12.1 A person who violates section 3 or 7, or who fails to comply with an order made under subsection 8(1), commits an offence and is liable on summary

conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding thirty days, or to both.

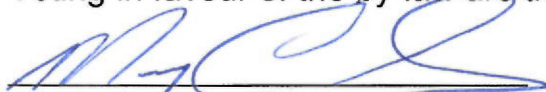
Coming Into Force

13.1 This By-Law shall come into force upon it being first published pursuant to subsection 86(1) of the *Indian Act*.

13.2 All previous By-Laws governing the destruction and control of noxious weeds are hereby revoked and are of no force or effect.

THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the Waywayseecappo First Nation this 6th day of September, 2018.

Voting in favour of the by-law are the following members of the Council:



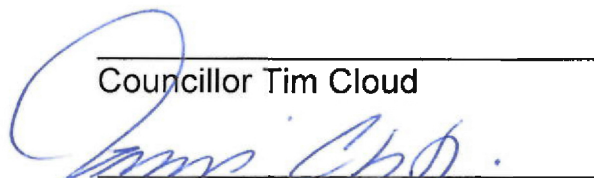
Chief Murray Clearsky



Councillor Chantel Wilson



Councillor Tim Cloud



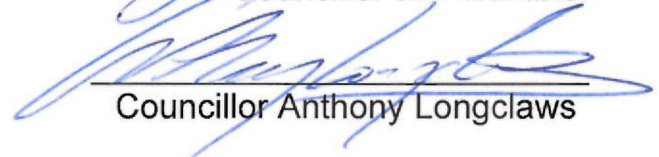
Councillor Travis Cloud



Councillor Mel Wabash



Councillor Joe Gambler



Councillor Anthony Longclaws

being the majority of those members of the Band Council of the Waywayseecappo First Nation present at the aforesaid meeting of the council.

The quorum of the Band Council is three members.

Number of members of the Band Council present at the meeting:

SCHEDULE A
NOXIOUS WEEDS

<u>Item</u>	<u>Common Name</u>	<u>Scientific Name</u>
1	Barberry, common	Berberis vulgaris L.
2	Buckthorn, European	Rhamnus cathartica L.
3	Carrot, wild	Daucus carota L.
4	Colt's-foot	Tussilago farfara L.
5	Dodder spp.	Cuscuta spp.
6	Goat's-beard spp.	Tragopogon spp.
7	Hemlock, poison	Conium maculatum L.
8	Johnson grass	Sorghum halepense (L.) Pers.
9	Knapweed spp.	Centaurea spp.
10	Milkweed spp.	Asclepias spp.
11	Poison-ivy	Rhus radicans L.
12	Proso millet, black-seeded	Panicum miliaceum L. (black-seeded biotype)
13	Ragweed spp.	Ambrosia spp.
14	Rocket, yellow	Barbarea spp.
15	Sow-thistle, annual, perennial	Sonchus spp.
16	Spurge, Cypress	Euphorbia cyparissias L.
17	Spurge, leafy	Euphorbia esula L. (Complex)
18	Thistle, bull	Cirsium vulgare (Savi) Tenore
19	Thistle, Canada	Cirsium arvense (L.) Scop.
20	Thistle, nodding, spp.	Carduus spp.
21	Thistle, Russian	Salsola pestifer A. Nels.
22	Thistle, Scotch	Onopordum acanthium L.
23	Vetchling, tuberous	Lathyrus tuberosus L.

NOTE:

- (i) "A. Nels" is an abbreviation for Aven Nelson;
- (ii) "L" is an abbreviation for Linnaeus;
- (iii) "Pers." is an abbreviation for Persoon;
- (iv) "Scop." is an abbreviation for Scopoli; and
- (v) "spp." is an abbreviation for species.

SCHEDULE B

ORDER TO DESTROY NOXIOUS WEEDS OR WEED SEEDS

TO

Name of Person

Address

Under By-Law No. _____ of the Waywayseecappo First Nation, A By-Law for the Destruction and Control of Noxious Weeds, you are hereby ordered to destroy the noxious weeds and weed seeds described as follows:

_____ (name of noxious weeds or weed seeds)

located at _____

not later than ____ (number not less than seven) days from the date of service of this order.

Dated at _____ this ____ day of _____, 20__.

Signature of Community Safety Officer

Note

Pursuant to subsection 9(1) of this By-Law being a By-Law for the Destruction and Control of Noxious Weeds, a person who is served with an order to destroy noxious weeds or weed seeds may, within five days after service of the order, appeal the order or any requirement contained in it by filing a notice of appeal with the Council.