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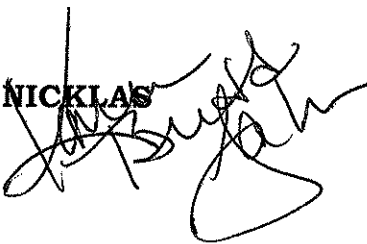
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MEMORANDUM

TO: BOWMAN-SLOPE SOIL AND WATER CONSERVATION
DISTRICT LAND USE PLAN STEERING COMMITTEE

VIA: EMAIL
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FROM: KAREN BUDD-FALEN & CONNER NICKLAS
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THROUGH: BRENDA YOUNKIN
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DATE: SEPTEMBER 12, 2017

RE: NOXIOUS WEED CONTROL IN NORTH DAKOTA

Pursuant to the Federal Noxious Weed Act, 7 U.S.C. § 2814, federal agencies have the authority to manage undesirable plants and noxious weeds on federal and public lands pursuant to state laws. This memorandum describes this federal authority, as well as the North Dakota requirements for undesirable plant and noxious weed management.

I. FEDERAL NOXIOUS WEED ACT

The Federal Noxious Weed Act requires that each federal agency shall (1) designate an office or person to develop and coordinate management of undesirable plants and noxious weeds on the federal lands under its jurisdiction; (2) establish and adequately fund an undesirable plant management program; (3) complete cooperative agreements with each State regarding management of undesirable plants on federal lands and (4) establish an integrated management system to manage for undesirable plants targeted by the cooperative agreements with each State. 7 U.S.C. § 2814(a). The federal agency development and implementation of a cooperative agreement with the appropriate state governmental agency pursuant to state law is mandatory (assuming that there is agreement from the State management agency). Thus, the question is whether the State has a state law for the management of

undesirable plants and whether the state will request a cooperative agreement with the appropriate federal agency.

II. NORTH DAKOTA REQUIREMENTS FOR MANAGEMENT OF NOXIOUS WEEDS

Weed control is managed at both a local and state level in North Dakota. The initial responsibility of weed control is on private individuals. N.D.C.C. § 4.1-47-02 (requiring each person “do all things necessary and proper to control the spread of noxious weeds). Responsibility also falls to local counties and municipalities. The North Dakota Commissioner of Agriculture is also responsible for controlling and eradicating noxious weeds in the state. Finally, North Dakota statute also requires both state and federal agencies to control noxious weeds on public lands held by the agencies. The remainder of this memorandum will focus on the state and local government authority for management of noxious weeds.

A. Counties and Municipalities

By statute, each county in North Dakota must establish a county weed board. *Id.* at § 4.1-47-06(a). Each county weed board has the power to expend funds from all available sources if it determines that the noxious weed infestation on certain land is so severe that control efforts would place an extreme financial burden on the landowner. *Id.* at § 4.1-47-08(1). The funds available for noxious weed control include proceeds from the county general fund, or from proceeds collected from a special tax levy authorized by the board of county commissioners. *Id.* at § 4.1-47-14. The commission also has the power to employ workers to assist in noxious weed control efforts. *Id.* at 4.1-47-08(2). Finally, the commission has the power to designate certain weeds not included on the state’s list of noxious weeds if the board consults with North Dakota State University’s Extension Services and the designation is approved by the Commissioner of Agriculture. *Id.* at § 4.1-47-10(1). Further, each county weed board has several statutory duties. Each must implement a program to control noxious weeds, *id.* at § 4.1-47-09(1), and control noxious weeds along county and township roads, *id.* at § 4.1-47-09(2). The commission must also employ weed control officers. *Id.* at § 4.1-47-09(8).

County weed officers may enter any land to enforce the provisions of the statute, without being subject to any action for trespass or damages, so long as the officer uses reasonable care. *Id.* at § 4.1-47-23. The county weed officers have several duties. One of those duties includes providing notice to landowners to remove noxious weeds. *Id.* at § 4.1-47-28. Another duty is that a

weed officer must remove the noxious weeds and charge the landowner reasonable expenses if the landowner fails to comply with the notice. *Id.*

Although much of the responsibility of weed control rests with the counties, municipalities with a population greater than three thousand people can elect to create a city weed commission and enjoy the same authority and responsibilities given to the county within their jurisdiction. *Id.* at § 4.1-47-17. If municipality elects to create a noxious weed commission, the county no longer has authority within the municipality. *Id.* at § 4.1-47-07.

B. Commissioner of Agriculture

The North Dakota Commissioner of Agriculture also has a role in controlling noxious weeds in the state. The main responsibility of the Commissioner is to maintain and update a state noxious weed list. *Id.* at § 4.1-47-04. The Commissioner also must distribute funds from the state's noxious weed control fund. The distributions are extended mainly to city and county weed boards; however, there is a landowner assistance program that must be run locally through the county and city weed boards that uses state funds as well. *Id.* at § 4.1-47-15, 16. The Commissioner also has the ability to declare a quarantine if the Commissioner determines that the quarantine is necessary to prevent the spread of noxious weeds. *Id.* at § 4.1-47-29.

C. State and Federal Agencies

State and federal agencies also must control the spread of noxious weeds on public lands held by the agencies. By statute, each state agency must control noxious weeds on land within its jurisdiction. *Id.* at § 4.1-47-26. If the agency fails to do so, the local county weed board, with the Commissioner's approval may enter upon the land to control the weeds and be reimbursed by the agency for any expenses incurred in controlling the weeds. *Id.*

Under a recently enacted statute, if a federal agency does not control or eradicate noxious weeds on lands under its jurisdiction, the appropriate weed control office must notify the agency of its failure. N.D. S.B. 2026 (2017) (to be codified as N.D.C.C. § 4.1-01-13). Upon receiving notice, the federal agency must provide a report to the weed control authorities detailing its methods of controlling the noxious weeds and showing cause for why the weeds are not controlled or eradicated. *Id.* The Commissioner may also hold a public hearing to determine the reason of the agency's failure.

As a note, the North Dakota legislature recently redesignated chapter 47 of the North Dakota Century Code and moved the statutes to chapter 24. Thus, for example, § 4.1-47-26 will now be § 4.1-24-26.

III. ISSUES FOR BOWMAN-SLOPE LAND USE PLAN

Given this analysis, I believe that the Bowman-Slope land use plan should consider including issues regarding the management of noxious weeds on federal and state public lands. Those policies may include (but are not limited to):

- A.** Work with local county and city weed boards to identify and control noxious weeds in their jurisdiction.
- B.** Develop a management plan with state and federal agencies to control noxious weeds on public lands within their jurisdiction.
- C.** Develop a policy regarding adequate notice and funding using Commissioner of Agriculture funds to all parties responsible for noxious weed control in the area.

Should you have any questions, please do not hesitate to contact us.