

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1239

2005 HOUSE NATURAL RESOURCES

HB 1239

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1239

House Natural Resources Committee

Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-End

Committee Clerk Signature *KB*

Minutes:

Chr. Nelson: Opened hearing on HB 1239. All members present. Clerk read the bill aloud.

Rep. Todd Porter, Dist. 34: HB 1239 changes an existing that was put in place at landowners' request some time ago. The law is ambiguous and enforced in various ways across the state. The definition of a trail is left up to the game wardens, the courts, and the judges. This bill, as written, will allow an individual who owns or leases their land for the purpose of farming to drive across their land while hunting. It's not while chasing game or in pursuit of game, because that's already illegal. Section lines are a mile apart, sloughs in the middle of fields are sometimes $\frac{3}{4}$ mile wide. There would be nothing wrong with driving part way in over a stubble field with the landowner's permission, and walking the rest of the way. That's what the bill is meant to do. As far as chasing, harassing, jumping out of your vehicle and shooting are already covered and illegal in existing law. If you want to get from point A to point B, and it's not on an established trail, and you have written permission from a landowner, that you can get there to get out and

walk to hunt. I would amend one thing on Line 9, insert the word "written" before "permission"; on Line 20, the same thing.

Chr. Nelson: Any questions of Rep. Porter?

Rep. Hunsakor: A concern I've heard is the enforcement. If the game warden is driving down the road and sees a vehicle (in the field), is he legal or not?

Porter: The game warden has the right to stop you on the road. I think by clarifying it to "written permission" it gives the game warden something to ask for when he visits with you.

Rep. Johnson: You're driving across a stubble field and slough, and a buck jumps up, do you hunt and shoot, or do you have to wait until you get to the other side of the slough?

Porter: The wording on Line 17 says "no person while hunting big game or small game statewide may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass with a vehicle." So if you flush that deer with your vehicle and get out and shoot at it, I would see that as a violation.

Rep. Drovdal: I have a problem with "written" permission. As a landowner and a hunter, if somebody calls me up, I will give them permission, but whether they would be able to catch up with me to get written permission is another thing. I hunt in the Badlands and have one rancher that when I can finally get hold of him, after about 16 phone calls, he has always allowed me to cross his land. But, for me to get written permission would be impossible. Do we really need to have "written" in there?

Porter: It takes away some of the potential for conflict of one person's word against another. In your situation, I would encourage you to get in touch with the person early and get a blanket

written permission. If you don't have written permission in there, it's always going to be one word against another. I thought it would help clarify the bill by being in there.

Rep. Nottestad: Wouldn't the written permission be protection for the landowners?

Porter: I think it would clarify it just a little better by having "written" permission in it.

Chr. Nelson: Any further questions of Rep. Porter? Seeing none, thank you for your testimony.

Is there further support of HB 1239?

Jay Elkin, Ag Producer, Taylor, ND: (Written testimony attached)

Chr. Nelson: Are there any questions of Mr. Elkin? Seeing none, thank you. Is there further testimony in support of HB 1239?

Shane Sickler, farmer, Dickinson, ND: I'm in support of HB 1239. As a landowner, I'm in violation anytime I drive across my land with a gun in it. Sometimes the gun is in it, not just for hunting. It may be a skunk or coyote problem. I feel that as a landowner, I have a right to be able to drive across my land and not worry about having to leave my gun by a gatepost just to get across it. I went through a tragic accident last fall and was paralyzed. I've started walking again but my legs won't be as good as they use to be. I would like to go hunting with my son, but I won't be able to get to certain spots by walking. If my wife wants to pick me up at the end of a creek or tree row, I'm in violation if I get in that vehicle with a gun and drive across my field. As far as safety, I think the landowner is the one most concerned about driving across land as far as the safety issue of things like fire. As far as enforcing the law, does the game warden have more responsibility of enforcing the law? I don't think it changes his responsibility. He still has to enforce the law as it's written now. If he wants to check anyone off an established trail, he still

has the responsibility to check. The only thing that will differ now is that the landowner now would not be in violation driving across his land.

Chr. Nelson: Thank you Mr. Sickler for your testimony. Are there any questions from the committee? Seeing none, thank you. Is there further support for HB 1239.

Charles Eastgate, Bismarck: I don't farm the land myself, but I do about 1200 acres on shares with a farmer. We don't believe in CRP, so we put in wheat. We have certain areas on our land that are of no use at all other than draws and a lot of brush. In past years, I've stocked lady pheasants because I believe if you take off some birds, you'd better put some back. I pay taxes on this land, haven't seen the Game & Fish help me out with that. As a result, I set up my own trails. We summer fallow in certain areas and in the fall after harvest, I drive over certain areas of the fields (to prepare a trail.) I feel it is very necessary that this bill be passed. I post the land, it says No Hunting or Trespassing. I don't expect anyone to be on the land because it's posted. I feel very strongly that this bill should be passed with a yes vote.

Chr. Nelson: Are there questions of Mr. Eastgate? Seeing none, thank you. Further testimony in support of HB 1239? Seeing none, is there anyone opposing HB 1239?

Carl Blohm, ND Outdoor Heritage Coalition: (Written testimony attached, with proposed amendment)

Chr. Nelson: Mr. Blohm, you have one of them (proposed amendments), does that change your feelings at all?

Blohm: No

Chr. Nelson: With the addition of the deer/gun season addition, would you support the bill at that point.

Blohm: Yes

Chr. Nelson: Further testimony in opposition to HB 1239?

Harold Neameyer, Cass County Wildlife Club: (Written testimony attached)

Chr. Nelson: I will ask you the same question as I proposed to Mr. Blohm, would you be in favor of the bill with the proposed amendment that Rep. Porter offered, does that change your position on the bill at all?

Neameyer: I think written permission would make it more palatable. The other question, I don't the answer to.

Chr. Nelson: Any questions for Harold?

Rep. Keiser: In point A of your testimony, "reverses current law...owners didn't want hunters driving anywhere on their land." Don't you think landowners want to have authority to drive on their own land?

Neameyer: I think they do. We're not here to protest the landowner having the ability to do what he wants on his own land. (For example) I get permission from you (landowner), with that permission, does that mean I can drive anywhere?

Keiser: It would seem to me that if a landowner gives written permission, they might also give some direction as to where they would like that individual to drive.

Neameyer: Yes. I was not assuming that the "written" part of it was yet in the discussion. It's a proposal.

Chr. Nelson: Any further questions? Seeing none, thank you. Further testimony in opposition to HB 1239?

Mike Donahue: ND Wildlife Federation, and United Sportsmen of ND: (Written testimony attached)

Chr. Nelson: Are there questions of Mr. Donahue? Seeing none, thank you. Is there further opposition to HB 1239?

Rep. Porter: First, regarding fair chase. If I'm walking $\frac{3}{4}$ mile across a stubble field with no cover to reach a slough, or if you're walking $\frac{1}{4}$ mile across it because you drove part of the distance and parked, where does that come into fair chase?

Donahue: I do that a lot, walk in $\frac{1}{2}$ mile but I consider that all part of the fair chase. The animal I'm after has a chance to work against me being able to get to it. To me, that is all part of the hunt, and I do a lot of that walking. It's in fairness to the animal as well.

Chr. Nelson: Mr. Donahue, the difference is that you are a relatively young man, in good health, you can do that. Some of the veteran hunters, or people with health problems as Mr. Sickler indicated, could be eliminated from the sport. Shouldn't that be a consideration?

Donahue: For those with a disability, they can already get a permit from the Game & Fish. That's already in code.

Porter: Regarding the increase or pursuit or harassment of game, that's already against the law. It's still against the law when this bill passes, so wouldn't you see the enforcement of that the same as it is now?

Donahue: My point is, this puts the person that probably wouldn't go off the chase a little closer to the edge and he might now do it because he's closer.

Porter: Don't you have any faith in the landowner's, to think that they know what fair chase and harassment is, and pursuing game from a vehicle, that if they saw someone doing that on their

land, that they would probably tell them not to bother to come back, or call the game warden on them?

Donahue: Yes, I concur with you.

Chr. Nelson: Mr. Donahue, how does the proposed "written" permission amendment affect your group's support of this bill?

Donahue: We'd still be in opposition.

Chr. Nelson: Seeing no further questions, thank you for your testimony. Is there further opposition to HB 1239?

Dennis Daniel: I don't know that I'm opposed to this. It says, "the landowner or lessee," How does that terminology fit in with state land. Now, I believe it is against the law to take a vehicle onto state land. If I rent state land, I become a lessee. I would like a clarification on that. Does that give me a right as a lessee to tell somebody that I'll give you written permission and you can drive across state land.

Chr. Nelson: I'm not an attorney, but my best guess would be that the terms of the state land lease would not allow you to drive on state land.

Daniel: What would allay my fear on that, if you would insert the word "private land," or "land that's held fee title to." If you put something of that degree into (the amendment), I would have no opposition to it.

Rep. Drovdal: The State Land Department does not give up any hunting rights to the lessors on their land. They totally control the hunting rights on that land.

Daniel: Would this be inclusive?

Drovdal: The State Land Department trust land is not going to allow the renter to determine who drives. They keep total control of the hunting issues on state land.

Daniel: I have been on state land when the lessee has already done this.

Drovdal: If that happens, and that man is turned in, he loses his lease.

Daniel: I had contacted a game warden about 10-12 years over this same issue. When I talked to him, he (warden) said he (lessee) is going to tell me he's looking for a calf. He drove every patch of brush that would have held a deer on that state land that he (leased). If you could make sure that that doesn't happen.

Chr. Nelson: We'll try to get clarification of that, Mr. Daniel. Is there further testimony in opposition to HB 1239?

David Munsch: I'm in support of the bill, but when he was talking about this it reminded me, last year some people were walking access on PLOTS land. This year, there is a sign that was coordinated with the landowner that allows them to drive right below the PLOTS sign. These PLOTS that I've seen have variables in the contract. There should be something pertaining to the PLOTS so it would be (on the signs), so they wouldn't have to give permission.

Chr. Nelson: Is there further testimony in opposition to HB 1239?

Bill Helphrey, ND Bowhunters Assoc.: (Written testimony attached.)

Chr. Nelson: Are there questions of Mr. Helphrey?

Rep. Porter: Your example is already against the law, and it remains against the law with the passage of this bill.

Helphrey: I think that is a judgement call of the warden who sees it. If you are driving, see a deer, there is no law stopping you from jumping out of your vehicle, leaning down and shooting it. That's perfectly legal.

Porter: Mr. Helphrey, you didn't use your vehicle in the pursuit of that game. The example you used is using the vehicle to flush the game.

Helphrey: That was not my intent. My exact words, you drive along the rim of a canyon, like I've watched hunters do in MT (it's quite common), looking into the brakes. You can see a deer laying down there. The deer will lay still because it knows that normally that a vehicle will drive on by. This time it doesn't. The person stops, hops and shoots. The deer hasn't even gotten up. Therefore, it's not pursuit.

Chr. Nelson: Are there further questions for Mr. Helphrey? Seeing none, thank you. If there further testimony in opposition to HB 1239?

Ray Hager, Washburn, ND: I'm not opposed to the landowner driving on his land. It's his land, that's fun. But, to give permission, written or whatever, invites a problem. (cites example) I think the landowner should be able to drive anywhere he wants on his land, but not pulling a hayrack with 15 guys in that will hunt. That's the problem with this bill. It leaves it impossible for a game warden to try to stop (them). Rewrite the bill, let the landowner drive on his property, but to give everybody permission from the landowner, how are you going to figure it out.

Chr. Nelson: Questions of Mr. Hager?

Rep. Porter: In your example, are you saying you already violate existing law?

Hager: People violate the law because there is a way to do it. I was with a rancher who did that (hauled fencing material as a cover for hunting). That was his choice. I don't think it's right.

But I'm saying the landowner should have the right to drive around on his property, drive out to dig postholes, across whatever. It's his property. But to have the pickup full of guys that can't walk a couple hundred yards... I think the problem you have with your bill absolutely leaves too many things open ended. Change it so the landowner can do what he wants, but (restrict) it to the landowner.

Porter: So in answer to my question, you did violate the law in the pursuit of game?

Hager: About 50 years ago, yes. I was only 20 years old then, and 20-year olds do different than 70 year old people do. It was wrong, it was not right, but it was done. I see people violating the law every day, but it's too hard to catch them doing it.

Chr. Nelson: Questions? Seeing none, thank you, Ray, for your testimony. Is there further testimony in opposition to HB 1239? Does the Department want to testify on this bill?

Dean Hildebrand, ND Game & Fish: I speak in opposition to this bill. At present, we have a pretty good form or managing hunting and fishing in the state of ND. There has been a lot of discussion about off road travel and we've printed many articles in magazines and periodicals dealing with what is an established trail and what isn't. There are a lot of people with extensive surgery. (They) can still get a permit to allow them to hunt off road. We've had the bill in effect for a long time and it's worked very well. Last night, informally, I asked five farmers in Cando what they felt about how the current bill is working. All five of them felt that what we have is working, and I do feel it is working. You will make a dramatic change in the state of ND, when you change this to allow people to drive anyplace they want to drive with permission from the landowner, or let that landowner do that during the hunting season. Look at the equipment we have today, 4-wheel drive pickups, ATV's, GPS, some ATV's now allow the driver to drive

sidesaddle. It would make it very easy to step off to hunt. Is that illegal? It's a tough judgement call for a game warden. I think this (amendment) would have people driving anywhere. I don't think the wardens would have much game control this way. My other concern is the hunter safety message we send to young people. We try to send the message of fair chase. In my nine years at the G & F Department, the changes that have taken place in the equipment that we have for fishing and hunting...the only protection between abnormal harvesting of game is the Game & Fish Department and our Legislature. You put a wall there. We have a limit, a season, things we can do and can't do in hunting of game. If we start retreating, and this session, there are 57 bills going through here, and many deal with relaxing restrictions on the harvesting of game. I'm concerned at how we get out and get at game; it's taking the sense of fair chase away. I've even thought of putting an age bracket of when you could drive off trail. So I'm very sensitive to the dilemma you are dealing with, and their (hunter) wants. But, as Director, I have to tell you flat out, that I'm looking out for the welfare of that resource. I think I would be delinquent in my job if I didn't ask you to take a very close look at what we're doing here. This is statewide, it's for all game, and it's a precedent that years ago the farmer/landowner came in and said, "we've got to do something, we've got people driving all over our land." If you look at the genesis of this legislation, it's 180 degrees from where we want to go now.

Chr. Nelson: Thank you, Mr. Hildebrand. Seeing no questions, we appreciate your testimony.

Is there further testimony in opposition to HB 1239? We'll take a five minute recess.

Chr. Nelson: It may be an appropriate time to offer an amendment. Rep. Porter has one.

Rep. Porter: Motion to add "written" (**amendment attached**) to the bill.

Rep. DeKrey: Second

Chr. Nelson: There has been a motion for the amendment by Rep. Porter and a second by Rep. DeKrey. Committee discussion on the amendment? Seeing none, I'll call for a voice vote on a proposed amendment. All those in favor, signify by saying aye; opposed? Motion carried.

What's the committee's wishes.

Rep. Norland: To begin with, I thought this was a good bill, but as I listened to testimony, and as I listened to the Director of the Game & Fish, and the more I thought about it, I'm not going to support the bill. I own land and I lease land and I guide and I look at this. I really think the bill that we have now is probably one of the best bills that we have to control hunting as we see it in the state of ND. If you want to be a hunter, you have to *go* and hunt. I heard testimony about people unable to hunt, that's true. But there are also a lot of PLOTS land, and areas where you can hunt by driving, pulling off the trail, and hunting. (There are things many of us) can no longer do. There are other hobbies to turn to and other ways of hunting that allow me to hunt. I don't want someone driving the ridges and ruining my hunt. If you get permission to hunt someone's land and you walk half way between sloughs, and someone else *drives* by and is hunting in front of you. Your hunt is over. I don't see any plausible way the Game & Fish can control this situation, even if they get the written permission. They're still going to have to track that person down. It's going to be a nightmare. I think it's one of the worst bills in my mind that has come up to affect Game & Fish and the hunting that we've had so far in this session. I move Do Not Pass HB 1239 as amended.

Rep. Charging: Second.

Chr. Nelson: Further committee discussion?

Charging: I agree with Rep. Norland. I think this is a bad direction to go. I also agree with our Game & Fish Department who we look to for advice and guidance. As he said, there are 57 some bills up here. This isn't in line with the majority of them.

Rep. DeKrey: I won't support the motion, I think it is a common sense piece of legislation. I think it would be executed by Game & Fish and landowners with common sense. It's not uncommon for me in the fall during deer season to throw my rifle in my pickup to fix fence or chasing cows. If my wife calls to tell me I have cows out, I'm actually violating the law when I drive across my own land to fix my fence because I have a gun in the pickup. It gets worse if my dog happens to be with me, because now, I'm hunting with a dog, when all I'm doing is fixing fence.

Chr. Nelson: I'm not going to support the Do Not Pass as well. I think landowners and sportsmen are at a different level today than some of the past horror stories we've heard. I think the self policing that landowners will have...people are not going to want people driving over their land if they're not invited or welcome. I think this allows more people to get into the field. I will try to promote the sport as long as possible. I'm not going to support the Do Not Pass as well.

Rep. Porter: I'm not going to support the Do Not Pass. when you look at this piece of legislation, it puts the responsibility back on the landowner, the person who is paying the taxes, the person who raises the crops, fixes the ruts, fixes the fence. It's their responsibility, now. They don't have to worry about calling the game warden because someone is driving off the trail. They can call the sheriff. The biggest complaint that I hear is from landowners during waterfowl season, from both residents and non residents driving out during wet conditions and dropping off

their decoys and driving back to the road before walking in. If you think there is a problem of driving on people's land, then maybe what we should do is change that and make everybody hunting waterfowl carry their decoys in so that they quit rutting up the stubble fields. The owners have the ultimate say on what happens on their land. There's no public land involved in this, there's no PLOTS land involved. I would hope you vote against the Do Not Pass.

Rep. Nottestad: Question.

Chr. Nelson: Question has been called. Will the clerk call the roll, please.

Do Not Pass as Amended Vote:

8-Yeas; 6-Nays; 0-Absent; CARRIER: Norland

By: Todd Porter

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1239

Page 1, line 9, after the first "the" insert "written"

Page 1, line 20, after the first "the" insert "written"

Renumber accordingly

February 10, 2005

VR
2/10/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1239

Page 1, line 9, after the first "the" insert "written"

Page 1, line 20, after the first "the" insert "written"

Renumber accordingly

✓ 2/10/05
Talk to LC
Wait for amend.

Date: 2/10/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number : 50277.0201 Title : .0300

Action Taken : Do Not Pass as Amended

Motion Made By : Norland Seconded By : Charging
: Click here to type Name

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson		✓	Rep. Lyle Hanson		✓
Vice Chairman - Todd Porter		✓	Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh		✓
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg		✓
Rep. Duane DeKrey		✓			
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 8 No 6

Absent ~~None~~ 0

Floor Assignment Norland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 11, 2005 12:56 p.m.

Module No: HR-28-2555
Carrier: Norland
Insert LC: 50277.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1239: Natural Resources Committee (Rep. Nelson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1239 was placed on the Sixth order on the calendar.

Page 1, line 9, after the first "the" insert "written"

Page 1, line 20, after the first "the" insert "written"

Renumber accordingly

2005 SENATE NATURAL RESOURCES

HB 1239

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1239

Senate Natural Resources Committee

Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - end
		X	0.0 - 18.5

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order.

All members of the committee were present

Senator Lyson opened the hearing on HB 1239 relating to offroad hunting.

Representative Todd Porter of District 34 introduced HB 1239 as an olive branch to landowners to create a positive relationship with them and what they can do with their land.

Presently if land is not posted a waterfowl hunters can drive anywhere they want and set up, drive out and then walk back in to hunt with or without land owner permission. The intent of HB 1239 is to allow a landowners or their designated person by written permission, to drive across their land for up land game hunting purposes. Although the bill say big game hunting, he stated he intended to offer an amendment to remove that portion of the bill. Things like dragging chains to chase up game is still illegal and the component of fair chase should still exist. Farming

practices have changed and large parcels of land may have a slough in the middle of that can not be accessed without walking a long distance. A landowner or his designee should be able to drive on his own property to access these hunting areas. He distributed his proposed amendments to the committee that limited the bill to just up land game. (see attached).

Senator Lyson asked if on Line 10 if after the word "land" if something could be added for a designated point to be traveled to hunt, so that hunting could not happen along the way.

Representative Porter agreed and that the intent of the bill is not to allow the hunter to stop and hunt along the way to the designated hunting spot. He further stated that if more clarification is needed in the bill to avoid hunting along the way should be included in the bill.

Jay Elkin (6.7) an ag producer and hunter from Taylor, North Dakota testified in support of HB 1239 (See attached testimony).

Senator Joel Heitkamp asked if he has ever had a game warden write him up for driving on his property and if his father was a good shot.

Jay Elkin answered no to each question.

Malcolm Brown, Mandan, North Dakota testified on his own behalf in support of HB 1239. He stated he has always been puzzled by the law that says he can drive to and hunt in a duck slough in the middle of a section but cannot drive to that same slough to hunt pheasants. This is simply a transport and access issue and that the way the bill is drafted it will be under the strict control of the land owner or his designee. The bill will give the landowner control of his property and will not effect the present population, other hunters and not have a bad effect on the North Dakota State Game and Fish Department.

Representative Duane DeKrey (11.2) of District 14, cosponsor of the HB 1239 stated that it a only makes sense to be able to drive to a hunting area and a landowner or his designee certainly should be able to drive on his own land.

Representative Rodney Froelich (11.8) of District 31 cosponsor of HB 1239 presented two scenarios of hunting stories of transporting hunters on private land and how they were sited. Landowners should have the authority to let hunters drive on their property. No one is claiming to own the wildlife but it is the landowner that supplies the habitat for that wildlife, so give the landowner that option to give permission to those he wishes to hunt his property.

Shane Sickler (14.6) of Dickinson, North Dakota testified in support of HB 1239 on his own behalf stating his personal story of a back injury and his difficulty hunting. He cannot walk long distances and needs help, so would like to see this loop hole in the law changed to accommodate his life long passion for hunting. He further stated the is not a harvest issue, but transport or an access issue.

Brian Kramer (17.7) representing the North Dakota Farm Bureau testified in support of HB 1239, stating they are on record in support in support of the bill.

David Munsch, a resident of Morton County testified in support of HB 1239 stating his personal story of hauling hay and a confrontation with a game warden. He further stated that a land owner should have the right to drive on his own property.

Gerald Eastgate, Bismarck, North Dakota and landowner in Grant County testified that he was in full support of HB 1239.

Senator Lyson asked for testimony in opposition to HB 1239.

Mike McEnroe (20.8) representing the North Dakota Chapter of the Wildlife Society testified in opposition to HB 1239 (See attached testimony).

Senator Joel Heitkamp asked if the amendment was adopted, would the Society support the bill.

Mike McEnroe answered that the amendment would clear part of the bill, but it would still be there for upland game.

Senator John Traynor asked if the requirement in the bill for written permission from the landowner would control of the disparagement of the landscape.

Mike McEnroe referred the question to the North Dakota State Game and Fish Department, but thought things will only be fogged up for what the hunter and landowners expect for the landscape.

Representative Mike Nordland of District 1, testified in opposition to HB 1239 stating that the bill would be helpful in his business to haul customers around in vehicles but does not want to do that and is not necessary. The game and fish department will have a difficult time monitoring the hunters if they have written permission to drive on property. A slip of paper can easily be written and a signature forged and unless a warden tracks down the property owner they will never know. He further stated that the way the law is presently written is the reason why there is bountiful game in North Dakota. To address the physical limitations, there are provisions within the law to allow for this.

Senator Heitkamp asked about the amendments presented by Representative Porter.

Representative Nordland stated the amendment removes some of the issues but does not believe transportation issue is necessary.

Bill Schaller (32.5) a District Game Warden representing the North Dakota Game Warden's Association testified in opposition to HB 1239 (See attached testimony). He further stated the amendments only confuse the issues.

Senator Heitkamp asked for North Dakota State Game and Fish Department process in regards to handicapped hunters.

Bill Schaller answered that there are provisions for "handicapped" hunters that allow for them to drive off road and even allows them to shoot from the vehicle.

Mike Donahue (38.0) representing the North Dakota Wildlife Federation and the United Sportsmen of North Dakota testified in opposition of HB 1239 (See attached testimony). He also presented pictures of duck decoys to the committee for viewing. The clubs are still in opposition to HB 1239 even with the proposed amendments.

Harold Neameyer (40.7) representing the Cass County Wildlife Club testified in opposition to HB 1239 (See attached testimony).

Bill Helphrey (42.3) representing the North Dakota Bowhunters Association testified in opposition to HB 1239 (See attached testimony).

The committee had discussion if it is legal for the driver of a vehicle transporting a hunting handicapped person, to hunt along with the handicapped hunter and came to understand it was not legal.

Lyle Peltz (48.1) and landowner and hunter testified in opposition of HB 1239 stating that the amendment makes the bill a little better but is concerned about vehicles off road and the possibility of fires. If this is a landowner issue, than the bill should be created for landowner use only and not that the landowner can give the right away to others.

Don Bosch, President of the North Dakota Wildlife Federation testified in opposition to HB 1239. He passed an article about hunter safety around to the committee. If this bill is adopted it will set the program back in regards to hunter ethics. There are handicapped licenses available for those who need them. Law enforcement will find it difficult to enforce and there is no mention in the bill as to time limits on the written permissions given by the landowners.

Patricia Stockdale of Garrison, North Dakota is a landowner and hunter testified in opposition to HB 1239 stating the reasons not to pass the bill have already been stated. **Tape 1, Side B** She further stated that property lines could easily be crossed unintentionally and enforcement could not enforce it. Handicapped provisions have already been created. Landowners to do not have any special rights to wildlife just because they own the land does not give them special privileges to access that land.

Dean Hildebrand, Director of the North Dakota State Game and Fish Department testified in opposition of HB 1239. He was confident the committee was wise enough to work out a compromise for the both the landowners and hunters. There are both provisions for both severely handicapped and those that are not that handicapped. There should be a compromise that would allow a landowner to move off the trail and if they want to have a person of a certain age, it should be able to be done. He distributed copies of the "Outdoor" magazine (See attached) containing an article on "Access". The issue also contained an article on youth hunting and "Understanding Off Trail - best to know the code before leaving the road". The North Dakota State Game and Fish Department has worked extremely hard on the landowner/hunter relationship and there should be something in the middle to satisfy all. The LAP program has been developed towards that goal and he has charged the department's wardens to contact

landowners. He distributed copies of the "PLOTS" magazine that explains the nine programs that compensate landowners for the privilege of hunting on their land. The department has done everything physically possible to show appreciation to the landowners and feels the relationship between landowners/hunters is the best they have ever been. Things need to be taken slowly and expressed his concern of an explosion within this relationship. He further asked the committee to step back and gave the committee three options. 1.) turn this into a study; 2.) consider giving this privilege to the landowner only; and finally 3.) a possible amendment that gives the director some lead way to provide an opportunity for a person to hunt that may not be disabled but does have difficulty for some reason and then issue a permit to hunt offroad. He cautioned the committee to look at the options and not blow the wheels off the good landowner/hunter relations that have been developed.

Senator Freborg admitted he is in the middle in regards to the bill and told the personal story of his own land being hunted by a hunter in a vehicle and can not cross his own land to find out who it is that is hunting in violation.

Dean Hildebrand stated hunting is a very passionate issue and wants to proceed cautiously to address the needs of landowners and hunter alike.

Senator Ben Tollefson asked if the enforcement of the bill would be difficult.

Dean Hildebrand assured the committee that the wardens would do everything that is right, but he is concerned that they are given the right thing to do and still accommodate the public.

Senator Traynor asked if there would be more established trails if this bill is passed.

Dean Hildebrand confirmed this to be true.

Senator Lyson closed the hearing on HB 1239.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1239

Senate Natural Resources Committee

Conference Committee

Hearing Date March 10, 2005

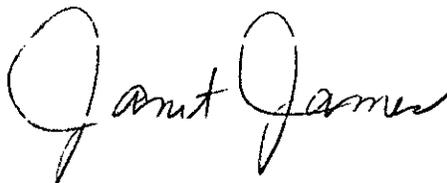
Tape Number
3

Side A
X

Side B

Meter #
14.1 - 22.6

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1239.

All members of the committee were present except **Senator Joel Heitkamp**.

Senator Layton Freborg commented that no one should be allowed to drive around in fields and where ever, but thinks a landowner should not be restricted to drive over his own property because he has a gun in the vehicle. Of course it is against the law to shoot a gun from that vehicle at any time and that is not changing.

Senator Lyson stated that those opposed to the bill claim this not to be a landowner bill, but strictly a shooter's bill.

Discussion regarding the three proposed amendments was held by the committee.

Senator John Traynor commented that the way he reads it, the bill still does not give permission to the landowner to drive on his property, but lets him give permission to someone else.

Senator Michael Every felt that someone has a specific parcel of land this bill is speaking to. Discussion was held about the bill not giving the landowner the right to drive on his own property and that he could write himself a permission slip.

Senator Freborg made a motion for Do Not Pass of HB 1239.

Senator Ben Tollefson second the motion.

Discussion was held as to how long the off trail issue has been around.

Senator Rich Wardner commented that a landowner has the right.

Roll call vote for a Do Not Pass of HB 1239 was taken indicating 3 YEAS, 0 NAYS AND 1 ABSENT.

The motion failed.

Senator Freborg asked if the no votes were because those voting such wanted to amend the bill to give the landowner permission or why. The intern was asked to prepare an amendment to allow the landowner to drive on his own property, to be viewed by the committee the next day.

Senator Lyson closed the committee work on HB 1239.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1239

Senate Natural Resources Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		50.8 -end
		X	0.0 -13.7

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1239.

All members of the committee were present except Senator Ben Tollefson.

Senator Lyson presented a prepared amendment reflecting the observation of **Senator John Traynor** to include the landowner himself to operate a vehicle on his own property. **Senator Traynor** was comfortable with the amendment.

Discussion was held if big game was to be included.

Tape #1, Side B, 0.0 - 13.7

Senator Layton Freborg stated that if the game wardens are not enforcing the law we have now as long as the landowner is helping somebody out, why do we not want to exempt landowners from the law.

Senator Heitkamp refuted that in his area of the state it is common sense and good practice where the game wardens can make the call to site a landowner that is helping out a person to hunt. We are getting into a situation where it is going to be a tough road just to accommodate a few people when the game wardens can make the decisions.

Senator Traynor clarified that if adopted as written, the amendment would allow a landowner to drive off the established trails and he can give written permission to others to do the same. Only the driver could be charged, not the other people in the vehicle.

Senator Heitkamp stated this would allow a landowner to drive around off trail until he locates the birds and then start hunting.

Senator Lyson stated the intent of the bill although it does not say it, is to transport people from one point to another point and later pick them. The bill is open to interpretation.

Senator Heitkamp questioned if HB 1239 is passed how could a game warden ever stop someone or have any control. He further stated he could see things being abused and there will not be the control of the game wardens. Landowners will become upset with the fact that they did not give anyone written permission and they have tracts all over there land.

Senator Traynor stated he views it as part of the property owner's power over his own property and that he has the right to drive where he wants to and the right to allow other people to drive where he tells them to drive. It puts the landowner in control.

Senator Traynor made a motion to adopt the amendment consisting of changes on Lines 8 and 19 on Page 1.

Senator Rich Wardner second the motion.

Roll call vote #1 to adopt the amendment was taken by voice vote indicating 6 YEAS, 0 NAYS
AND 1 ABSENT.

Senator Heitkamp made a motion to adopt amendment 0302.

Senator Michael Every second the motion.

Roll call vote #2 to adopt amendment 0302 was taken by voice vote indicating 6 YEAS, 0
NAYS AND 1 ABSENT.

Senator Heitkamp made a motion to adopt amendment 0301.

Senator Every second the motion.

Roll call vote #3 to adopt amendment 0301 was taken by voice vote indicating 6 YEAS, 0
NAYS AND 1 ABSENT.

Senator Wardner made a motion for a Do Pass as Amended of HB 1239.

Senator Traynor second the motion.

Senator Freborg asked the committee members to tell him exactly what the bill does with the
amendments.

Senator Lyson explained that with the amendments the bill would allow a landowner could
drive on his own land or give permission to another to drive on his land except for the period of
time when big game season is on.

Senator Freborg asked if there could be conflict with the amendments and again asked for
clarification of the bill.

Senator Wardner stated his opinion of the bill is that a landowner has the right to hunt or drive
off the trail on his own land and he can give permission to others to do the same except during
big game hunting season when he is restricted from doing so.

Page 4
Senate Natural Resources Committee
Bill/Resolution Number HB 1239
Hearing Date 3-11-05

After some discussion of the amendments fitting together it was decided to table the bill until next week.

The intern will consult with the Legislative Council in regards to the amendments.

Senator Wardner withdrew his motion.

Senator Traynor withdrew his second to the motion.

The committee will wait until next week to continue work on HB 1239.

Senator Lyson closed the committee work on HB 1239.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1239

Senate Natural Resources Committee

Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 10.2

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the committee work on HB 1239 relating to off road hunting.

All members of the committee were present.

Senator Lyson had asked the intern to combine the three adopted amendments and to check with the Legislative Council to find out if they would fit together or if they would be in contradiction to each other.

Jeff Ubben the Senate Natural Resources Committee intern stated he conferred with Jeff Nelson of the Legislative Council and he indicated there was no conflicting problem with the amendments if that was what the committee wished to adopt.

Senator Layton Freborg made a motion for a Do Not Pass of HB 1239.

There was no second to the motion.

Senator John Traynor made a motion for Do Pass as Amended of HB 1239.

Senator Michael Every second the motion.

Senator Freborg asked Senator Traynor to then explain exactly what the bill does.

Senator Freborg stated that the bill will allow a landowner to drive on his land any where he wants with a gun in his vehicle.

Senator Joel Heitkamp added that it goes beyond that. Anyone with written permission from a landowner can do the same thing. So the bill opens up all off road - go where you want to go - because game wardens will not stop people, so people will drive off road and the established trail rule will not longer exist.

Senator Freborg asked how long a time the written permission is good for. Is it for eternity unless it is revoked or dated.

Senator Heitkamp commented that the way he reads the bill, it is for eternity.

Senator Lyson stated he visited with the Legislative Council and said the permission slip would be good only for the year.

Discussion was held if the written permission slip would need to be dated and if this should be stated so in the bill. There is nothing in the bill that deactivates the written permission or the certification of the signature.

Senator Traynor stated he views the bill as a property right and landowner should have the right the drive any place on his own property whenever he pleases with or without a gun. He further stated he agrees with the Legislative Council that the written permission is valid for the year it is given. He felt landowners are aware that they need to limit the time on their written permission slips.

Page 3

Senate Natural Resources Committee

Bill/Resolution Number HB 1239

Hearing Date 3-17-05

Senator Lyson raised concerns that landowners are not always available for this permission slip and also that there is no description of the land required on the permission slip.

Senator Heitkamp further stated that he would be in favor of having just the landowner have the right to drive off trail and not include a permission slip given to others.

Senator Rich Wardner stated that landowners hate having people on their land for any reason and this bill keeps the landowner in control.

Senator Heitkamp presented one last scenario of hunters driving around pot holes until they find the birds and then hunt.

Roll call vote for A Do Pass as Amended of HB 1239 was taken indicating 4 YEAS, 3 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor will carry HB 1239.

Date: 3-10-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *DO NOT PASS*

Motion Made By *Freborg* Seconded By *Tollefson*

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman		✓	Senator Joel Heitkamp		
Senator Ben Tollefson, Vice Chair		✓	Senator Michael Every	✓	
Senator Layton Freborg	✓				
Senator Rich Wardner		✓			
Senator John Traynor	✓				

Failed

Total (Yes) *3* No *3*

Absent *0*

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HB 1239

Page 1, line 8, after the second comma, insert "other than the landowner,"

Page 1, line 19, after the comma, insert "other than the landowner,"

Renumber Accordingly

#1

Date: 3-11-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Adopt Amend P.1. Line 8, P.1 Line 9*

Motion Made By *Traynor* Seconded By *Wardner*

Senators
Senator Stanley Lyson, Chairman
Senator Ben Tollefson, Vice Chair
Senator Layton Freborg
Senator Rich Wardner
Senator John Traynor

Yes No

Senators
Senator Joel Heitkamp
Senator Michael Every

Yes No

(11) 11/19

Total (Yes)

6

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 23, after the period insert "The provisions of this section relating to hunting big game or small game using a motor-driven vehicle on any land other than an established road or trail without the written permission of the landowner or a lessee who actually farms or ranches that land do not apply to the hunting of deer."

Renumber accordingly

Date: 3-11
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Amend. 302

Motion Made By

Heith

Seconded By

Every

Senators
Senator Stanley Lyson, Chairman
Senator Ben Tollefson, Vice Chair
Senator Layton Freborg
Senator Rich Wardner
Senator John Traynor

Yes No

Senators
Senator Joel Heitkamp
Senator Michael Every

Yes No

Heith

Total (Yes)

6

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 8, after "20.1-02-05" insert "and as otherwise provided in this section"

Page 1, line 15, after the period insert "A person may not use a motor-driven vehicle on any land other than an established road or trail to hunt upland game during the deer gun season."

Renumber accordingly

Date: 3-11
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amend #0301

Motion Made By Heitkamp Seconded By Every

Senators
Senator Stanley Lyson, Chairman
Senator Ben Tollefson, Vice Chair
Senator Layton Freborg
Senator Rich Wardner
Senator John Traynor

Yes No

Senators
Senator Joel Heitkamp
Senator Michael Every

Yes No

MTW

Total (Yes) 6 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 11
Roll Call Vote #: 2/

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Wardner Seconded By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman			Senator Joel Heitkamp		
Senator Ben Tollefson, Vice Chair			Senator Michael Every		
Senator Layton Freborg					
Senator Rich Wardner					
Senator John Traynor					

Withdrawn

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3-17-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

Senate Senate Natural Resources

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass as Amended

Motion Made By

Traynor

Seconded By

Every

Senators	Yes	No
Senator Stanley Lyson, Chairman	✓	
Senator Ben Tollefson, Vice Chair	✓	
Senator Layton Freborg		✓
Senator Rich Wardner	✓	
Senator John Traynor	✓	

Senators	Yes	No
Senator Joel Heitkamp		✓
Senator Michael Every		✓

Total (Yes)

4

No

3

Absent

0

Floor Assignment

Traynor

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1239, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1239 was placed on the Sixth order on the calendar.

Page 1, line 8, after "20.1-02-05" insert "and as otherwise provided in this section" and after the second comma insert "other than the landowner,"

Page 1, line 15, after the period insert "A person may not use a motor-driven vehicle on any land other than an established road or trail to hunt upland game during the deer gun season."

Page 1, line 19, after the comma insert "other than the landowner,"

Page 1, line 23, after the period insert "The provisions of this section relating to hunting big game or small game while using a motor-driven vehicle on any land other than an established road or trail without the written permission of the landowner or a lessee who actually farms or ranches that land do not apply to the hunting of big game during an open and lawful season for small game."

Renumber accordingly

2005 TESTIMONY

HB 1239

By: Jay Elkin
Re: HB1239
2/10/05

TESTIMONY – House Bill #1239

Mr. Chairman and committee members,

I am Jay Elkin, an ag producer and sportsman from Taylor, North Dakota. I farm and ranch on land that I own and lease in southwestern North Dakota. I am here today in support of House Bill #1239.

At the present time the law restricts me as a landowner from driving my vehicle across my land to access areas where there may be small game. As a landowner, I believe that I should have the right to allow myself as well as anyone I choose the right to drive a vehicle across land owned or leased by me to access hunting areas. I believe this to be a fundamental right of ownership of property.

I enjoy sharing the resources my land has to offer with hunters, and as a landowner I am encouraged to do so.

I have shared this resource with hunters that have hunted pheasant on land owned or leased by me for the past 25 years. These people are true sportsmen. They have enjoyed hunting for the greater part of their lives. However, when hunting small game on my farm the distance to areas where one may find pheasant could be greater than ½ mile from an established road or trail. This distance may be too far for a lot of our elderly sportsmen to walk in order to enjoy the privilege of hunting in North Dakota.

As a landowner and sportsman, I urge your support of H.B. #1239. Thank you for your time.

House Bill No. 1239

**Reference: Relates to obtaining permission from landowner
Or lessee for off road vehicle use on land during
hunting**

House Natural Resources Committee

Hearing Date: February 10, 2005

Good Morning, Mr. Chairman and Committee members. My name is Curtis Blohm. I appear before you today representing the North Dakota Outdoor Heritage Coalition. This coalition was founded out of the need for representation before the legislative committee by North Dakota citizens concerned for the preservation of our unique outdoor recreational heritage.

The ND Outdoor Heritage Coalition is not in favor of the content of this bill. We would suggest that the following amendments be incorporated into HB 1239.

- 1. Permission from the landowner or lessee to be "Written Permission."**
- 2. Suspend off road vehicular traffic for all hunting during deer gun season.**

Thank You.



**Cass County
WILDLIFE CLUB**

**Box 336
Casselton, ND 58012**

By: Harold Neameyer



**TESTIMONY OF HAROLD NEAMEYER
CASS COUNTY WILDLIFE CLUB
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE**

ON

HB 1239

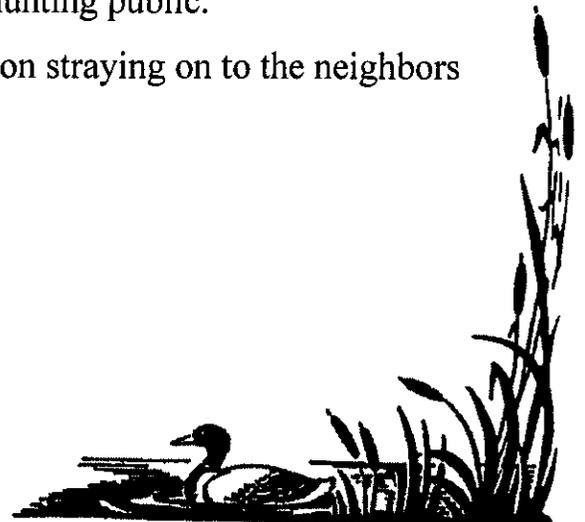
February 10, 2005

Mr. Chairman and Members of the Committee:

The Club opposes this bill for a number of reasons:

- a. This bill if passed, reverses the current law that was put into place because land owners didn't want hunters driving anywhere on their land.
- b. The enforcement of off-road driving would be near impossible, because how can enforcement officers know who has permission and who don't?
- c. Hunter safety instructors are teaching respect for landowners property. This bill lends itself to land abuse.
- d. This bill makes it to easy to disturb wildlife whether intentional or not.
- e. This bill sends the wrong image to the non-hunting public.
- f. There may be cases of hunters with permission straying on to the neighbors property.

Please **oppose** HB 1239.



By: Mike Donahue

North Dakota Wildlife Federation

Abundant wildlife and wildlife habitat, and access to wildlife recreational opportunities



2/10/2005

For: House Natural Resource Committee

Ref: HB 1239

The North Dakota Wildlife Federation and United Sportsmen of North Dakota are opposed to this bill and urge a do not pass.

You could say this bill allows road hunting in the fields.

It defeats "Fair Chase."

The current code, we understand, was enacted in the 70's at the request of landowners.

It will probably increase the pursuit/harassment of game with a motor vehicle; at the same time it will make enforcement more difficult.

We understand that enforcement will presume owner/lessee approval unless there is a complaint.

Please, do not pass.

Thank you,
Mike Donahue
Lobbyist # 275



PO Box 1091 • Bismarck, North Dakota 58502 • E-mail: ndwf@ndwf.org • Fax: 701-223-4645
Office Manager: 701-222-2557 • 1-888-827-2557 • Web: www.ndwf.org

By: Bill Helphrey



North Dakota Bowhunters Association



P.O. Box 374
Bismarck, ND 58502-0374
Phone: 701.222.3499
E-mail: info@ndbowhunters.org
Web: www.ndbowhunters.org

Testimony of Bill Helphrey representing the North Dakota Bowhunters Association on HB 1239.

Good Morning Mr. Chairman and Members of the Natural Resources Committee.

My name is Bill Helphrey and I represent the North Dakota Bowhunters Association.

We are asking you to defeat this bill.

This bill would allow any landowner or lessee who actively farms or ranches, or anyone with their permission, to drive anyplace they want to while hunting, including retired cropland, brush areas, slough areas, timber areas, open prairie and un-harvested or harvested cropland. This will encourage driving around on the rims of the coulees and draws, or next to the woods or anyplace, waiting for an animal to expose it's self only to have the driver and passengers jump out and start shooting? Is this hunting?

How are those charged with enforcing the law going to enforce this one? If a warden sees someone driving around and stops him or her and they say, "We have permission"; is the warden expected to try and run down the landowner to ask if it is true? Even if written permission were granted, how is the warden going to confirm that the written permission came from the landowner?

We are talking about keeping hunting the respected activity that it is, hunting should be conducted in an ethical, fair and appropriate manner, hunting should not be "jump out and shoot".

Please defeat this bill.

What questions do you have of me?

Testimony of Jay Elkin
Before the Senate Natural Resources Committee
March 3, 2005
Testimony on HB 1239

Mr. Chairman and committee members,

I am Jay Elkin, an ag producer and sportsman from Taylor, North Dakota. I am here today in support of House Bill #1239.

The current law was passed I believe with good intentions. However, most landowners I visited with are under the assumption that they have the right to drive across their property during hunting season to access hunting areas for upland game.

At the present time the law restricts me as a landowner from driving my vehicle across my land to access areas where there may be small game. As a landowner, I believe that I should have the right to allow myself as well as anyone I choose the right to drive a vehicle across land owned or leased by me to access hunting areas.

As a farmer I know my land better than anyone, as do most ag producers. I am aware if a fire danger exists or if the land I farm can afford to be hunted in a given year, as well as, if people are abusing the hunting privileges on my land.

My support of this bill is not to direct any displeasure with the North Dakota Game and Fish Department. The North Dakota Game and Fish Department does a wonderful job of managing the wildlife resources North Dakota has to offer. However, I believe the ND Game and Fish Department can ill afford to place a game warden on every quarter of land to enforce hunting regulations. I believe the responsibility of enforcement needs to be shared by landowners, sportsmen and the ND Game and Fish Department.

This legislation does not make it legal to pursue wildlife with a vehicle. This legislation allows myself the right to drive across my land to access those areas where a hunt may begin or end. This is a transport issue.

I enjoy sharing the resources my land has to offer with hunters, and as a landowner I am encouraged to do so.

I have shared this resource with hunters that have hunted pheasant on land owned or leased by me for the past 25 years. These people are true sportsmen. They have enjoyed hunting for the greater part of their lives. However, when hunting small game on my farm the distance to areas where one may find pheasant could be greater than ½ mile from an established road or trail. This distance may be too far for a lot of our elderly sportsmen to walk in order to enjoy the privilege of hunting in North Dakota.

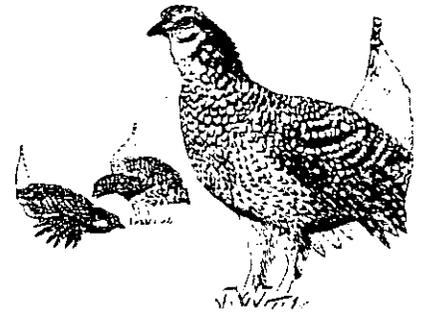
As a landowner and sportsman, I am asking for your consideration in this matter. I urge your support of H.B.1239. Thank you for your time.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MICHAEL McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
SENATE NATURAL RESOURCES COMMITTEE
ON HB 1239
MARCH 3, 2005**

Chairman Lyson and Members of the Senate Natural Resource Committee:

My name is Mike McEnroe, and I am representing the North Dakota Chapter of The Wildlife Society, comprised of over 300 wildlife biologists, land managers, natural resource administrators, and educators. The Chapter is opposed to HB 1239.

No hunting activity creates more animosity between hunters and landowners, or between hunters and non-hunters than road hunting, the practice of driving around with no intention to get out and walk, unless something is spotted.

The Legislature created the current statute limiting motor vehicles to established roads and trails to protect landowners and their property in the 1970s. This Bill allowing landowners and hunters with landowner permission to drive off-road to hunt big game and upland game is not a property rights issue. It is a manner of taking wildlife issue, just like landowners (or anyone else) not being allowed to take or shoot wildlife with the aid of a spotlight, or with an automatic firearm, or without regard to the bag limits.

From a habitat perspective, this bill leads to habitat degradation by developing trails along shelterbelts, through wooded areas, sloughs, CRP lands and across grasslands. Driving off-road in this manner has the potential to increase the incidence of wild fires on private lands.

Hunting, or more correctly, shooting in this manner, has the potential to increase the harvest of both big game and upland game, and to chase or harass game animals out of secure cover and habitats.

From a law enforcement perspective, hunting in this manner will lead to chasing and harassing wildlife with a motor vehicle, and eventually to shooting from a motor vehicle.

Based on 16 years experience as a NDGFD Hunter Safety instructor, trying to teach beginning hunters about safety, ethics, and developing relationships with landowners; this Bill is counter to everything we try to teach our youth.

When people seek easier ways to hunt, focusing only on the results, such as a dead animal, they fail to gain the intimacy, knowledge, appreciation, and respect for the game, for the habitat, and for other wildlife that is gained through hard pursuit. The connections between wildlife and the land are shattered. That is what this bill helps do.

Finally, this bill is not needed. It was not asked for by the sportmens' groups and wildlife clubs testifying here today.

The NDCTWS strongly urges a "Do not Pass" vote on HB 1239.

House Bill 1239
March 3, 2005
Senate Natural Resources Committee

My name is Bill Schaller. I am a District Game Warden and am here today representing the ND Game Warden's Association. Members of the Association urge you to oppose this bill today. The first problem we see is that the existing law has long been the standard for "fair chase" pursuit of game animals in the state. Eroding that standard will certainly lead to hunters having less respect in the eyes of the non-hunting public as well as a lot of hunters. Also, if this law passes, it makes it more difficult for Game Wardens to prosecute violators of this law. Currently, when a Game Warden observes a violation, he initiates a stop and writes a citation based on the circumstances. A landowner doesn't need to be involved in the prosecution process. If the proposed language becomes law, a Game Warden could only respond to an off trail driver if a landowner called in a complaint. It would be prosecuted the same as the current 'hunt on posted land' law. When a landowner calls in a complaint, game wardens respond to the scene to meet with the landowner and gather evidence. In almost all cases the landowner is required to assist in the prosecution of the case. A lot of landowners have told us they would rather have us deal with the courts and attorneys; they have other things to do. Then there is always the rumor out there that landowners are regularly prosecuted for driving off trail on their own property. In reality very few have ever been charged. However, if that is a concern the Association would ask that you exempt only landowners from the current off trail law instead of making the change proposed. I would be glad to answer any questions at this time. Thank you.

North Dakota Wildlife Federation

Abundant wildlife and wildlife habitat, and access to wildlife recreational opportunities



3/3/2005

For: Senate Natural Resources Committee

Reference: HB 1239

The North Dakota Wildlife Federation and the United Sportsmen of North Dakota oppose HB 1239 and ask for a Do Not Pass.

We lost this on the House side because the argument of "Landowner Right" was used and confused the issue.

This bill is actually an assault on the Ethic of Fair Chase and the rules and law governing the method and manner of taking game.

Hunting is a licensed activity. Whether you own the land or are a guest on the land - to hunt you must be licensed.

What will be the next "logical" step?

- A. Will it be because I own the land I can exceed daily limit!?
- B. Will it be thus I can use lights and hunt at night!?
- C. Will it be that I can use explosives to fish!?

There exists in the law now a method to get a permit to drive off road if you are disabled. This should be sufficient.

You will hear the argument that waterfowl hunters can drive off road. True. But it is to haul several hundred pounds of equipment to a certain point. And then, normally, the waterfowl hunter drives back to the field access (or further), parks the vehicle and walks in to the setup-which is usually ¼ to ½ mile in. At the end of the hunt the reverse is normally true.

This bill is adjusting Method and Manner of taking.

Do not pass, Please!

Thank you,
Mike Donahue
Lobbyist #275



PO Box 1091 • Bismarck, North Dakota 58502 • E-mail: ndwf@ndwf.org • Fax: 701-223-4645
Office Manager: 701-222-2557 • 1-888-827-2557 • Web: www.ndwf.org



Cass County
WILDLIFE CLUB

Box. 336
Casselton, ND 58012



TESTIMONY OF HAROLD NEAMEYER
CASS COUNTY WILDLIFE CLUB
PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE
ON

HB 1239
March 3, 2005

Mr. Chairman and Members of the Committee:

The CCWC is very strongly opposed to HB 1239. This bill sets hunting back 30 years. It was off road driving abuse that caused us to have the current restriction we now have. The current law is proper.

The enforcement of law violations will be near impossible by game enforcement officials. Enforcement will fall on landowners when violations occur. They will need to report all unwanted activity on their property.

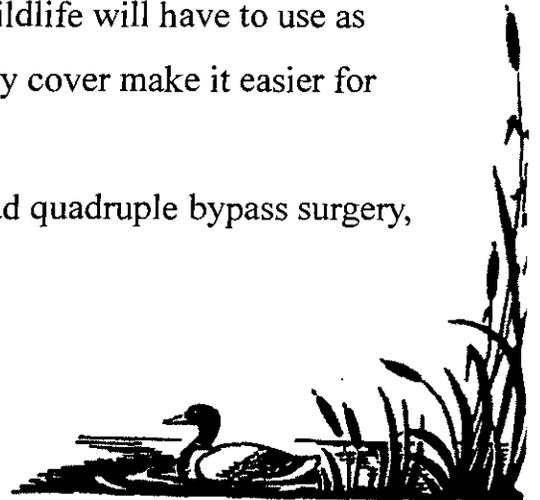
This bill will send the wrong message to the non hunting public regarding how hunters conduct themselves.

This bill is offensive to the Hunters Safety Program. I recently attended the first session with my granddaughter, and the first topic discussed was ethics and respect. They stressed respect for the landowners property, the guns and yes the wildlife. This bill is contrary to the teaching of this great program.

The more driving off trails is allowed, the less area wildlife will have to use as cover they need to survive. Tracks made by vehicles in heavy cover make it easier for predators to find and destroy game.

Finally, you can see I am not a spring chicken. I've had quadruple bypass surgery, and total knee replacement and I like the rules as they are.

Please DEFEAT this bill.



March 3, 2005

Testimony of Bill Helphrey representing the North Dakota Bowhunters Association on
HB 1239

Good morning Mr. Chairman and Members of the Natural Resources Committee.

My name is Bill Helphrey and I represent the North Dakota Bowhunters Association.

The proponents of this bill are asking that a law be passed that will enable them, or anyone they give permission to, to drive off an established trail while hunting. During the House testimony, I heard reference being made to the need to drive off the established trail due to health reasons such as bad knees, hips etc. I appreciate individuals wanting to be able to enjoy the "hunt" in their older years. I hope I too can enjoy the hunt when I become less able to get around. The North Dakota Game and Fish Department also recognizes this desire to hunt when physically challenged and has made provisions for just exactly that situation.

Today, under existing law, an individual with a physical mobility problem can acquire a permit from the game and fish to drive off the trail. There is a procedure in place to acquire this permit and I know it works. Judge Dennis Schneider was my best friend and hunting partner for over thirty years. He suffered from Multiple Sclerosis, could not walk and was granted a permit to drive off an established trail. I know he did because I drove for him.

I do not believe this is a property rights issue. I believe hunting legally, takes precedence over property rights, as it is illegal to shoot out of a vehicle, or to hunt at night with a spotlight, or to hunt without a license, or hunt out of season, regardless of land ownership.

Thank you for your time.

What questions do you have of me?

From LE

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50277.0300

FIRST ENGROSSMENT

Fifty-ninth

Legislative Assembly **ENGROSSED HOUSE BILL NO. 1239**

of North Dakota

Introduced by

Representatives Porter, DeKrey, Haas, Herbel

Senators Freborg, Urlacher

A BILL for an Act to amend and reenact section 20.1-01-07 of the North Dakota Century Code, relating to offroad hunting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-07. Hunting big game or small game other than waterfowl or cranes with motor-driven vehicles prohibited - Exception - Motor-driven vehicle use in transporting big game restricted. Except as provided in subsection 11 of section 20.1-02-05 or subsection 2 of this section, no a person, without the written permission of the landowner or a lessee who actively farms or ranches that and, while hunting big game or small game, other than waterfowl or cranes, statewide, may not use a motor-driven vehicle on any land other than an established road or trail, unless that person has reduced a big game animal to possession and cannot easily retrieve the big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, but after retrieval, the motor-driven vehicle must be returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. No A person, without the written permission of the landowner or a lessee who actively farms or ranches that land, while hunting big game or small game, other than waterfowl or cranes, statewide, may not drive through any retired cropland, brush area, slough

area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail.

2. For the purpose of upland hunting, the director or designee of the director may issue a permit to drive off trail to a person not otherwise exempt under subsection 11 of section 20.1-02-05, if the person provides a description of the land the permit is valid upon; provides proof that they own or otherwise have permission to hunt on that track of land; and provides sufficient evidence that the person would incur an undue physical hardship if off-road travel was not permitted by the person on that track of land. Permits may be issued for one year, multiple years, or lifetime and the director shall not charge a permit fee. However, no person may hunt or shoot from the vehicle and the vehicle must stay on harvested cropland or open prairie at all times. No permit shall be valid for upland hunting when the regular deer gun season is open, or on any public land including school lands or any private lands enrolled in the private land open to sportsman program. All other restrictions in this section remain in effect. In addition to all other penalties of law, the director may deny or revoke a person's off-road permit if the director finds probable cause that the person hunted or shot from the vehicle or used the vehicle to run, chase, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game species or furbears. A person must carry their permit with them while driving off-trail and unless a game warden knows the person has a valid permit the game warden may stop and require a person to produce their permit.

PLOTS GUIDE

HB
1239

2004
CONSERVATION
PLOTS GUIDE

Contact
Game & Fish
for a copy of
this 2004 guide



NORTH DAKOTA
GAME AND FISH
DEPARTMENT

VALID THROUGH SPRING 2005

NORTH DAKOTA

OUTDOORS

PUBLISHED BY THE NORTH DAKOTA

GAME AND FISH DEPARTMENT
\$2.00 AUGUST 2002



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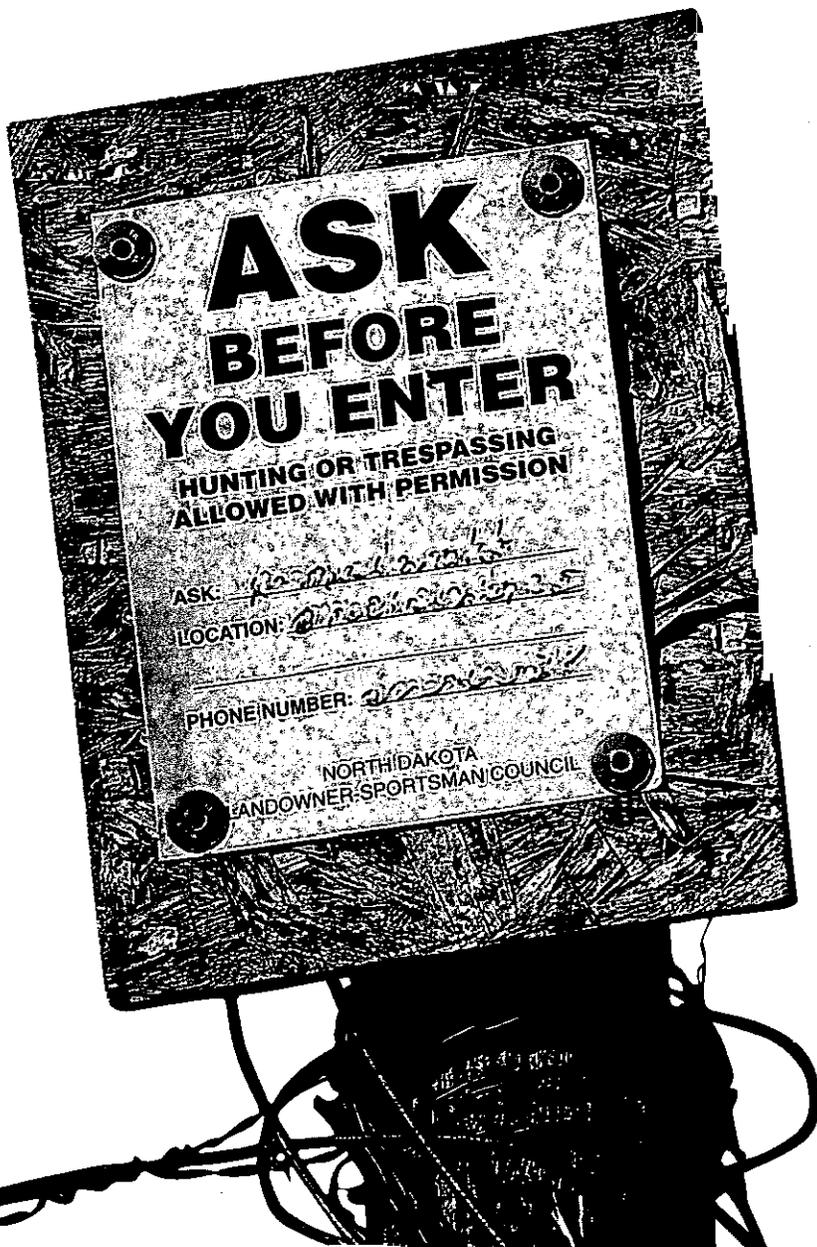
Story and Photos by Craig Bihrl

Just north of the tree grove that frames a rural Towner County house, a duck-covered wetland naturally attracts the attention of hunters passing by in vehicles on the adjacent gravel road. On the fence between the road and the slough is a sign declaring No Hunting or Trespassing and bearing the signature of Tony Galow, the friendly farmer/rancher who lives in the house and tends the cattle and horses in the pasture that surrounds the water.

Hunters frequently stop by the house and ask for permission to hunt in the marsh, and Galow politely tells them "no." It's too close to the house. Not even Galow, a landowner as well as an avid hunter, hunts in that slough.

Some days, four or five groups of hunters stop by to ask permission to hunt. While the land around the farm buildings is off limits, as you might expect, visitors might also learn something else: that Galow has some other parcels of land, well away from the house, that are not "posted" – a long-used term referring to private land in North Dakota that is marked with signs indicating that permission is required before anyone enters. These other quarters of land, which contain wetlands and grain stubble attractive to waterfowl, might be available.

"It's nice when they (hunters) come and ask," Galow says. "You get to visit with a lot of different people ... it's just nice to know who's out there."



Left and facing pages: Signs along rural North Dakota roads have different meanings... or do they? One implies that permission for hunting will likely be granted to those who ask first. The other might mean the same thing, or it could mean the landowner doesn't allow hunting at all. The only way to find out is to ask.

ESS

nging Times, tunities on Private Land

Galow is just one of thousands of North Dakota landowners who allow at least some type of hunting on their land each fall or spring. Each have their own set of circumstances for the way they manage their land.

Signs along a gravel road in rural Burleigh County offer a modern perspective to this tradition long-associated with hunting in North Dakota.

On the west side, stapled to a weathered rectangle of chipboard nailed to a fence post that marks the corner of a quarter-section of land, is a faded poster promoting the words

**"ASK BEFORE YOU ENTER
HUNTING OR TRESPASSING
ALLOWED WITH PERMISSION."**

On the east side and just down the road stands a similar fence post wrapped in a sign, each with a different message: No Hunting.

The sign on the west side leaves the favorable impression that the land behind it is accessible for hunting to those who have the courtesy to ask.

To the east, the words say something else. The easy assumption is that hunters aren't welcome, so don't even bother asking. That might be correct, it might not. Many hunters, upon seeing such signs, or any signs, won't bother asking, and therefore will never know for sure. They'll drive down the road looking for another place where access might be easier.



That's unfortunate, says Lyle Westbrook, who operates a farm/ranch about 30 miles southeast of Bismarck. An avid hunter himself, Westbrook "posts" his land, as do most if not all of his neighbors. Some neighbors charge access fees, a few lease their land to hunters. Westbrook and others often allow hunting access to people who ask first – they, like Galow, just want to know who's on their property.

In an area close to North Dakota's second largest city, with such a mix of landowner approaches to hunting, it's reasonable to assume that Westbrook is overrun with hunters seeking permission. However, that is not the case in recent years. "I'm finding there's less and less hunters," in the area each fall, he said. "They're afraid to even stop and ask."

Human nature often follows the path of least resistance and some hunters who encounter posted land tend to continue searching for either public land, or private land that is not posted. When a sign goes up, hunters who previously had uncomplicated access to that land assume an erosion of hunting opportunities. That's not always the case, but the perception remains and it's been that way since the first farmer tacked to a fence post a sign that said – or meant – "No Hunting."

Part of Hunting History

Access to land, whether it's public or private, has received considerable attention over the past year, but it's not a new issue. Consider this from the November 1931 issue of *North Dakota OUTDOORS*: "Hunters should be courteous in their contacts with the owners of land in areas where hunting will be permitted. One heedless and uncivil act on the part of a hunter may prejudice a farmer land-owner against all sportsmen as a class. The posting of property against hunting has been largely brought about by thoughtless and selfish hunters who have violated every moral right while hunting on farmers' property."

In February 1937 another mention: "Sportsmen resented having favorite hunting grounds posted and farmers resented the lack of consideration observed by some sportsmen toward property rights of the landowner and renter."

These are two of the first references to land posting in the 71-year history of the magazine. Many others follow. Most of them relate to posting in response to becoming hunter behavior. The underlying theme is that many landowners who

post their land still allow hunting, they just want to control the terms of access, as is the right of every property owner, rural or urban.

Since the early 1990s, an increasing number of landowners have put up signs of a different sort – those that advertise hunting access for a fee, or that access to the land has been leased for a fee. This is another prerogative of land ownership, and it is not a new concept either.

***"There's no question,
if you can find them
(the landowner),
it's better to talk to them
face to face..."***

"In my locality we were faced for the first time this fall with a group of landowners having formed a block in some of the choicest hunting land, and charging a \$25 fee to hunt on it," wrote R.J. Christiansen of Marmarth in the November 1959 issue of *North Dakota OUTDOORS*. "It is true that some of them have suffered property damage from careless hunters, so their attitude toward public hunting is partially justified."

Ten years before that, in the September 1949 issue, a Massachusetts man, Martin Bovey, wrote an article asking "Why So Much Posting?" Bovey, apparently an annual visitor to North Dakota, related an incident in which a farmer pleaded with him to put up "No Hunting" signs around his place in return for exclusive access to a popular duck slough. Bovey had to explain that he already had a lease on a duck slough, but the farmer wasn't looking for money. Bovey had simply proven himself trustworthy in previous visits to the farm.

While leasing of hunting rights and access fees have been around for decades, these practices were less prevalent 50 years ago. Hunters who encountered one good-looking spot that was off limits could just drive on down the road and find a place that wasn't posted at all. In 2002, the situation is different. Hunters are concerned about the loss of opportunities, whether it relates to unposted land that has become posted, or posted land previously available by permission where access now requires some type of payment.

Call it a sign of the times. Finding places to hunt in some parts of the state for some species is often difficult for a stranger. In other places, access to private land remains relatively available. Hunters

who recognize this factor, and temper their expectations accordingly, can still find places to go, regardless of the type of game they want to hunt, in a landscape marked by myriad signs with different meanings.

The Golden Rule Still Applies

Ten years ago, Lyle Westbrook authored a story for this magazine titled "The North Dakota Landowner: Are Considerate Hunters Still Welcome?" "Very much so," Westbrook wrote in September 1992.

In 2002 his outlook hasn't changed though perhaps half the landowners in his immediate area would now accept daily access or seasonal lease fees. Westbrook doesn't begrudge his neighbors the opportunity to make extra income from their land. He likely could, too. "I've had people stop in who expected to pay," he said, adding that such an arrangement just isn't right for him. "I guess I'm still part of the old school," he related, adding that if parents don't have a place to hunt, they won't take their kids hunting, and when that happens, the tradition suffers.

While Westbrook doesn't expect money, he does expect courtesy and fair treatment. Those same expectations are shared by landowners across the state. He wants to meet prospective hunters face to face the first time they ask permission. If a second trip is possible, a phone call the day before a hunt might be sufficient. "Then no longer are they a stranger," Westbrook noted. Hunters, even those who are known by landowners, should always make a contact ahead of time to make sure the land is available the day they want to hunt.

"There's no question, if you can find them (the landowner), it's better to talk to them face to face," relates Todd Foss, a Fargo resident and life-long hunter. Foss does this consistently, especially before an opening day. "After the hunt we try to contact the owners again to thank them, tell them how we did, and perhaps offer them some game or a small gift. Once you establish this personal relationship, you'll have an 'in' if you want to hunt that land again."

Hunters should also be able to accept "no" for an answer without resentment. Hunters who think that farmers and ranchers owe them an opportunity to hunt will be less successful in finding places to go. "I don't care for that attitude," says Les Leim, a McLean County farmer/rancher, and fortunately, he doesn't encounter it very often. Duck hunters, especially, have "always been about as

polite of people as I've ever met," Lelm said. "I've never turned down anybody that came and asked to hunt. The reason I post is so I know who's out there."

Landowners have any number of good reasons why a particular day or piece of land is not available. Perhaps friends or relatives are coming. Maybe the rancher is moving cattle in the area, or still harvesting. Maybe the landowner wants to hunt himself. Don't worry about it, Westbrook suggests. Ask if another day or another area is possible. As a potential guest, hunters should expect to accommodate the landowner's wishes, not the other way around.

Gary Melby agrees. Melby, along with his son, operates a grain farm near Bowbells in north central North Dakota, a popular waterfowl hunting area. He also serves on the North Dakota Game and Fish Department District Advisory Board and is an active hunter. "Some people get turned down one place and then they get sore and don't ask at the next place," Melby said.

A more productive tact, he added, would be to allot enough time to allow for making more contacts. "You have to build acquaintances and it always works out," he said.

As a hunter, Melby has such an acquaintance in southwestern North Dakota, where he is able to hunt pheasants every year. A key to maintaining that relationship, he said, is to consult the landowner before the season to find out a convenient time to plan a trip, rather than just showing up on opening day, or the evening before opening day, and hoping the land is available as it has been in the past.

As landowners, Melby says he and his son don't post any of their land, which is mostly grain stubble that hunters use for decoying geese, and potholes that duck hunters use. The same is true for many

landowners in the area, he said, and even those who do post hardly ever turn anyone down, unless there's a special circumstance.

In North Dakota, since it is legal to enter unposted land without permission, many hunters do just that. Melby says he doesn't mind, but he always appreciates when hunters stop in to ask first. "It's just nice to know who's out there," he said.

If hunters can find the owners of unposted land, which is sometimes a challenge, asking first is a good way to establish one of those acquaintances Melby mentioned. Consider Martin Bovey's story referenced earlier. The farmer trusted Bovey to hunt on land he was going to post to everyone else, because Bovey had taken the time to stop, ask permission and become a familiar face when the land wasn't posted.

Similar situations exist today. Hunters who take the time to find landowners and ask permission to hunt on unposted land, will not be strangers if the landowner chooses to post the land in the future.

Along the same line, Melby said, word travels in small communities. Hunters who treat landowners with respect will develop a reliable reputation and may eventually find other open doors.

"Treat others the way you want to be treated," it's that simple, Westbrook added. "Treat them (landowners) right and you'll have a place to go hunting."

That's an easy enough concept to understand and put into practice, but hunters need to realize that not every parcel of private land is available to those who ask. Potential for access depends on timing during the season, and species. A landowner who charges a fee for pheasant hunting on opening weekend might welcome a turkey hunter later in the year. Someone who posts land for the traditional family deer hunt on opening weekend might allow guests later in the season.

Finding the right place at the right time is seldom easy. Eric Odegaard, Enderlin, likes to hunt ducks and geese in the southeast and near his hometown of Rugby in north central North Dakota.

Odegaard is like a lot of North Dakota hunters who move around looking for opportunities, rather than always hunting the same ground. He often searches for isolated pockets of undisturbed birds, a strategy that sometimes leads to exceptional hunts. It also means contacts with numerous landowners, and potential competition with other hunters looking for the same thing.

In recent years, Odegaard says, the competition has increased and it's more difficult to find those out-of-the-way spots that no one has yet discovered. They do exist, however, and the rewards usually go to the hunters willing to put forth the most effort. "You've got to do your homework," Odegaard stressed. "You have to do the miles and the time.... Some days it takes hundreds of miles. It does for me, even in southeast North Dakota."

DON'T BE AFRAID TO ASK.
Driving up to a farm "cold" is not always an easy thing to do.
However, it is necessary if hunters want to expand opportunities beyond unposted or public land.

Opportunities for hunting on private land have changed in the last 10 years, and will continue to evolve. The same issues debated 70 years ago will likely be around well into the future.

Government agencies like the Game and Fish Department are developing new programs that increase public access to private land, but hunters must continue to try to establish their own contacts. Fifty-three years ago Martin Bovey wrote: "Regardless of public shooting grounds North Dakota may eventually acquire, it is quite certain that for many years to come the average man will get the bulk of his hunting on farmer-owned land."

That statement remains true today. With the right attitude and the right approach, hunters can still find the experiences they seek. As another fall approaches, it's not too early to start the search.

CRAIG BIHRLE is the Game and Fish Department's communications supervisor.

5 Rules for Improving Access Opportunities

They don't always work, but ignore them and few doors will open.

1. Plan ahead and set reasonable expectations.
2. **DON'T BE AFRAID TO ASK.** Driving up to a farm "cold" is not always an easy thing to do. However, it is necessary if hunters want to expand opportunities beyond unposted or public land.
3. Accept "No" graciously; find out if another day might be better.
4. Strive to meet landowners even if the land you want to hunt isn't posted; arrange a personal meeting, rather than relying on a phone call.
5. Honesty and courtesy are vital.

Y.O.U.T.H. YOUNG OUTDOORSMEN UNDERSTANDING THE HUNTING HERITAGE

By Jeb Williams

The North Dakota Game and Fish Department is initiating a new program that could aid young hunters in learning one of the more important lessons necessary for a lifetime of memorable hunting experiences: asking permission to hunt on private land.

Approaching a stranger and asking for permission to hunt at times makes even the most experienced hunters uncomfortable. For a young hunter, the situation can be downright intimidating.

The Department's new Young Outdoorsmen Understanding The Hunting Heritage is designed to help. Nationwide, the number of young hunters is declining. The Game and Fish Department believes that one way to reverse that trend, at least in North Dakota, is to give beginning hunters an advantage – to remove some of the obstacles that might make them quit before they really get started.

Over the past decade the Department has initiated special youth-only hunting seasons for waterfowl and deer. These seasons have been well received and encourage situations where youngsters receive constant attention from adult mentors.

During regular seasons, the outdoor experience is at times complex and competitive. Young hunters, who along with friends or family members have trouble finding a places to go, might become discouraged.

The YOUTH program doesn't guarantee anyone a place to hunt. However, it does give interested and concerned landowners a way of saying: "My land is posted, however, I am concerned about the younger generation of hunters and I may allow access with permission. I encourage you to stop and ask."



Harold Umber

*A Cooperative Volunteer Program Between the
Game and Fish Department and Private Landowners*

The main feature of the YOUTH program is a sticker that landowners can attach to "No Hunting" signs, as a way of communicating with young hunters. While a high percentage of landowners in North Dakota do allow hunting access with permission, a sign bearing a sticker may give young hunters further encouragement and confidence in building relationships.

What this Program is NOT:

1. If a landowner places a YOUTH sticker on a no hunting sign, it is NOT a green light for young hunters to hunt their land. It is only a sticker sending a signal that "as a landowner, I do allow hunting access with permission, under certain circumstances. I encourage you to stop and ask."

2. If a landowner places the sticker on his signs, it indicates a willingness to accommodate young hunters. However, certain situations will develop where a landowner may already have hunters, or may be busy doing farm or ranch work and would rather not have hunters at that time. It is our hope that a landowner would explain this situation and perhaps invite the hunting party back at a later date.

3. Hunters should not expect to pull into a yard with six adults and a teenager and expect the landowner to grant them access, just because the YOUTH sticker is displayed. This program is aimed at providing young hunters with a quality experience in the field, and teaching them respect for private land and landowners is a major part of our rich hunting heritage.

JEB WILLIAMS is a biologist with the Conservation and Communications Division.



Questions and Answers

Q. What are the age requirements of this program?

A. *The Game and Fish Department will leave that up to the landowner. It is a landowner's decision whom they allow on their land.*

Q. Will the parent/companion be allowed to hunt with the young hunter?

A. *We are promoting a youth program; if the landowner feels the youth should be the only one carrying a gun, that is his or her decision. If the landowner feels comfortable with other hunters carrying firearms, that is also his decision.*

Q. My land is posted, but I do allow access with permission. Why should I put a sticker on my sign?

A. *The sticker will provide young hunters with encouragement in their quest for a good hunting experience and in developing relationships with people living on the land. This sticker should help landowners who are concerned about youth hunting opportunities and young hunters who feel they have no place to hunt.*

Q. I am a private landowner and I am interested in placing these stickers on my posted signs. How do I get these stickers?

A. *Contact the Game and Fish Department office nearest you and they will send you the free logo stickers in the mail. Or call the headquarters office in Bismarck at 328-6300; or send an e-mail to ndgf@state.nd.us.*

The Game and Fish Department hopes the YOUTH program will be a timely tool to increase youth hunting activities and provide young hunters with the confidence they need in dealing with private landowners for years to come.

Understanding Off-Trail

It's Best to Know the Code Before Leaving the Road

By Craig Dunks



Year after year, one of the more common citations North Dakota game wardens issue is to hunters who are driving a motor vehicle off an established trail.

It's not like everyone's trying to skirt the law—far from it, in fact. Only about one hunter in a thousand actually violates the code and gets a ticket—but driving off-trail is usually second or third on the list of most prevalent violations during hunting seasons. State game wardens would like to change that.

Hunters, game wardens say, are familiar with the time-tested and well-known regulation that prohibits driving off-trail while hunting upland game or big game. However, while hunters know they're duty-bound to keep vehicles on established roads or trails, many trips afield involve interpretations of what is or isn't an established trail.

It's not always an easy determination. Between the extremes of improved gravel roads and virgin prairie and woodland terrain perhaps thousands of varied tracks, trails and travel routes exist. Many are established trails; many aren't.

With the following guidelines and photos, however, hunters can learn more about the types of routes that qualify for travel, and make sure to avoid those that don't. When in doubt, advises district game warden Daryl Kleyer, Williston, hunters should err on the side of caution. "If you're not sure if it's a trail," Kleyer notes, "it's a good idea to not drive there."

"This is what I would expect to see where somebody may have retrieved a big game animal," says district game warden Daryl Kleyer about this photo and the tracks leading away from the vehicle. "The tracks wander between the bales...clearly, it's a one-time deal. This would be an off-trail violation (if the driver was hunting big game or upland game)."

Off-Trail Roots

North Dakota legislators first created a law to restrict vehicle travel to established trails in 1969.

"The abuse of range and farmland by hunters using vehicles to flush and chase big game has become increasingly intolerable," wrote Wilbur Boldt, Game and Fish deputy commissioner in the September 1969 issue of *North Dakota OUTDOORS*. "...Rutted pastures, burned-off grassland, cut fences and frightened cattle are all part of the reason farmers and ranchers have demanded that something be done to stop the indiscriminate use of vehicles off roads and trails."

"Some hunters who have used vehicles to flush or run down deer or antelope may feel abused by such restrictions," Boldt continued, "but the true sportsman who has had a hunt spoiled by a Honda coursing the draw ahead of him will find his hunting will be better."

Over the years, legislators amended the law several times. At first, it applied only to big game hunting, then came small game in several counties in southwestern North Dakota, and finally big game and small game statewide.

Waterfowl hunters have always been exempt from the off-trail law; sandhill crane hunters were specifically exempted in 1981. From the beginning, big game

hunters have been allowed to drive off-trail to retrieve a downed animal.

2002 Off-Trail Law

Current provisions for vehicle travel off established trails are found in section 20.1-01-07 of the North Dakota Century Code. The law states:

Except as provided in subsection 11 of section 20.1-01-05 (relates to special permits for handicapped hunters) no person, while hunting big game or small game, other than waterfowl or cranes, statewide, may use a motor driven vehicle on any land other than an established road or trail, unless that person has reduced a big game animal to possession and cannot easily retrieve the big game animal, in which case a motor driven vehicle may be used to retrieve the big game animal, but after retrieval, the motor-driven vehicle must be returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any such game with the use or aid of any

motor-driven vehicle. No person, while hunting big game or small game, other than waterfowl or cranes, statewide, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except on an established road or trail.

It's a law that most hunters readily accept as necessary to maintaining the fair-chase ethic of hunting, as well as protecting private property on which landowners may not want vehicle travel. Game wardens say that off-trail violations are not usually incidents of people using vehicles to try to flush game. More often, a citation is rooted in laziness – someone driving to a spot, such as a vantage point to look for deer, or to the middle of a stubble field to pick up pheasant hunters, instead of walking.

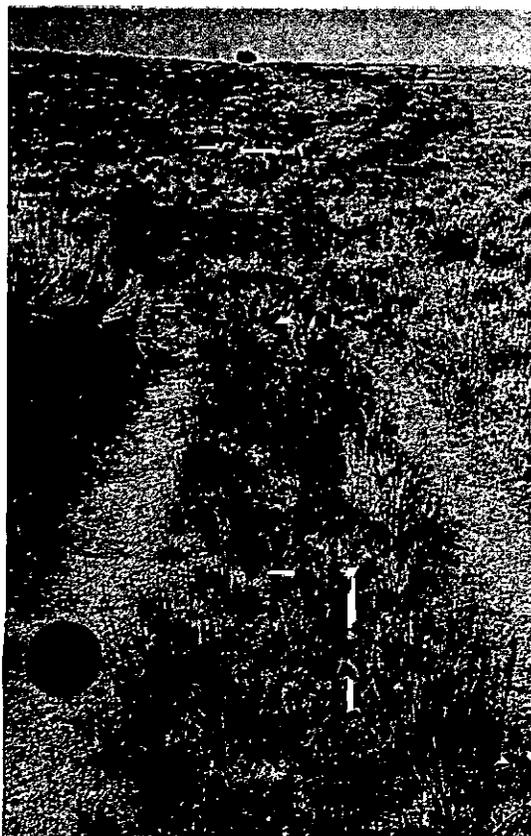
"You just can't drive off-trail to pick people up and drop them off," says Brent Schwan, district game warden at Watford City.

Defining an Established Trail

According to North Dakota Century Code, established road or trail "means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include tem-

Test Your Trail Definition Knowledge: Is the trail in each photo "established?"

YES. An obvious established trail that has depressed wheel tracks with little or no vegetation.



MAYBE. "This looks like it may have been a trail for years and years," according to Kleyer. "The first thing I'm going to look at is what's in the bottom of this. Vegetation has grown up over the trail, but if below that vegetation you find a clean track, then it's going to be a trail."

porary trails across cultivated land used for agricultural purposes.”

While this definition still provides opportunity for interpretation, Kleyer says the benchmark wardens typically use is this: An established trail is a route for vehicle travel that has been established by consistent travel over time. Another way to define it is a trail that exists from year to year.

Sometimes, Schwan said, people think they are on an established trail because they are following a set of wheel tracks. “Just because somebody drove there before doesn’t establish that as a trail,” he stated.

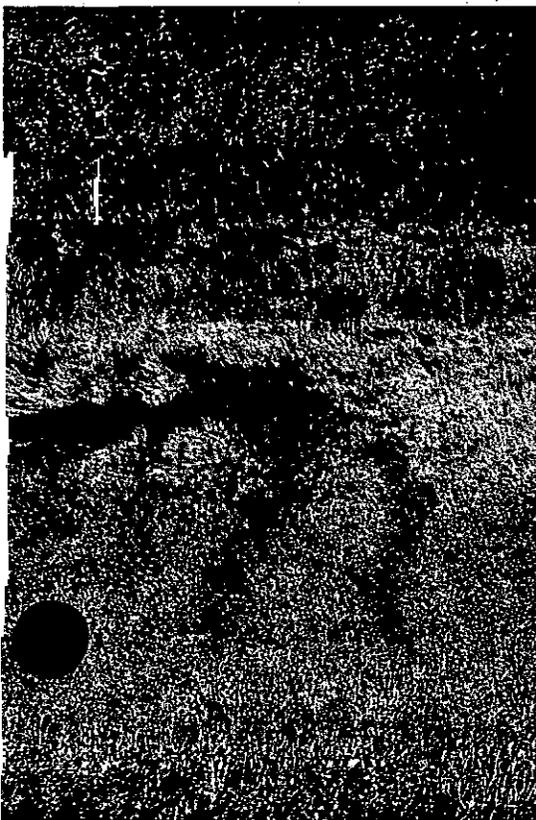
In fact, it takes many trips over a piece of ground before a trail becomes “established.”

The physical traits that help make a legal determination are: 1) Depressed wheel tracks; 2) Lack of vegetation in the wheel tracks. If one or both are present, the route is typically “established.”

If the path is obviously just matted down vegetation, even though a vehicle may have passed over it several times, odds are it’s not an established trail. In such cases, Kleyer recommends that hunters seek the advice of game wardens. “It’s a lot easier to find out beforehand,” he said, rather than risk the alternative of finding out later that a set of tracks was not a trail.

“If there’s no wheel depressions that indicate use for a substantial amount of time, or dirt clearly visible on the trail,” Schwan added, “I wouldn’t drive it.”

NO. A one-time track through the grass.



Agricultural Fields

Of all citations wardens issue to hunters for illegally driving off-trail, a good share involve cultivated agricultural fields. The Century Code specifically restricts travel over “retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland.”

Further, state law does not recognize “temporary trails across cultivated land used for agricultural purposes” as established trails.

For instance, a route developed by a farmer/rancher through a stubble field to haul out straw bales one year, even though the track is worn down to bare dirt, is not an established trail because the following year the land would be plowed and planted and that particular trail would no longer exist.

Same would hold true for combine tracks in a field made during harvest, or random tracks developed from hauling bales from an alfalfa field. These are not established trails because they don’t exist in the same place from year to year.

“When you’re in a stubble field, a summer fallow field or other types of agricultural fields, there really isn’t any gray area as to what determines an established trail,” Kleyer stated. “The law clearly says that those are not trails.”

Retrieving Downed Big Game

Since legislators passed the first off-trail law, it has allowed big game hunters to leave established trails to retrieve downed animals. Several important provisions apply.

First, the animal must be “reduced to possession” and properly tagged.

Second, the law states that a hunter cannot use a vehicle to retrieve a dead big game animal unless the hunter “cannot easily retrieve the big game animal.”

Third, if the first two provisions are met, a hunter must take the most direct route to the animal, and follow that same route back to the established trail.

Driving off-trail to go after a wounded big game animal is not allowed, Kleyer said.

One situation that can lead to an inadvertent violation, is when a hunter who still has a valid license rides along in the vehicle used to retrieve an animal. Licensed hunters in the vehicle could not make any legal attempt to go after, for instance, a deer that might jump up from some nearby brush while the vehicle is en route to pick up a dead deer.

Such a situation could lead to a violation for harassing game with a motor vehicle, in addition to a citation for driving off-trail, even though the original purpose was to legally retrieve a deer.

Waterfowl, Fox and Coyote Hunting

Waterfowl and crane hunters are exempt from the off-trail law. This exemption allows the traditional practice of driving into a harvested crop field for the purpose of setting decoys for goose or duck hunting. While not specified in state law, the Game and Fish Department recommends that hunters get permission from landowners before driving off-trail for waterfowl or crane hunting, and predator hunting as well.

Fox and coyote hunters may also drive off-trail, except during deer gun season.

Sometimes, people hunting waterfowl have opportunities to take small game. Whether those opportunities comply with the law depends on the circumstances, Kleyer said.

For instance, someone sitting along the edge of a marsh, waiting for ducks to come into decoys, could shoot a pheasant if one landed nearby, even though travel to get to the duck hunting spot may have involved an off-trail route.

“If we stopped someone just coming out of a field and they had pheasants in the vehicle,” Kleyer commented, “certainly we would have some questions as to what they were doing.”

If the hunters had decoys in the vehicle, and steel shot in possession, that would be enough evidence that they were waterfowl hunting and likely took the pheasants while they were “afield,” Kleyer noted. On the other hand, if a warden saw the same hunters, on their way out of the field, stop the vehicle and walk a slough bottom for pheasants, that would be a problem.

Each incident has its own set of circumstances, Kleyer said, and there’s no precise formula for what falls within the law when both waterfowl and small game are involved. Hunters who aren’t sure if their actions are legal should err on the side of caution, Kleyer again emphasized.

Snowmobiles, ATVs

Snowmobiles and four-wheelers or all-terrain vehicles need to follow the same trails as other motor vehicles. A snowmobile track over the snow is not an established trail for another snowmobile, Kleyer said. Similarly, if snow covers an established vehicle trail, a snowmobile-riding hunter could travel on the snow over the trail, even though he couldn’t see the trail.

In such cases, Brent Schwan added, hunters traveling by snowmobile are responsible for knowing the location of the trail under the snow. “They can’t be off by a hundred feet,” he stated.

Craig Birnie

Public Land Restrictions

On most types of public land in North Dakota, off-trail driving for any purpose, including big game retrieval or waterfowl hunting, is not allowed.

North Dakota has a variety of public land, most of which is managed by state or federal government agencies.

Following are most of the major public land types in North Dakota, and their travel management policies.

North Dakota Game and Fish Wildlife Management Areas and PLOTS areas - No public motorized travel off established roads and trails for any purpose, including game retrieval.

U.S. Fish and Wildlife Service Waterfowl Production Areas - No vehicle travel except on designated routes on a few areas.

U.S. Fish and Wildlife Service National Wildlife Refuges - No vehicle travel except on designated routes.

U.S. Fish and Wildlife Service Wildlife Development Lands - No vehicle travel except on designated routes.

U.S. Bureau of Reclamation Lands - No vehicle travel except on designated routes.

North Dakota State Forest Land - Vehicles restricted to established trails; off-trail travel to retrieve big game is allowed.

North Dakota State School Land - No public motorized vehicle travel for any purpose, either on or off-trail. Existing trails within state school land are for designated management purposes only.

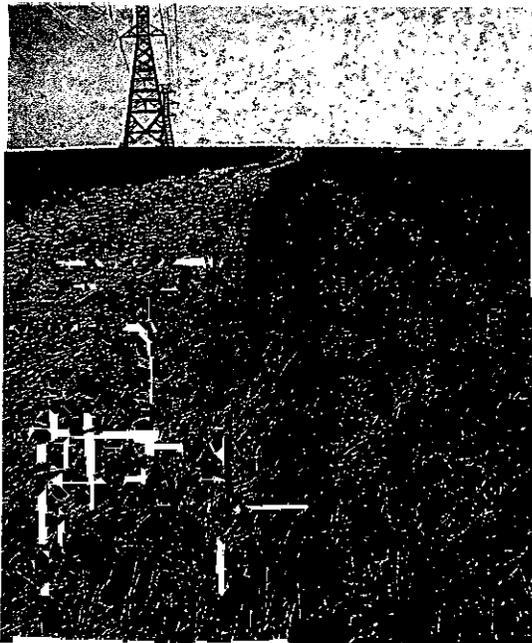
U.S. Forest Service - Includes Sheyenne and Little Missouri national grasslands. Off-trail travel by hunters is not allowed. This includes retrieval of big game animals and for waterfowl hunting.

CRAIG BIHRLE is the Game and Fish Department's communications supervisor.

YES, MAYBE and NO. Trail at left is on a section line so it is open to legal travel. Tracks in the middle are possibly within the boundaries of the section line as well, even though they're outside the fence, which would qualify as an established trail. Tracks at right were probably made by someone hauling bales out of the field, and would not qualify as a trail.



Craig Bihrlé



Craig Bihrlé



Pat Lachyworth

NO. A travel route likely made by farm machinery during harvest. Temporary trails across cultivated agricultural land do not qualify as established trails.

NO and NO. The trail on the left was made by someone driving back into a pasture several times while putting in a water tank. It shows grass flattened by a motor vehicle and is not an established trail for hunting purposes. The track veering to the right is just a one-time track through the grass and driving on it while hunting would be an obvious violation.