

Cooperator(s) **Ernie Horsager**

PUBLIC ACCESS AGREEMENT
North Dakota Game and Fish Department

This Agreement is between the undersigned Cooperator, whether one or more, and the State of North Dakota, acting by and through the North Dakota Game and Fish Department ("Department").

Background - The Department is authorized by N.D.C.C. §§ 20.1-02-05 and 20.1-02-27 to enter into agreements to lease eligible lands, for public access and walk-in hunting purposes. In consideration of the mutual promises and obligations contained in this Agreement, the Cooperator and Department agree as follows:

1. Public Access Agreement:

Cooperator leases the property (the "Property") to the Department and will allow public access for walk-in hunting annually on the Property situated in LaMoure County, North Dakota, containing 160 acres, more or less, and more particularly described on the attached Map, "**Exhibit A**", and the Payment Sheet, which contains the acreage calculation, attached as "**Exhibit B**."

Cooperator warrants that the Property is accessible to the public without any additional permission or license from the Cooperator or any adjacent landowners.

2. Term:

This Agreement commences on January 1, 2023, or the date this Agreement is signed by both parties, whichever is later, ending March 31, 2026 ("Agreement Expiration Date"), unless terminated sooner as provided in Section 5, 6, or 7, below.

The Department may renew this Agreement. If the Department intends to seek renewal of this Agreement, it will provide notice to the Cooperator.

3. Cooperator agrees:

- a. To preserve and enhance wildlife habitat and forage components to benefit and sustain wildlife populations;
- b. To remove and not permit erection or placement of any signs on the Property, the purpose or effect of which is to limit, impede, restrict, or prohibit hunting on the Property;
- c. To permit the Department, or its agent, to post signs upon the Property that it is open to public access for walk-in hunting and to publish the same;

- d. To allow the Department, upon a nonrenewal, termination, or expiration of the Agreement, 180 days to remove Department-owned signs and posts referred to in paragraph 3c above. In the alternative, the Cooperator may personally assume the responsibility to remove Department-owned signs and posts within those 180 days and so notify the Department. Cooperator removal of Department-owned signs and posts will be at no cost to the Department, the Cooperator is then responsible for any damage to the signs and posts resulting from Cooperator removal, and the Cooperator is then responsible to arrange the return of such Cooperator-removed signs and posts to the Department;
- e. To not charge or accept any fee, payment, or any form of remuneration from any person for hunting access or privileges to the Property;
- f. To allow the Department access to the Property for purposes of inspection to verify Agreement compliance;
- g. To allow, without any restriction, public access for walk-in hunting on the Property, to include, but not limited to, public hunting or pursuit of game in Cooperator's, or, if applicable, tenant's, unharvested cereal grains or sunflowers under North Dakota Century Code section 20.1-01-22.

If the Property includes cropland acres, Cooperators may deny access to unharvested cereal grains or sunflowers.

☐ Check here to deny access to cropland until harvested.

_____ (Cooperator's initials)

If the above box is checked and the Cooperator initialed, the Department will designate those areas with "No Hunting in Unharvested Crops" signs. If the Property does not include cropland acres, the Department will not designate the Property with "No Hunting in Unharvested Crops" signs.

- h. To adhere to the terms of the Management Plan, if applicable, which may be attached as "**Exhibit C**".

☒ ✓ Check here if **Exhibit C** is attached.

☐ ✓ Check here if **NO Exhibit C** is attached.

- i. To maintain conditions and habitat agreed upon and to notify the Department when conditions change to warrant a reevaluation of the Property. Any agreed upon changes may impact the payment calculations;

- j. To notify the Department if, during the term of this Agreement, Cooperator chooses to enroll in another State or Federal program in which the Cooperator receives a soil rental and/or cost-share payment for grass or tree establishments. Failure to notify the Department within 30 days of enrollment in another State or Federal program may, in the sole discretion of the Department, be considered a breach of this Agreement and result in a termination with cause. The Department, in its sole discretion, may choose to waive Cooperator reimbursement of Department payments, in full or in part, if that program does not interfere with the management authority of this Agreement;
- k. To control noxious weeds on the Property as required by State law. Noxious weed control will not be restricted on the Property unless outlined in the "Exhibit C", if attached. Noxious weed control practices are limited to only those areas where noxious weeds are found to exist.
- l. To conduct Haying and Grazing on Other Conservation Programs acres only if the Cooperator has obtained approval from the Agency or Organization that funds the Other Conservation Program(s). For purposes of this Agreement, "Other Conservation Programs" shall mean any and all conservation programs other than PLOTS, including but not limited to CRP, WRE, EWP, and WTB.

Under no circumstance may the Cooperator hay more than 50 percent (50%) of the Other Conservation Programs acres in any given year as long as this agreement is in effect unless otherwise approved by the Department. All haying and grazing activities must be completed by September 1st of each year unless otherwise approved by the Department.

4. Department agrees:

- a. To pay Cooperator at a rate derived by using the attached payment sheet, attached to this document as "**Exhibit B**", which will include an annual payment and may include upfront one-time enhancement payments; and,
- b. To distribute Cooperator payments based on the percentage shown in the Cooperator information table on the signature page; and,
- c. To reimburse Cooperator \$10 per acre for completion of clipping new grass establishments, only as preauthorized and directed by the Department prior to completion; and,
- d. To provide, erect, and maintain signs and sign posts indicating that the Property is open to walk-in public hunting for the stipulated Agreement period.

5. Termination:

- a. Except as otherwise provided in this Agreement, this Agreement remains in effect and may not be terminated until after the Agreement Expiration Date or any extension or renewal thereof. After the Agreement Expiration Date or any extension or renewal thereof, the Department has no further claim to, or

commitment to, the Property.

- b. Termination By Cooperator, Without Cause: This Agreement may be terminated without cause upon 30-days written notice by the Cooperator to the Department, but only if the Department consents in writing. In the event of this Agreement being so terminated prior to the Agreement Expiration Date or any extension or renewal thereof, the Cooperator will repay and/or forfeit the current annual lease payment, and all upfront payments including incentive payments received from the Department under this Agreement, and reimburse the Department for all administrative expenses paid or incurred by the Department under this Agreement. The North Dakota Game and Fish Department Director ("Director"), in the Director's sole discretion, may reduce the amount that the Cooperator is required to pay. In the event of this Agreement being so terminated, no additional payments shall be made by the Department to Cooperator except as accrued prior to termination, and the Department shall have no further claim to, or commitment to, the Property.
- c. Termination By Department, For Cause: The Department, by written notice of default (including breach of contract or breach of lease) to the Cooperator, may terminate the whole or any part of this Agreement for cause if Cooperator or any heirs, successors, assigns, lessees, or any other person claiming under Cooperator fails to perform any of the obligations of this Agreement, or fails to pursue those obligations as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the Department, fails to correct such failures within 10 days or such longer period as the Department may authorize. Upon such failure to cure, the Cooperator will be in breach of this Agreement and the Department will enforce the Cooperator's obligations in this Agreement in accordance with Section 6 below.
- d. Termination By Department, Lack Of Funding Or Authority: The Department, without any liability, may terminate this Agreement effective upon delivery of written notice to the Cooperator, or on any later date stated in the notice, under any of the following circumstances:
 - i. If funding from federal, state or other sources is not obtained and continued at levels sufficient to allow payment of the Agreement compensation in the indicated quantities or term. The Agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - ii. If federal or state laws or rules are modified or interpreted in such a way that the leasing of the Property or other provisions of this Agreement are no longer allowable or appropriate, or the Agreement is no longer eligible for funding.

Any termination of this Agreement under this subsection 5(d) shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination.

6. Breach of Agreement – Specific Performance – Liquidated Damages

- a. This Agreement benefits the public, and specific performance is required unless the Director, in the Director's sole discretion, finds that emergency circumstances or the public interest are best served by termination of the Agreement.
- b. The Department may seek to enforce the Cooperator's obligations under this Agreement by legal action in any court of competent jurisdiction in the State of North Dakota. The parties agree that, if the Director determines, in Director's sole discretion, that specific performance is not required, the parties shall apply the following liquidated damages clause:

Because of the difficulties that would arise in determining the Department's damages upon Cooperator's breach, the parties, after careful consideration, agree that Cooperator will repay, as damages, the full amount of all consideration previously paid to Cooperator by the Department, plus all cost share funds, bonus payments, incentive payments, and administrative expenses paid or incurred by the Department under this Agreement, plus interest at the prime rate. The Director, in the Director's sole discretion, may reduce the liquidated damages amount that the Cooperator is required to pay.

- c. It is expressly agreed that in the event of suit or other proceedings to enforce any part of this Agreement, Cooperator agrees to pay all of the Department's attorney fees and expenses. The Director, in the Director's sole discretion, may waive in full, or in part, Cooperator's payment of the Department's attorney fees and expenses.
- d. The rights and remedies of the Department provided in this Section 6 related to defaults (including breach of contract and breach of lease) by the Cooperator are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

7. Transfer of Ownership:

This Agreement is binding upon the successors, administrators, heirs, and assigns of Cooperator. A change in ownership of the Property causes this Agreement to terminate at the end of the contract year in which the transfer occurs. Such termination is without prejudice to the rights and obligations accrued by the parties during that current contract year. If the Cooperator sells or otherwise divests the ownership of the Property, Cooperator will notify the Department within **30 days** of the transfer, giving the name(s) and address(es) of the transferee(s). Failure to give notice is a breach of this Agreement. At the end of the lease year in which the transfer occurs, the new

landowner may continue this Agreement under the same terms, or enter into a new Agreement, or the new landowner may choose not to participate in the program

8. Limited Liability of Cooperator:

NDCC 53-08-04 provides that “an owner of land leased to the state or its political subdivisions for recreational purposes owes no duty of care to keep the land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions.” Therefore NDCC 53-08-04 limits the liability of a landowner of land leased to the Department.

9. Cooperator Owner of Property/ Hunting Rights and Privileges:

Cooperator covenants and certifies that Cooperator owns the property subject to this Public Access Agreement, including all hunting rights and privileges to the property, and that no easement, license, lease, or other interest granting, transferring, or divesting the Cooperator of these hunting rights and privileges exists. Cooperator agrees that Cooperator, not the Department, is responsible to pay any applicable remuneration accruing as a result of this Agreement to any other person or persons who may have a property interest in the property, to include remainder men or others.

Cooperator covenants and certifies that, in regard to the property subject to this Agreement, Cooperator is not a party to, and not receiving payments from, any other Federal or State habitat, conservation or other land management agreement. Cooperator will notify the Department at least 30 days before Cooperator enters into any such agreement.

10. Severability:

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

11. Applicable Law:

North Dakota law governs this Agreement.

12. Commercial Wind Energy Development:

Installation of new commercial wind energy development (including but not limited to turbines, roads, and associated infrastructure) is prohibited within the access boundary of this agreement without prior written consent of the Department. Failure of the Cooperator to obtain prior written consent from the Department will be considered a material breach of contract.

The Department will attempt to reasonably accommodate Cooperator developing wind energy to avoid or minimize impacts to wildlife habitat within the access boundary. In some cases, impacts may be unavoidable and could lead to termination for cause.

13. Merger and Modification:

This Agreement is the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.

14. Counterparts:

This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same Agreement, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile, email, or other electronic form, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

EXHIBIT "A"
NORTH DAKOTA GAME & FISH DEPARTMENT
WORKING LANDS PROGRAM

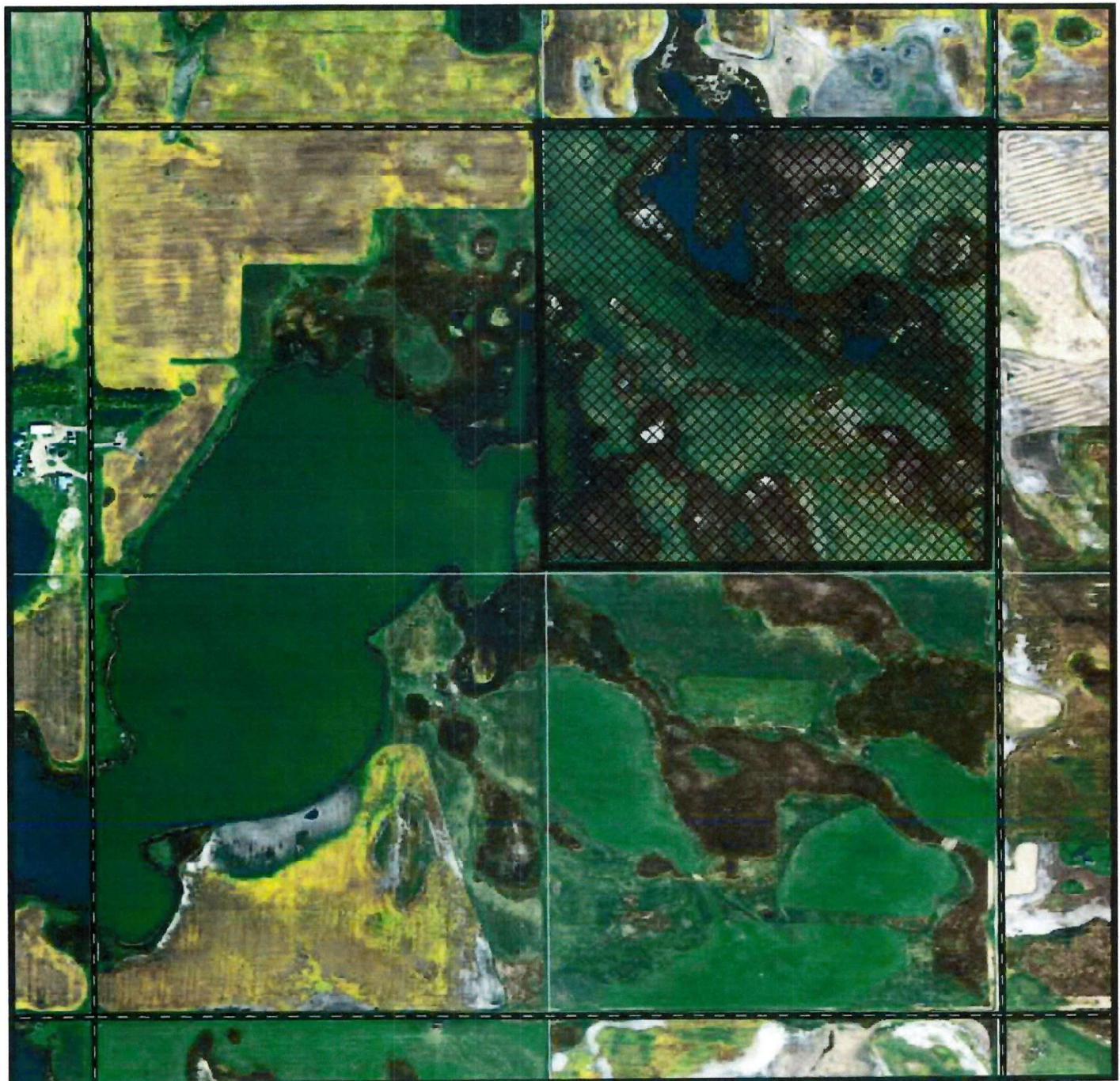
COOPERATOR(S) : Ernie Horsager

AGREEMENT: 2420003

PUBLIC ACCESS AND WORKING LANDS EASEMENT FOR:

LaMoure COUNTY, STATE OF North Dakota

Section(s) 21 T. 136 N., R. 59 W., Acres 160



Access Boundary



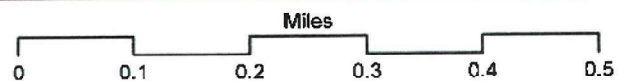
Section Lines



Idle Habitat



Soil Rental



Scale 1:10,560
1 inch equals 880 feet

Exhibit B

Name: Ernie Horsager

Agreement # 2420003

County: LaMoure

Annual Access and Rental Payments

Production Land Classification	Rate	Acres	Payment
Cropland and/or Hayland (C, H)	\$1.00	0.0	\$0.00
Rangeland I (R1)	\$1.00	0.0	\$0.00
Rangeland II (R2)	\$2.00	0.0	\$0.00
Rangeland Woodland (RW)	\$4.00	0.0	\$0.00
Cropland with waterfowl driving access granted (WD)	\$2.00	0.0	\$0.00
Development (D)	\$0.00	0.0	\$0.00
Subtotal		0.0	\$0.00

Habitat Classification	Rate	Acres	Payment
Idle Habitat	\$24.00	0.0	\$0.00
Other Conservation Programs	\$10.00	0.0	\$0.00
Unusable acres/open water (OW)	\$0.25	0.0	\$0.00
Soil rental	\$111.00	160.0	\$17,760.00
New Tree/Shrub planting soil rental (T)	\$111.00	0.0	\$0.00
Full-season food plot/cover crop (FP)	\$261.00	0.0	\$0.00
CRP Food Plot (CRP FP)	\$150.00	0.0	\$0.00
Subtotal		160.0	\$17,760.00

Total Acres and Annual Payment **160.0** **\$17,760.00**

The Department agrees to issue annual payments on or before December 15th and in accordance with this Exhibit B. Annual payments may be altered, delayed or suspended if Property acres are determined to be out of compliance with Lease terms.

One-Time Habitat Enhancement Payments

	Rate	Acres	Payment
NDGF Grass Establishment Payment	\$60.00	0.0	\$0.00
NDGF Habitat Incentive Payment	\$30.00	0.0	\$0.00
New CRP Habitat Incentive Payment	\$30.00	0.0	\$0.00
Tree/Shrub cost-share	\$0.00	0.0	\$0.00

One-Time Enhancement Payment **\$0.00**

The Department agrees to issue earned one-time enhancement or incentive payments in accordance with this Exhibit B within 60 days of completion of enhancement.

CREP Incentive Payment

	Rate	Acres	Payment
CREP Incentive Payment	\$100.00	0.0	\$0.00

One-Time CREP Incentive Payment **\$0.00**

The Department will issue the CREP Incentive Payment once a completed CRP-1 is received from USDA.

Comments:

Exhibit C- Management Schedule

Agreement #:2420003

Purpose of this Agreement:

Cooperator agrees to maintain 160 acres of grass and forbs (soil rental) as herbaceous habitat for upland game birds, waterfowl, and white-tailed deer. Herbaceous cover will provide nesting and brood habitat for pheasants, sharp-tailed grouse and waterfowl as well as fawning cover and forage for white-tailed deer. Management activities in this plan are specific to "soil rental" acres described in the agreement.

Management Plan:

Haying – Hay rotation will help reduce the build-up of dead vegetation and invigorate the existing stand of vegetation. Cooperator is approved to hay 1/3 (up to 53.3 acres) of the soil rental and idle habitat acres on an annual basis. Haying must be done in a rotational manor so that the same 1/3 is not hayed more than once in a three-year span. When all the acres have been hayed over the three-year span, the rotation will start over. Only one cutting of hay is allowed per a year. Haying activities may take place between August 2st and September 1st to avoid the primary nesting seasons. It is preferred that cooperator leave at least 6 inches of stubble when cutting for hay to maximize the health and longevity of the grass stand and provide suitable stubble height for wildlife use. All bales should be removed from the field or stacked near an entrance by September 10th.

Noxious weed control - Noxious weed control on all acres is required by State Law and is the responsibility of the landowner. Spot clipping (preferred) or spot spraying for noxious weeds is permitted during the life of the agreement on acres where noxious weeds exist. If noxious weeds encompass a significant acreage or the entire field, cooperator will discuss weed control options with the Department prior to application to determine the best control method that will minimize damage to the grass/forb stand. Noxious weed control will be applied when it has the greatest likelihood of suppression.

Comments:

Grass and forb stand quality will be evaluated throughout the term of this Agreement and may dictate management activities being required to enhance its value to wildlife.

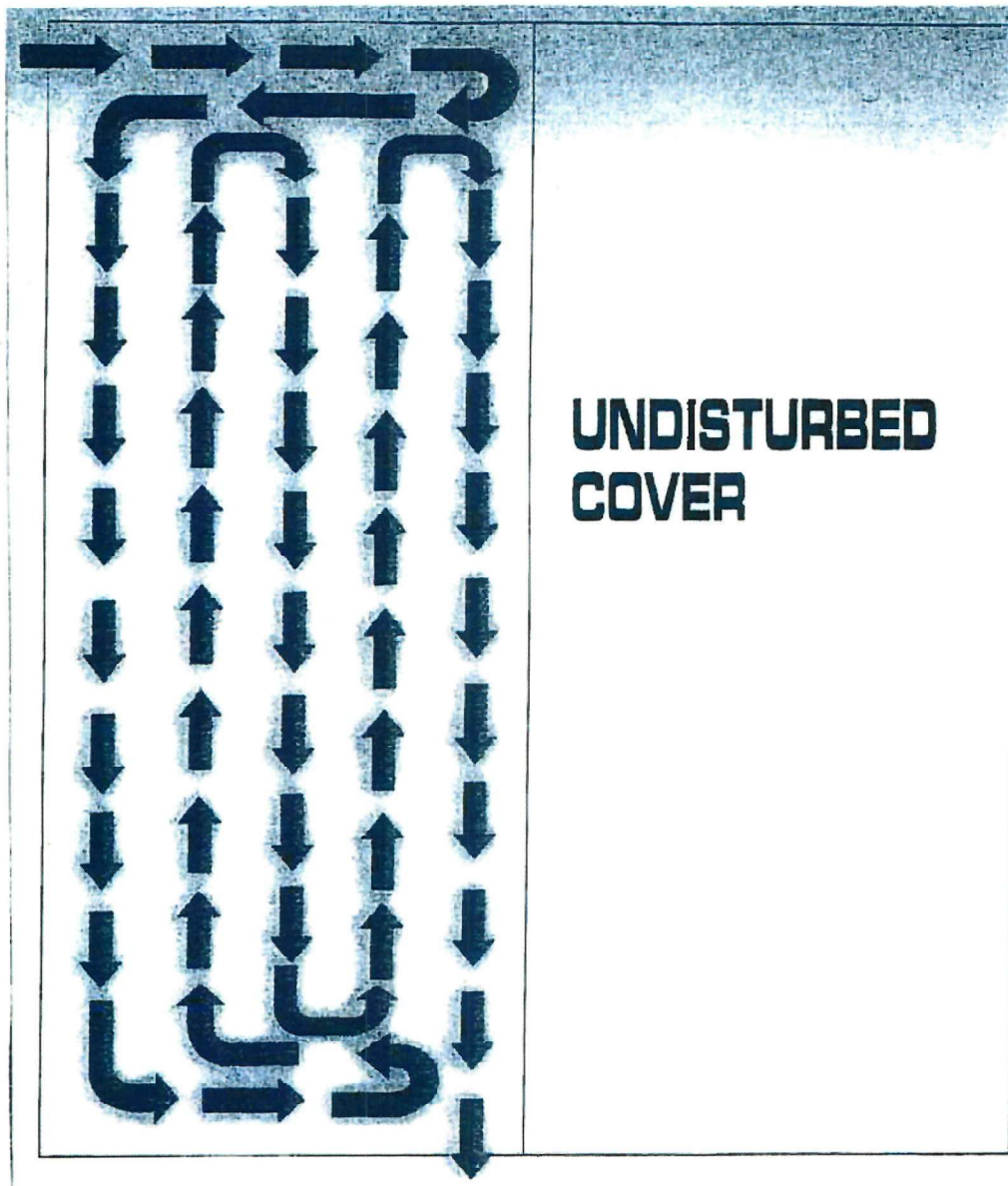
A diagram illustrating how the field should be hayed has been included with this management plan. This haying scenario will allow wildlife to escape to the non-hayed area instead of getting trapped in a small strip of vegetation in the middle of the field. If this scenario cannot be used, the landowner may discuss other wildlife friendly options with the Department.

If planned grazing or prescribed burning are the preferred management activities by the Cooperator(s), an alternative management plan can be discussed with the NDGF biologist.

Alterations – Any alterations to this management plan at the cooperators request must be pre-approved by the Department.

Haying Diagram

Using this scenario, the producer hays the ends of the field first, then works back and forth towards the unhayed cover.



Haying towards idle acres allows wildlife to escape to the unhayed area instead of getting trapped in a small strip in the middle of the field.