

**RESOLUTION 2024-04****ADOPTION OF THE BOX BUTTE PRAIRIE DOG MANAGEMENT PLAN**

WHEREFORE, the Box Butte County Board of Commissioners hereby finds that there are adverse impacts of unmanaged colonies within the County and that it is necessary to exercise the authority made available under the "Black-Tailed Prairie Dog Management Act", Nebraska Revised Statute 24-3803; and

WHEREFORE, the primary purpose of the Box Butte County Black-Tailed Prairie Dog Management Plan is to avoid negative impacts between landowners who wish to accommodate prairie dogs on their property and those that do not wish to have them encroach from these adjoining lands onto their properties.

BE IT SO RESOLVED that on the 5th day of June, 2024, Box Butte County Board of Commissioners adopts the Box Butte County Prairie Dog Management Plan.

**Box Butte County Black-Tailed Prairie Dog Management Plan**

The Management Plan reflects the necessary cooperative effort between Box Butte County Commissioners, Box Butte County Weed Superintendent, the Box Butte County Prairie Dog Advisory Board, and Box Butte County landowners or managers, and any relevant Box Butte County Department Heads.

1. **Duty to Manage Colonies.** Each person who owns or controls property (within a county that has adopted a coordinated program for the management of black-tailed prairie dogs) shall effectively manage colonies present upon his, her, or its property to prevent the expansion of colonies to adjacent property unless the owner of adjoining land consents in writing to the expansion of such colonies onto their property. With adoption of the "Box Butte County Prairie Dog Management Plan", any person or entity that owns, manages, or controls land within Box Butte County, in whole or in part, has such a duty and shall be subject to the requirements and penalties as set forth in Nebraska law and the adopted Management Plan.
2. **Entry Upon Land Authorized as per Nebraska Revised Statute 23-3808.**  
The County Board of Commissioners of a county that has adopted a coordinated program for the management of black-tailed prairie dogs, or anyone authorized by the County Board (Representative), may enter upon property in the county for purposes of performing the duties and exercising the powers under the Black-Tailed Prairie Dog Management Act without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised and forty-eight hours written advance notice of entrance is provided to the property owner or occupant.
3. **Management Plan.**

- a. Listing of Methods for Management of Colonies. The Box Butte County Commissioners identify the following as potential methods for management of colonies:
- i. A control treatment effort shall be defined as a chemical application and follow up application as one treatment. (See Neb. Guide. G1476 for further information). All applications shall follow label instructions. A review by the Representative will provide this information on a case-by-case basis.
  - ii. Prairie dogs will be controlled the full length of the property line between the complainant and the noncompliant landowner.
  - iii. The use of monitoring shall be included for long-term maintenance including timely cleanup of new infestation or repopulation.
  - iv. Control shall be performed by a licensed applicator, eligible to use restricted use pesticides.
- b. Creation of Advisory Board. There shall be the creation of the "Box Butte County Prairie Dog Advisory Board" as an Advisory Board.
- i. The Advisory Board shall consist of five (5) members.
  - ii. The membership of the Advisory Board will be voluntary.
  - iii. The membership term of service shall be as follows:
    1. All persons serving on the Advisory Board shall continue to serve until a successor is appointed and accepts the position.
    2. The initial Advisory Board appointees shall be divided into three classes. The term of the first class shall end on January 1, 2025; the term of the second class shall end on January 1, 2026; the term of the third class shall end on January 1, 2027. The first and second classes shall have 2 members each; the third class shall have 1 member.
    3. All persons appointed after the initial Advisory Board appointments shall serve four-year terms in order that some continuity within the Advisory Board is preserved by staggered appointments.
    4. Beginning January 1, 2027 member terms will end on January 1<sup>st</sup>; new member terms will begin on January 5<sup>th</sup>.
  - iv. Open Meetings Law – The Advisory Board meetings will follow the Open Meetings Act.
- c. Advisory Board Duties. The Advisory Board shall develop the management plan, conduct an annual review of the costs and determine the annual charge/acre of force control, review written plans for a managed prairie dog colony, review and address complaints, and make recommendations to the Box Butte County Board of Commissioners for actions to be taken.

- d. Box Butte County Board of Commissioners shall:
- i. Annually publish the General Notice through the legal county newspaper on or before the 1<sup>st</sup> of May, or at another time as deemed necessary as determined on a case-by-case basis, notifying all property owners of the adopted coordinated program for management of black-tailed prairie dogs.
  - ii. Receive recommendations of the Advisory Board;
  - iii. Hear the results of investigation of complaints regarding specific individual unmanaged colonies, review the recommendation for management of the unmanaged colonies, and determine the action that shall be taken after such investigation;
  - iv. Conduct the issuance of individual notices to owners of unmanaged colonies, directing the method of management recommended by the Advisory Board and adopted by the County Board of Commissioners, unless other appropriate management methods are acceptable and approved by the County Board of Commissioners;
  - v. Provide notice of the County Board of Commissioners intent to enter upon property for the purpose of taking appropriate management measures and assessment of costs for management activities if property owner does not provide suitable management plan within sixty (60) days. **The County Board of Commissioners shall use one or both of the following forms for all individual notices:**
    1. **Individual Force Control Notice-** If after sixty days (60), evidence is received that the offending landowner (who has been previously notified as provided in the Box Butte County Prairie Dog Management Plan) has not complied with said notice and begun management of the offending colony, the County Board of Commissioners or its Representative may enter upon that property for the purpose of taking the appropriate management measures. Costs for the management activities performed by the County Board of Commissioners shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.
    2. **Individual Fine Notice** – Upon notification of unmanaged prairie dogs which are objected to by the owner of adjacent property, if after sixty days (60) the landowner has not provided evidence of control measures, this property may be subject to a fine of \$100.00 per day for each day of noncompliance, up to a maximum of fifteen days (maximum \$1,500).

- vi. **Written Protest:** If any person is dissatisfied with the charges against him or her under the Black-Tailed Prairie Dog Management Act, he or she may, within fifteen days after being initially advised of the amount of the charge, file a written protest with the County Board of Commissioners. The County Board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the management measures were conducted in a timely fashion. Following the hearing, the county board shall have the power to adjust or affirm such charge.

### **Duties Of All Parties Under the Management Plan**

#### Box Butte County Board of Commissioners

- Administer program.
- Publish General Notice annually in the newspaper.
- Create, maintain, and manage a budget for the prairie dog control
- Review the recommendations of the Box Butte County Prairie Dog Advisory Board regarding the results of an investigation into a complaint, and approve or reject the recommendation after a vote at the next scheduled meeting.
- Approve and appoint members to Box Butte County Prairie Dog Advisory Board.
- Communicate formal action and activities to the landowner, including issuing Force Control notices.
- Hear protests of costs charged under the Box Butte County Prairie Dog Management Plan

#### Box Butte County Prairie Dog Advisory Board

- Must be a Box Butte County landowner or manager.
- Provides annual review of success or failure, which shall include period review of the management plan.
- Conduct an annual review of the costs and determine the annual charge/acre of force control.
- Review written plans for a managed prairie dog colony.
- Represents the Board, acting on a Case-by-Case basis, on each complaint received.
- Hold hearings for complaining landowner, offending landowner, and Box Butte County Weed Superintendent.
- Recommends new Board members to the Board of Commissioners.

#### Weed Superintendent

- Receives Complaint.
- Completes paperwork.
- Notifies the Representative of the complaint to complete an inspection.

- Initiates Force Control paperwork.
- Compiles information.
- Maintains communication between County Board, Advisory Board, and the Representative.

#### Representative

- Receives information about a complaint from Weed Superintendent.
- Physically investigates to verify if encroachment imminent.
- Contacts offending landowner and recommends optional control methods.
- Presents written opinion and accompanying documents to Weed Superintendent.
- Implements Force Control if authorized.

#### Adjoining Landowner/Complainant

- File complaint with Box Butte County Weed Superintendent that includes the legal description, supporting evidence of an unmanaged colony, and contact information.
- Supply follow up communication.
- Help with long term monitoring of the colony

#### Landowner/Offender

- Visit with the Representative personnel if an investigation is ongoing.
- If offending landowner disagrees with the findings of an investigation, offending landowner has to prove they are using control efforts or methods to manage the colony.
- Has 60 days to implement successful management upon being sent notice by the Box Butte County Commissioners.
- Has the right to timely request a hearing before the Box Butte County Board of Commissioners prior to the force control beginning.
- Has the right to timely request an assessment hearing after the force control on the costs assessed against the property.

#### Landowner Desiring to have Prairie Dogs on his/her Property

The landowner desiring prairie dogs on his/her property (desiring landowner), will voluntarily, maintain a control area to mitigate encroachment by the colony onto neighboring landowner(s) property who does not wish to have prairie dogs (non-desiring landowner). The depth of the control area shall be the minimum Encroachment Buffer Zone (EBZ) listed in the Box Butte County Prairie Dog Management Plan on the desiring landowner's side of the property line, parallel to the property boundary between the desiring landowner and non-desiring landowner. The depth shall be maintained to the full length of this adjoining property line.


An Individual Force Control Notice will be initiated by the Box Butte County Board of Commissioners after an affirmative vote that shall occur after review of an investigation into a verified complaint from the adjacent, non-desiring landowner that the desiring landowner's control area is not effectively managed.

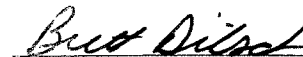
**Plan Amendment Clause**

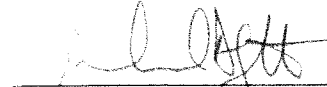
The Box Butte County Black Tailed Prairie Dog Management Plan may be edited or amended from time to time by a majority vote of the Box Butte County Board of Commissioners at a meeting held in compliance with the Nebraska Open Meetings Act.

Adopted this 5th day of June, 2024.

BOX BUTTE COUNTY, NEBRASKA  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Steve Burke, Chairperson

  
\_\_\_\_\_  
Brett Ditsch, Vice-Chairman

  
\_\_\_\_\_  
Michael Sautter, Board Member



Attest:

  
\_\_\_\_\_  
County Clerk

## **BOX BUTTE COUNTY PRAIRIE DOG MANAGEMENT PLAN**

### **ADMINISTRATION**

1. This plan shall include all of Neb. Rev. Stat. 23-3801 to 23-3810, which is known as the Black-Tailed Prairie Dog Management Act.
2. The Box Butte County Commissioners shall have the authority to approve and implement a budget, hire employees as needed to satisfy the law, and appoint members to the Box Butte County Prairie Dog Advisory Board.
3. The Box Butte County Prairie Dog Advisory Board shall consist of five (5) Box Butte County landowners or managers, preferably from different geographic locations throughout the county. The members of the Box Butte Prairie Dog Advisory Board shall be appointed by the Box Butte County Commissioners and will act as an advisory board to handle complaints.
  - a. Membership and services on the Box Butte Prairie Dog Advisory Board shall be voluntary.
  - b. The Board shall consist of 5 members who will be appointed on a rotating basis, to serve terms of up to 4 years.
  - c. Members may serve as many terms as he or she chooses, as long as their reappointment is approved by the Box Butte County Commissioners.
4. The Box Butte County Prairie Dog Advisory Board's primary obligation is to enforce Neb. Rev. Stat. 23-3801 to 23-3810.
  - a. All meetings shall follow the Open Meetings Law.
  - b. All meetings and hearings shall be advertised as necessary.
5. The purpose of the Prairie Dog Management Plan is to provide for management of prairie dog colonies that encroach or impact neighboring landowners.

### **IMPLEMENTATION**

1. Definition of Terms
  - a. Colony means the series of burrows and tunnels created by the black-tailed prairie dog where black-tailed prairie dogs live;
  - b. County board means the county board of commissioners or supervisors of a county that has adopted the act;
  - c. The Board shall mean the Box Butte County Prairie Dog Advisory Board;
  - d. Managed colony means a colony of prairie dogs that is confined to land owned by one person;
  - e. Person means any individual, partnership, firm, limited liability company, corporation, company, society, or association, the state or any department, agency, or political subdivision thereof, or any other public or private entity;

- f. Encroachment means when a prairie dog colony on private land has expanded to the point where colonization of adjoining land occurs and is unwanted by the impacted landowner and/or land manager; and
  - g. Encroachment Zone means the minimum depth from the adjoining landowner property line that must be managed to have no prairie dog colonies.
  - h. Representative is defined as the individual, entity, or organization who has been appointed by formal action of the Box Butte County Board of Commissioners to investigate complaints and take action for force control if specifically authorized by the County Board of Commissioners after an investigation has been completed and the findings have been reviewed and voted on.
  - i. Adjoining landowner is defined as the owner or manager of property that shares a common boundary, which may be property sharing a continuous boundary or as property which touches corners with the site of a colony.
2. General Notice: General notice shall be published by the county board of each county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 in one or more newspapers of general circulation in the county on or before May 1 of each year, or at such other times as the county board may determine is appropriate or necessary.
3. Control of Colonies
- a. Prairie Dogs will be controlled using approved chemical control methods for the full length of the property line between the complainant and the offender.
    - i. The minimum depth of 300 feet parallel to the property line on the offender's side of the line shall be the de facto encroachment zone for all properties in Box Butte County, but may be a greater distance as determined by the Prairie Dog Advisory Board on a case-by-case basis, taking into account the size of the colony, the management plan presented, the property impacted, and the rights of the offending and adjoining landowners at a public meeting.
    - ii. Any prairie dog colonies within 300 feet of the property of an adjoining landowner who files a signed complaint, as set forth in Paragraph 4, shall trigger an investigation.
    - iii. The presence of colonies within the encroachment zone is prima facie evidence that encroachment is imminent but may be rebutted with evidence of a management plan or sufficient evidence that shows encroachment will not occur.
  - b. Long-term maintenance efforts may be necessary to discourage re-infestation of the previously controlled colony or colonies which are identified after investigation as posing a risk of expanding onto adjoining landowner's property. The offending landowner shall maintain control of previously controlled colonies on their property to avoid encroachment through a variety of methods, including but not limited to, monitoring, surveying, and timely control of new infestation/repopulation of the encroachment zone.



- c. Control shall be performed by a licensed applicator, eligible to use restricted use pesticides.
- d. A control treatment effort shall be defined as a chemical application and follow up application as one treatment. (See Neb. Guide. G1476 for further information). All applications shall follow label instructions. A review by the Representative will provide this information on a case-by-case basis.
- e. The Box Butte County Prairie Dog Advisory Board will annually determine the cost per acre charged for force control. The 2024-2025 charge will be \$50 per acre, plus costs of supplies and mileage to conduct the force control. The annual rate shall be determined prior to May 1 of each year and shall be recorded in the minutes of the meeting in which the rate was determined.

#### 4. Complaints

- a. The Prairie Dog Advisory Board will address all complaints on a case-by-case basis.
- b. Formal complaints will be filed with the Box Butte County Weed Superintendent.
- c. All complaints must include a legal description of the property, and sufficient supporting evidence to show that there is an infestation which is not being managed. Sufficient evidence may be, but is not limited to, an aerial photo of the colony, video footage, photos clearly showing the colony encroachment, etc.
- d. The Weed Superintendent shall provide documentation to the Representative. The Weed Superintendent may be the Representative, upon mutual agreement and formal action by the Box Butte County Commissioners appointing the Weed Superintendent to also fulfill such role.

#### 5. Investigation

- a. The Representative shall inspect the identified colony and/or colonies within the encroachment zone on the possible offender's land and offer a written opinion as to whether encroachment is imminent.
  - i. As part of such investigation, the Representative shall provide written notice of intent to investigate the property a minimum of 48 hours in advance of such entry, as authorized in Neb. Rev. Stat. 23-3808.
- b. The written opinion and any accompanying documentation shall be provided to the Weed Superintendent. Upon receipt, the Weed Superintendent shall send all information to the Prairie Dog Advisory Board. If the Weed Superintendent is the Representative, they shall create a written opinion after investigation that is sent to the Prairie Dog Advisory Board.
- c. The Prairie Dog Advisory Board shall advise the Weed Superintendent as to what actions shall be taken next, as determined by the Prairie Dog Advisory Board at a meeting and affirmative vote of the majority of the members present.
  - i. Determination of action
    - 1. If the Prairie Dog Advisory Board determines that there is not sufficient evidence that there is possible expansion of colony to adjacent property, the Prairie Dog Advisory Board shall vote to take "No Action".

2. If the Prairie Dog Advisory Board determines that there is sufficient evidence to show that there is possible expansion of the colony to adjacent property, the Prairie Dog Advisory Board shall vote that action be taken and present such recommendation and accompanying information to the Box Butte County Board of Commissioners at the next scheduled meeting for approval.
3. The Box Butte County Commissioners shall review the minutes, the report, and the recommendation from the Prairie Dog Advisory Board, and a member of the Prairie Dog Advisory Board shall be present at the Box Butte Commissioner's meeting to answer questions. Upon review of the information, if they agree with the recommendation of the Prairie Dog Advisory Board, the Box Butte County Commissioners shall approve the recommendation and authorize the notification process to begin, with legal action to follow.

ii. Notification of Action

1. Upon a determination that action shall be taken and authorization for the notification process to begin, the Box Butte County Commissioners shall authorize the Weed Superintendent to notify the offending landowner of such possible expansion of colony to adjacent property by certified mail at his or her last-known address, which shall contain the language as set forth in the statute and "Exhibit A" to this Management Plan.
2. If no action has been taken within 60 days of the notice being provided via certified mail, the Box Butte County Commissioners shall proceed with legal action.
3. If within 15 days of the notice being received, the landowner requests a hearing, the Box Butte County Commissioners shall proceed with such a hearing as set forth in Neb. Rev. Stat. 23-3806.

iii. Legal Action

1. Legal Notices: The Box Butte County Commissioners shall proceed with legal notices sent to the landowner, which shall list the type of notice and action that is authorized by the Box Butte County Commissioners to proceed.
  - a. Fine Notice:
    - i. The Box Butte County Commissioners are authorized to assess a fine of up to \$100 per day for up to 15 days, with a maximum of \$1500 total.
  - b. Force Control Notice:
    - i. If upon expiration of the sixty-day period set forth in Paragraph 5(c)(ii) above, the offending landowner has not complied with taking action to manage the prairie dog colony, the Box Butte

County Commissioners may cause proper management methods to be used on such property and shall advise the landowner of all costs incurred in connection with such operation as prescribed by law. The cost of any such management shall be at the expense of the landowner. In addition, the Box Butte County Commissioners shall immediately cause notice to be filed of possible unpaid black-tailed prairie dog management assessments against the property upon which the management measures were used in the register of deeds office in the county where the property is located. If unpaid for two months the county board shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the management measures were taken as a special assessment levied on the date of management. The county treasurer shall add such expense to, and it shall become and form a part of the taxes upon such land, and shall bear interest at the same rate as delinquent taxes.

- ii. Upon expiration of sixty-day notice, with all forms complete the Representative will control the colony at their earliest convenience.
- iii. Follow up inspection and control shall be completed for a minimum of three consecutive years.
- iv. If the Force Control deadline falls outside the time frame allowed pursuant to label specifications, then force control cannot be performed. Action on the case will resume as soon as permitted by the product label.
- v. As part of this process, the Box Butte County Commissioners shall determine a distance from the property line of the adjoining landowner for Force Control, in order to address recolonization or encroachment from the colony. They may adopt a recommendation by the Prairie Dog Advisory Board, which may be provided with the initial recommendation or at a later date if requested.

6. **Managed Prairie Dog Colony:**

- a. A managed prairie dog colony is defined as one which is being managed for monetary gain or other ecosystem services, in which the colony is not close enough to threaten encroachment on adjacent landowners.

- b. Encroachment Buffer Zone (EBZ) shall mean the minimum depth from the adjoining landowner property line that must be managed to have no prairie dog colonies, and must be maintained for the full length of the property line. If an adjoining landowner provides a written consent, an EBZ does not need to be established for that specific property line.
- c. A landowner may provide a management plan of colonies on their property, which incorporates information regarding the location, the EBZ, and affirmative steps taken to manage the migration of the colony to avoid colonization of neighboring landowners.
- d. Such management plan must be submitted and approved by the Box Butte County Prairie Dog Advisory Board to be considered a managed prairie dog colony.
- e. Prior to approval, adjoining landowners must be provided with a copy of such proposed management plan and notice of the meeting at which this plan is subject to discussion. Such notice shall be provided by the petitioning landowner and shall be sent via first-class mail.
- f. Upon approval, a copy of the management plan shall be provided to the Weed Superintendent and may be utilized in investigating any complaints for the property that are received under the Box Butte County Prairie Dog Management Plan.

#### 7. Costs

- a. Protest of Costs Charged
  - i. If any person is dissatisfied with the amount of any costs charged against him or her under the Black-Tailed Prairie Dog Management Act, he or she may, within fifteen days after being advised of the amount of the charge, file a written protest with the county board. The county board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the management measures were conducted in a timely fashion. Following the hearing, the county board shall have the power to adjust or affirm such charge.
- b. Prairie Dog Management Fund
  - i. A black-tailed prairie dog management fund may be established by a county, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the county board in carrying out its duties and responsibilities under the Black-Tailed Prairie Dog Management Act.

Box Butte County Commissioners

OFFICIAL NOTICE

Information received by the county board, including from an onsite investigation, indicates the existence of an unmanaged black-tailed prairie dog colony on property owned by you at: [LEGAL DESCRIPTION: \_\_\_\_\_].

The method of management recommended by the county board is a control treatment effort, which is defined as a late summer/early fall application and follow up application as one treatment of chemical control treatment. Other appropriate management methods are acceptable if approved by the county board.

State law specifies a duty of each person who owns or controls property within a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 to manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property unless the owner of the adjacent property waives objection in writing to such expansion. You must provide notice and evidence to the county board within sixty days after the date specified at the bottom of this notice that appropriate management as specified in this notice, or alternative management that is approved by the Box Butte County Prairie Dog Advisory Board, has been initiated. If services for the management of black-tailed prairie dogs are not available within the sixty-day period specified in this notice, you may satisfy this notice by providing evidence that you have arranged for management to occur when available. If such notice and evidence are not received by the county board within sixty days after the date specified at the bottom of this notice, the county board or its agent may enter upon your property for the purpose of taking the appropriate management measures. Costs for the management activities performed by the county board shall be at the expense of the owner of the property and shall become a lien on the property.

Additionally, you may be subject to a fine of \$100 per day for each day, beginning on the following date of [INSERT DATE THAT IS 7 DAYS AFTER DATE OF NOTICE], for up to fifteen days of noncompliance (maximum \$1,500).

If the county board receives a written request from you within fifteen days after the date specified at the bottom of this notice, you are entitled to a hearing before the county board to challenge this notice.

Box Butte County Board of Commissioners

Dated \_\_\_\_\_

EXHIBIT A