

WESTBANK FIRST NATION
NOXIOUS INSECT CONTROL LAW NO. 2005-03

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate the control of noxious insects within Westbank Lands;

NOW THEREFORE Council of Westbank First Nation enacts the following law:

1. TITLE

1.1 This Law may be cited for all purposes as the "*WFN Noxious Insect Control Law No. 2005-03*".

2. DEFINITIONS

2.1 In this Law, unless the context otherwise requires:

"control the infestation" means procedures which are recognized by the *Ministry of Agriculture, Food & Fisheries*, and the tree fruit, forestry or horticultural industries as responsible methods of controlling specific pests such as application of an appropriate chemical or biological spray, direct removal of the noxious or destructive insects or pests, removal of host species or removal of host habitat;

"Council" means the governing body of Westbank elected pursuant to the *Westbank First Nation Constitution*;

"infested/infestation" means the presence of populations of noxious or destructive insects or pests in trees, bushes, plants or associated fruit that have caused or are likely to cause significant damage to the trees, bushes, plants or associated fruit;

"noxious or destructive insects or pests" includes any insect or pest identified as such by Council, from time to time, or any other insect commonly known as a pest;

"occupant" or **"occupier"** means a person who is legally entitled to occupy or simply occupies a parcel of land, building, dwelling or premises within Westbank Lands;

"parcel of land" or **"parcel"** means any lot, block, manufactured home pad or other area in which real property within Westbank Lands is held or into which real property within Westbank Lands is subdivided and the improvements affixed to it;

"peace officer" means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

"person" in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

“registered holder” means a person who is registered in the Westbank Lands Register as the holder of an interest in Westbank Lands and, where applicable, includes the occupant;

“Westbank” or **“WFN”** means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

“Westbank Lands” means:

- (a) the following Westbank Indian Reserves:
 - (i) Mission Creek Indian Reserve No. 8
 - (ii) Tsinstikeptum Indian Reserve No. 9
 - (iii) Tsinstikeptum Indian Reserve No. 10
 - (iv) Medicine Hill Indian Reserve No. 11
 - (v) Medicine Creek Indian Reserve No. 12; and
- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

“WFN Law Enforcement Officer” means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws enacted by Council, and includes any delegate or any peace officer.

2.2 Unless otherwise provided in this Law, words and expressions used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

2.3 Until such time as Westbank develops its own protocols and procedures for the control of infestation, it hereby adopts the procedures recognized, from time to time, by the provincial *Ministry of Agriculture, Food & Fisheries*.

3. PREVENTION OF INFESTATION

3.1 All registered holders of a parcel of land within Westbank Lands must take all action necessary to prevent the parcel from becoming infested.

3.2 It is the full responsibility of the registered holder of any parcel of land within Westbank Lands to take all actions necessary to comply with the provisions of this Law.

4. CONTROL OF INFESTATION

4.1 All registered holders of a parcel of land within Westbank Lands that has become infested must take all action necessary to control the infestation.

5. ORDER TO CONTROL INFESTATION

5.1 Where an WFN Law Enforcement Officer has received a complaint that a parcel of land is infested and the infestation is verified and confirmed by investigation, the WFN Law Enforcement Officer may issue a written order to the registered holder of the parcel requiring that the registered holder take all action necessary to control the infestation within 72 hours from the date of delivery of the order.

6. DIRECT ENFORCEMENT IN DEFAULT

- 6.1 If, after the expiry of 72 hours from the date of delivery of an order given pursuant to this Law, a registered holder has failed to control the infestation, it will be lawful for the WFN Law Enforcement Officer, by its employees or other authorized representatives, to enter the parcel and take all action necessary to control the infestation at the expense of the registered holder.

7. INSPECTION

- 7.1 The WFN Law Enforcement Officer may enter any parcel of land within Westbank Lands at any reasonable time concerning any matter under this Law and may perform such reasonable tests, analyses or other things as may be necessary to determine if an infestation exists.

8. SERVICE OF ORDER

- 8.1 An order made pursuant to section 5.1 of this Law shall be deemed to be validly delivered by:
- (a) personal delivery to the registered holder of the parcel of land; or
 - (b) being mailed by regular mail addressed to the registered holder of the parcel of land and posting the order in a reasonably visible location on the parcel.

9. REGISTERED HOLDER RESPONSIBLE FOR COSTS

- 9.1 All costs incurred by Westbank to control the infestation of a parcel of land must be charged to the registered holder of the parcel.
- 9.2 If the compliance is carried out under section 9.1 of this Law, and the registered holder does not pay the costs on or before December 31st in the year that the compliance was effected, the costs may be added to and form part of the taxes payable by the registered holder in respect of the parcel of land and deemed to be taxes in arrears.

10. CONSULTATION

- 10.1 The WFN Law Enforcement Officer is authorized to consult with registered holders concerning complaints about insects or pests that are not currently included in the definition of noxious or destructive insects or pests.

11. FEES AND FORMS

- 11.1 Council may, by resolution passed at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

12. NOTICES & CHARGES AGAINST REGISTERED HOLDERS

- 12.1 Where Westbank is required to give notice to or imposes an additional cost or charge against the registered holder and two or more persons are shown as registered holders in respect of a parcel of land, then a notice given to or a cost or charge imposed against one registered holder is not invalidated by the failure to give notice to or impose a charge against any other registered holder.

13. OFFENCES

- 13.1 No person shall obstruct, interfere with or hinder Council, the WFN Law Enforcement Officer or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 13.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 13.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 13.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.

14. IMMUNITY

- 14.1 No action for damages lies or may be instituted against present or past Council, WFN Law Enforcement Officer, or members, employees, servants or agents of either Westbank or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 14.2 Section 14.1 does not provide a defence if:
- (a) Council, WFN Law Enforcement Officer, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 14.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or

failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

14.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law, and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

14.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

15. APPLICATION OF LAW

15.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.

15.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.

15.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

15.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

BE IT KNOWN that this Law entitled, "WFN Noxious Insect Control Law No. 2005-03" is hereby read for the first, second, and third and final time and is hereby enacted as Law No. 2005-03 by the Council of Westbank First Nation at a duly convened meeting of Council held on the 7th day of February, 2005.

Voting in favour of the Law are the following members of Council:


Chief Robert Louie


Councillor Michael De Guevara


Councillor Brian Eli


Councillor Loretta Swite


Councillor Michael Werstuik

being a majority of those members of Council of Westbank First Nation present at the aforesaid meeting of Council.

The Quorum of Council is three (3) members.

Number of members of Council present at the meeting: 5.