Law for Iowa Landowners

Workshops for Landowners and Advisors

with Prof. Neil D. Hamilton

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Law for Iowa Landowners: Workshop Agenda

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A. Introduction: How to Use the Law for Landowners Workbook

1. The workbook was written to provide Iowa landowners with a basic set of rules and guidelines to keep in mind concerning how the law applies to you and your land. To get a driver's license the state requires us to take a test and gives us a book of rules to understand. There is no test for becoming a landowner but there are many laws and rules that do apply – and understanding them can make being a landowner more enjoyable.

2. Just owning land doesn't make us an expert on what the law is. While we all might have some basic ideas about land law – such as using the right hand rule to divide fences – there is a lot we can all learn. My goal in writing this information is to bring together in one place an understandable discussion of the key laws and legal issues Iowa landowners should know.

3. The workbook and workshop is organized around the key legal topics most relevant to landowners – beginning with the basics of property law and the types of legal interests in land – and then continuing with specific topics ranging from fence law and drainage to farm leasing and USDA programs.

4. The discussion is organized to set out the basic rules found in Iowa law – as interpreted by the our courts – and to include key points to understand.

5. To make the materials in the book more accessible and in other formats, the Center has prepared a series of 22 short videos – which focus on "Ten Things you should know" about a range of legal topics. The videos were made possible with support from the Leopold Center for Sustainable Agriculture and the USDA Natural Resources Conservation Service. The videos are available for viewing at: https://aglawcenter.wp.drake.edu/landowners-legal-guide/

6. Remember the purpose of the workbook is to help you understand basic elements of the law and to identify the questions you might want to ask of others – such as the lawyer, banker, or real estate agent – so you can better appreciate what you might face. The guide is not

designed to be a substitute for legal advice but to equip you with questions to consider. Trying to be your own lawyer – can be a risky and expensive way to try to save money!

7. If you need legal advice you have several options. First, if you have used a lawyer for your family needs this is the best place to start. Most lawyers in Iowa have a good understanding of land law. If you do not have an attorney you can contact the Iowa State Bar Association for information on how to find a lawyer in your area. The Bar also has sections of the association for lawyers who focus their work on agricultural law and property issues so these are good groups to contact. Iowa State University also has a Center on Agricultural Law and Taxation which can offer information on legal topics. Of course, the Drake University Agricultural Law Center is an excellent source of information on many of these topics.

8. Land ownership is often a family mater – not just an individual issue – so making decisions about how to use the land and deciding how and when to transfer it in the future are important issues possibly effecting many people. One purpose of the workbook is to provide a guide useful not just for landowners but for other family members – and advisors. Helping the people who will someday become landowners understand the law is important to our future.

B. Twenty Common Mistakes Landowners Can Make

1. Thinking you know more than you do – and conversely not recognizing how much you do know about the law.

2. Assuming circumstances will never change, even though events like death, divorce, illness, and new children are natural and predictable.

3. Not recognizing how money can influence human behavior, even within families. Blood may be thicker than water but not money.

4. Not asking enough questions to understand what is involved.

5. Not taking the advice of lawyers or others with expertise. A corollary is only seeking advice when the goal is reducing taxes rather than to meet other goals.

6. Not talking to a lawyer about legal issues – to save money.

7. Not reading the contract and understanding the effect of the terms

8. Assuming your actions will be accepted or excused even if they vary from you promised to do.

9. Trusting the other party to always do what they say or promise to do.

10. Trying to represent yourself in the transaction – by being your own lawyer or realtor.

11. Assuming a plan or strategy to minimize tax liability will also achieve your other personal goals.

12. Assuming your children will want what you want for the future and use of the land.

13. Assuming you know what is best for your children and trying to control them once you are gone, through trusts and other devices.

14. Assuming you have to treat all of your children or heirs the same when deciding how to divide your estate.

15. Leaving important decisions to the next generation to work out rather than make your wishes known or acting on them.

16. Assuming your children will always get along and be able to agree how land should be used, yoking them together as tenants in common.

17. Not having a will or succession plan for how your land and other assets will be distributed when you die, and not communicating with your family and heirs so they understand your intentions and plans.

18. Not keeping your will or estate plan up to date to address changing circumstances, and failing to keep good written records in a place where they can be found.

19. Assuming the truth won't come out eventually, such as about money you have lent to a child, or who you plan to be your executor.

20. Waiting too late to challenge an action or not speaking up when you believe something is wrong or illegal, when the delay may mean a statute of limitations makes the challenge no longer viable.

C. Eight Things to Remember about Land Agreements

1. Written and signed contracts are binding and enforceable, even though the circumstances may have changed

2. Contracts can always be renegotiated if the parties can agree, but changes and agreements become harder the more people involved or the more money at stake.

3. Freedom to contract and the beauty of the common law create great latitude in crafting land interests – but some statutes – such as your spouse's interest in the land - can't be avoided.

4. Contracts or agreements involving real estate must be in writing to avoid the statute of frauds if they are for more than one year, although in some limited circumstances conduct can establish promissory estoppel or detrimental reliance.

5. The wishes or desires of the dead are not binding on the living unless somehow made enforceable in the title to the land.

6. People's circumstances change over time as needs, obligations, health, finances, and responsibilities change, meaning a landowner's desires may change too.

7. Monetary damages alone are often not adequate when disputes involve ownership of land and the courts can allow "specific performance" to force the sale or transfer of promised real estate.

8. It is common for different people to have different types of legal rights or interests in the same property, and for the ownership and use of land to be divided over time, such as through such devices as life estates, tenancy, and easements.

D. Introduction on Law

This workbook and workshop is about the law but is for people who are not lawyers. So it is helpful to provide you with a brief explanation of the different types or sources of law you might commonly encounter. This should help you understand how laws come into existence, how they may vary in their weight or authority, and how they might be changed. The following lists the type of laws in descending order as to their legal weight.

First, are provisions found in the Constitution – both federal and state – which set out the foundational principles of law – such as protection for private property and the creation and empowering of the General Assembly to enact legislation for the Iowa Code. The Constitution is very stable and the process to amend it is very lengthy.

Second, are state laws referred to as statutes or legislation enacted by the General Assembly and placed in the State Code or by Congress and placed in the U.S. Code. Laws such as those on fencing, terminating farm tenancies, and soil conservation are found under Iowa law. Each year the General Assembly or legislature meets and it can enact new laws or amend or repeal existing ones.

Third, are the court decisions interpreting the meaning of legislation enacted by the General Assembly or in the Constitution. Courts also decide legal issues for which no legislation exists, but where society needs legal rules to guide the conduct of individuals. The legal rules established by these individual court rulings is referred to as common law – and historically courts rather than legislatures created most of society's legal rules. Most of the "common law" or basic rules relating to contracts, property, and torts – injuries between people – have their origin in the judicial rulings, for example the issue of whether a tenant has a duty to care for the landlord's property is largely a function of the common law.

Fourth, are administrative rules, the regulations developed by state and federal agencies to implement the legislation enacted on a topic. For example, the Iowa law concerning the right to withdraw and use water can only work once there are rules setting out the process for obtaining and using these rights. The Iowa Department of Natural Resources has enacted rules found in the Iowa Administrative Code for this purpose. Some of these rules

- for example those developed to implement a government program, such as the USDA Conservation Reserve Program (CRP) may require a landowner to sign a contract – agreeing to follow the rules – in order to participate.

Fifth, are laws and ordinances, enacted by local governmental bodies. Actions, such as the county board of supervisors setting property tax rates, or the city council enacting a zoning ordinance are good examples. These actions create "laws" applying to people or property within the jurisdiction of the governmental body acting. One important question is how the local government obtained the power to create the law. For some subjects, state legislation delegates the power. For example, Iowa's law on county zoning Chapter 335, authorizes counties to enact such ordinances. But on other subjects where there is no state law, amendments to the Iowa Constitution provides for what is known as "home rule" give counties and cities the power to enact their own legislation.

Sixth, a final and important form of law to consider can be seen as "private law" – the ability of individuals to enter into binding legal agreements – referred to as contracts. In exchange for some form of "consideration" - most commonly money, one party agrees to exchange something or perform some action. For example, the contract may involve selling or leasing a piece of ground, or agreeing to combine a crop. As long as the conduct being promised is not illegal and the parties are competent (and not minors) the law gives individuals wide leeway to create contracts, which operate as private laws binding the parties who enter the agreements. As noted above contracts, binding agreements between two parties may also be used to implement public programs, as well as for private agreements. In either case, the important idea to remember is the written terms of the contract operate just like "legislation" to guide the behavior of the parties to the agreement. If either party fails to follow the agreement – known as breaching the contract – the other party may go to court to enforce it.

These are the six most common forms of law and all of them are encountered in this workbook.

E. Pre-Workshop Quiz

Testing Your Knowledge about Law and Owning Land

1. County supervisors are responsible for resolving fence and boundary disputes.

2. If a farm lease lists a specific ending date then notice of termination is not required by September 1st.

3. Under Iowa law, County Soil and Water Conservation District commissions have the power to order landowners to install conservation practices if excessive erosion is discovered.

4. The law requiring sales of land to be in writing to be enforceable is known as the "statute of frauds."

5. If you are a joint tenant with your sister on a piece of land it means you have an undivided one-half interest in the whole property.

6. Iowa drainage laws allows landowners to block water coming on to their property from a neighbor's land.

7. If a county has enacted a county zoning ordinance it can require a farmer to apply for a zoning permit before constructing a barn.

8. If a fence marking the boundary between two landowners has been accepted as the property line for years it can become the legal boundary even if it is the wrong place.

9. If the deed to land only lists the name of one spouse the other spouse does not need to sign for a sale or transfer to be effective.

10. Under Iowa law all the water in the state is owned by the public and is subject to permitting requirements for its use.

#1 - Ten Basic Steps to Understand the Principles of Iowa Property Law

As someone interested in farmland you are dealing with property law – the legal issues concerning real estate. Here the focus is on helping you understand the key foundational principles of American property law. Law students spend a full semester learning about property law – but for our purposes you can learn what you need by understanding these ten steps.

1. U.S. Property Law Evolved from British Law

First, property law in the U.S. evolved from the British common law, but our American approach to real property is based on the idea individuals can own the exclusive rights to occupy and use parcels of real property. This type of "complete" ownership is referred to as having "fee simple" title in contrast to other property interests involving fewer rights or shorter time periods, such as easements or farm leases for one year. As we will discuss in the next section many other people may have some interest in how your land is used, but these are not "fee simple" ownership interests.

2. Property Rights are Like a Bundle of Sticks

Second, the most common way lawyers think about property law – and how law students learn it – is based on property rights being similar to a bundle of sticks. If you own all the sticks you have a fee simple title but if you only lease the property then your sticks – or rights – only include using it for the period of the lease. After that you must return the property to the owner in the same condition in which you received it. Thinking of property rights as being like a bundle of sticks makes it easy to realize how some sticks can be given or sold to others – for example selling an easement to a utility to run a power line overhead – without impacting the sticks you retain.

3. Individuals Property Rights Can be held by Others

Third, some property rights or sticks – can be separated from the fee title ownership of the land – and granted to others. These rights – like the utility easement - are intended to last forever - to "run with the land" - rather than being personal agreements between the parties. Farmland is considered "real property" – as contrasted to your tractor - it is personal property. Courts have spent centuries developing legal rules on "real property".

4. Land Deals Must be in writing to Avoid the Statute of Frauds

Fourth, one important rule is any transaction or a contract - involving real property – must be in writing to be effective. Oral agreements to sell someone a farm or to leave land to another when you die will not be enforced by the courts. The legal principle is called the "statute of frauds" – found in Iowa Code §622.32, this law requires all contracts for sums of $500 or more - or involving real property must be in writing to be considered by the courts. The idea behind the statute of frauds is to require people to put important contract agreements in writing – this way the terms are clear and the parties signatures show their agreement. It is called the statute of frauds because allowing people to make claims based on claimed oral agreements creates too much potential for parties to make fraudulent claims to courts. It is easier for the courts to say – if it isn't in writing it can't be considered.

One narrow exception is known as promissory estoppel, which requires the party trying to enforce the oral agreement to prove they took detrimental actions believing an agreement existed.

5. Farm Leases for One Year May be Oral Rather Than Written

Fifth, one key exception to statute of frauds especially important to agriculture involves leases of land for one year or less. As you know many farm leases are oral agreements between the owner and tenant. These agreements do not run violate the statute of frauds because they are only for one year. Under Iowa farm lease law if notice to terminate isn't given by Sept. 1st the lease continues for one additional year. Thus oral farm leases may continue for many years – but legally they are a series of one-year agreements. But an alleged oral agreement to lease a farm for five years – or for life – would be unenforceable. So the best rule to follow is if you think you are agreeing to something involving land – then get it in writing - do not rely on oral or spoken promises.

6. Land Rights are Based on Locally Recorded Written Records

Sixth, American property law is based written records used identify the ownership interests in real estate. The most familiar is the deed – the legal document which represents the title to property – as passed from the past to current owner. Our property system is based on these ownership interests – or titles – being established by recording them in a county office. In Iowa

this is with the county recorder who maintains a system of books – now computerized – of land records. The records are tied to the legal description of the property to indicate the ownership interests of record. When you buy land you receive the deed reflecting the "clear title" to own the land. The deed is recorded for a fee – with the county recorder. Once the deed is recorded it has the legal effect of putting everyone else on notice of a claim to ownership. Ownership claims to property are based on the priority in time when filed – that is why it is important to record a deed with the county so it can be enforced against anyone else who might buy or claim the land.

7. Clear Title and Abstracting are Used for Land Transfers

Seventh, when property is sold – or transferred such as settling an estate – it is important the land records are checked and updated to determine if the new owner (or purchaser) will have what is known as "clear title." This process if accomplished by a title search or examination of the land records designed to bring the "abstract" of the property up to date. The abstract is essentially a running record of all the claims every made or existing against the property with the goal being to make it clear what the purchaser is getting. This service is typically done by the lawyers handling the transaction or by a title company which charges a fee to prepare the abstract. Buyers want "clear title" meaning the full fee simple. If a lender is financing the purchase they will also demand clear title so no one can make a better claim. This means for a seller to dispose the property they must be able to provide a clear title. The abstract will identify any other claims that might exist in the title, for example an easement granted to the utility company. The buyer and seller will not be able to "remove" some claims but they will be aware of them. Other interests, for example the claim made by the seller's bank on a mortgage when the land was purchased, will need to be removed or "satisfied" in order for the buyer to have clear title.

8. Creation of Property Rights is an Issue of State Law

Eighth, property law in the U.S. is an issue of state law meaning that the legal rules concerning the types of interests that exist and the procedures for resolving disputes are questions of Iowa law. There is no "federal" property law and while federal programs like those of the USDA may have an impact on farmland, actual claims to land in Iowa are issues of state law. There are no state-wide land records, instead all the records relating to land are kept at the county courthouse. This means if you own property in different counties

the records will be maintained in the county where the land is located. The effect of having local records is to simplify the process of identifying interests in real property, you only have to look in one place, the county.

9. Recognizing the Variety of Property Rights Possible

Ninth, thinking about the types of rights or sticks that can exist in property is useful in considering how these interests can be separated. The use of property can be separated by time – such as when an owner leases land to a tenant or when land is given to a person to use for their life – a life estate – and then pass to designated remainders on death. The owner – known as the lessor grants the tenant – known as the lessee – the right to use and occupy the land for a set period of time subject to the terms of the lease – if in writing. A lease is consider to be like a sale for the period involved, and the tenant has the right to occupy and possess the land free from the interference of the owner – subject to the requirement the land is returned at the end of the lease in the same condition. Property interests can be separated by type of use rather than by time. The most common example of this are easements, which are legal interests held by other parties to make some use of the property – for example a utility easement, or to restrain the owner from taking certain actions. A conservation easement is designed to protect certain aspects of the property, a common example being a Wetland Reserve Program easement in which the USDA has purchased an easement to have farmland restored as a wetland. Interests in property can also be separated in space – for example the right to run a wind turbine overhead – or the severance of the underground mineral rights to another. Finally interests in property or sticks can be granted so they are held in common by a number of people, for example siblings owning a farm as "tenants in common" with an undivided interest.

10. Property Law is Flexible for the Parties' Needs

Tenth, American property law is very flexible – which contributes greatly to the success of our economy and society by making it possible for people to obtain and transfer property interests to others. The courts and lawyers have shown great creativity in developing varying forms of property interests to help people realize their objectives. One effect of this creativity and range of property interests is to increase the complexity of the law and result in many issues requiring lawyers or the courts to help resolve. Even though property law can be complicated, the best way to understand any potential

transaction or dispute is to follow a few basic rules. First, identify the type of legal interest involved, e.g., it is a sale, a lease, an inheritance, a conflict with neighbor or co-owner. Second, understand how the interest is being created, obtained or transferred, e.g., is it a sale, an inheritance, or because a neighboring property has been transferred. Third, determine from whom the interest is being obtained or how the legal issue has come about, e.g., does it involve a landlord, a neighbor, an easement holder. Fourth, consider how the issue or transaction involved may impact or affect your legal rights or interest in the property, e.g., is someone trying to claim an interest in your land or restrict what you can do on it. By following these basic steps –you will be in a better position to try and understand how the law might apply to your situation and be better able to ask questions of your attorney or other official to help you answer your questions.

#2 - Ten Points to Consider about Who else might have an interest in your property?

When people think about owning land it is easy to assume the ownership is exclusive and no one else has any rights to the land. This is true to an extent - for example if you own land in fee simple you have the exclusive right to occupy and use the property. But if you own a form of legal interest that is other than fee simple, such as a lease for a period of years, or an easement, you can assume there are other parties you have some form of interest in your land – at some point in time.

One way to think about your rights as a landowner is to consider the list of other people who may have some type of legal interest in how you use your land. As we will learn from the following discussion of ten examples – that list is quite extensive. It includes, the following types of interest holders:

First, future owners, who have an interest in learning if you have created any potential problems on the land, such as disposing of hazardous wastes or maintaining an open dump;

Second, your heirs, who will be bound by any agreements you have entered, for example if you sign a wind turbine easement it may run for 40 years or longer or if you agree with the neighbor to pay for any fences for livestock;

Third, the county assessor, who is interested if whether you have paid your property taxes – remember if you don't your land can be sold to pay them;

Fourth, the bank or mortgage holder, who wants to know if you are current on any loans or notes for which you have used the land as collateral – failing to pay the loan could result in the land being foreclosed;

Fifth, your neighbors, who hope any uses you make on your land do not create a nuisance for them or interfere with their right to quiet use and enjoyment of their land. The same is true relating to your neighbors interest in drainage and fence related issues;

Sixth, the state or public, which may have an interest in seeing that you comply with environmental laws relating to streams, with soil conservation requirements, or game laws on hunting and fishing;

Seventh, your co-owners, if the land is in some form of joint tenancy like "tenants in common" or is being held by a trust, then there are other people who are co-owners who may have interests exactly like yours;

Eighth, the tenant, if the land is subject to a lease then the tenant has a right to use and occupy the land free of interference, as set out in the lease;

Ninth, the local municipality, if you are annexed within the city limits you may be subject to complying with the zoning ordinance and other land use laws, which may also be true for the county and county zoning; and

Tenth, visitors or passersby, who have an interest in not being injured, such as falling into an unmarked abandoned well, or being bitten by a dog left in the yard or being chased down the road.

This list is not exclusive, there can be other people with an interest in how you use your property, including:

- other easement holders, if the land is subject to an easement, such as for the utility to run a power line over the property, or for a neighbor to drive across a portion of it to have access to other land; and
- the county engineer, who is interested in whether you are doing anything that might impact the roads running adjacent to your land.

As you can see from this list there are many other people who might have an interest in your land – or at least in how you use it. But you can also see many of these interests are reciprocal – just as you have neighbors – you are also a neighbor and enjoy the same interests or forms of legal protections concerning how others use their property in ways that might impact yours.

#3 - Ten things to know about joint tenancy and tenants in common

1. One form of property ownership for farmland is to have multiple owners - known as joint tenancy or tenancy in common. In both types the owners are said to hold an undivided proportional interest in the property. For example if a husband and wife own farmland as joint tenants with the right of survivorship each has an undivided 1/2 interest in the land. If 3 siblings are tenants in common on a property they each have a 1/3 undivided interest.

2. The key difference between joint tenancy and tenancy in common is what happens on the death of an owner. For joint tenants with a right of survivorship the interest of the one who dies is transferred to the survivor and does not pass to the heirs of the deceased. With tenants in common, if one dies the proportional share owned by the deceased party passes to their heirs as instructed in their will, and these parties will now share the proportional interest with the other original tenants in common. You can see how the number of people who are tenants in common and their percentage shares can change over generations.

3. Tenancy in common is a frequently used legal tool to transfer ownership of farmland in Iowa. It is a convenient way for parents to treat all children equally. Rather than try to divide the property into individual tracts - which might risk breaking up the farm business - the whole property is passed as one tract to whatever number of tenants in common are created.

4. Tenancy in common can work well, especially if the property owners can agree on common goals and can communicate. However tenancy in common can cause significant future problems - especially if siblings have different needs and objectives, long simmering resentments, or other differences exist. Anyone with siblings can appreciate how this is possible.

5. One important legal rule can present challenges, when tenants in common are required to take some action involving the property - such as deciding who to rent it to and at what price, or entering the land into a USDA program like the Conservation Reserve Program. In these situations all of the tenants in common must agree. The requirement for having unanimity to act is because each tenant in common has a possessory interest in the whole property even though they may only legally own an undivided share of it.

6. Tenancy in common can also present challenges when the goals or needs of the co-tenants conflict. This is especially true if one co-tenant wants to sell their share or otherwise realize its value so the money can be used for other needs. When the land involved is farmland this can cause significant issues especially if there is a co-tenant farming the land who wants to keep the farm intact. In this case the farming co-tenant might need to finance the purchase of the interest from the other sibling.

7. The types of conflicts that can arise over how to farm the land or sell it are apparent and can cause great strive within families. This is especially true if co-tenants no longer live near the farm or are not involved with the farming business - or if they believe they are receiving too little return from the property. The potential for conflict is compounded because Iowa law gives any co-tenant the right to petition the district court to order the land be "partitioned," meaning it can be sold and the money divided among the co-tenants based on the percentage of their interests. The threat of a possible partition action can force co-tenants to negotiate possible transfers to avoid having the courts act. Partition is controlled under Iowa Code Chapter 651.

8.The general rule courts will follow in partition actions is to order all the property sold (even if some co-tenants don't want this) as this is the clearest way to determine the fair value of the property and have proceeds to allocate to the co-tenants. However, courts will agree to order partitions "in-kind" with pieces of the property allocated to different co-tenants, if the parties can agree to such a division.

The Iowa courts historically required the sale of property in partition actions. A 2016 Iowa Supreme Court decision required the sale of a family farm to resolve a partition fight, and as a result of this case and because the idea of forcing the sale of farmland can cause difficulties, the Iowa Legislature in 2018 enacted a new version of Chapter 651. While much of the chapter is the same as before, the major difference is to authorize the courts to allow for partition in kind when they find it is “equitable and practicable.”

9. Because the risk of a future partition owners of the property, such as the parents, may try to include in the will creating the tenancy in common, instructions to the effect any co-tenant who brings a future partition action will lose or forfeit their share. This sentiment may be understandable but courts are reluctant to enforce these provisions - from beyond the grave - to later take away a property interest once it was legally transferred.

10. While tenancy in common is widely used and can function well if the parties get along and cooperate, the potential for future conflicts is real and one reason to consider other methods for transferring interests in property or treating heirs "equally" (perhaps not the same as fairly). Other alternative forms of property ownership include using trusts or corporations. Please recognize these tools can create their own problems when it comes to issues of control and valuation, especially if goals and needs of the parties differ.

#4 - Ten Things to Know about Fence Law and Straying Animals

Iowa has had laws on fences in the state code since the time of statehood. Presently, the laws is found in Iowa Code Chap. 359A (formerly Chap. 113).

1. Boundary or partition fences are not required by Iowa law but are a good idea because of the role they play in helping delineate the property you own.

2. Neighbors can enter into agreements dividing the fencing responsibilities between them, and those agreements can be recorded with the county and made part of the title to the property so they are binding on future owners.

3. Fencing law is related to the law of owning livestock. Owners of livestock are responsible for controlling their animals, and this is why Iowa is known as a “fence in" state. Livestock owners are also responsible for the possible damages caused by their livestock in many situations.

4. Livestock owners will not be responsible for damages if their livestock entered on to a neighbor's property because the neighbor failed to maintain a partition fence. This aspect of Iowa law means that Iowa is also a “fence out” state. The fact our law covers both the responsibility to fence in livestock and to fence out livestock is designed to minimize conflicts and provide bright line rules for who is responsible.

5. In most situations neighbors are able to amicably resolve questions they may have about their fences, but if they are unable to, Iowa law provides the fence viewers can be asked to resolve disputes and allocate fencing responsibilities between the neighbors.

6. The fence viewers are the Township trustees and the law provides a process for them to meet and view the fence at the point of the dispute between the parties. Fence viewers have the power to issue orders resolving fence disputes and allocating responsibility for fencing as they see fit.

7. What is known as the “right hand rule” is often used to allocate fencing responsibility. Under this approach the parties meet in the middle of their shared property line and then take responsibility for the portion of the fence on their right hand. But it is important to know the right hand rule is not

required by Iowa law, and fence viewers and the parties can use other approaches in allocating fencing responsibility.

8. If either party feels aggrieved by the decision of the fence viewers, they can appeal the decision to the District Court and even on to higher courts if they do not support the lower court decision. Any decision rendered by the courts will be binding on the owners of the property and future owners.

9. If a landowner is ordered to build the fence and fails to do so, the county supervisors can order the fence be built and have the costs charged to the landowner and collected like property taxes. In many cases the complaining neighbor may actually be hired by the county to build the fence. Because the cost of building the fence can be collected like property taxes, it means land owners are not able to avoid their responsibility for fencing obligations.

10. Iowa law provides a special rule in situations where livestock may be present and that is the requirement for what is known as a tight fence, typically with a section of woven wire at the base. If livestock owners make their portion of the fence tight they can request the property owner on the other side of the fence do likewise for their portion. The requirement to build a tight fence applies even if the neighbor does not own livestock, has no plans to own livestock, or under zoning law is prohibited from doing so.

In conclusion understanding the duty and obligation or responsibilities as relates to fencing is part of being a property owner.

Bonus Discussion - Acquiescence in Boundaries

An issue not uncommon is what happens when fences between parties are not in the right place. The situation is so common the Iowa Code contains "Chapter 650 Disputed Corners and Boundaries" providing a procedure to resolve disputes. If a fence has been in place for many years a court will rule it is the accepted property line under the legal doctrine "Acquiescence in Boundaries," the subject of several Iowa Supreme Court cases. If the parties have acquiesced on the boundary for the minimum of at least 10 years as required in §650.6 and §650.14 the court can determine it is the boundary, even if a later survey shows the fence located in the wrong place.

Chapter 650 provides that "when one or more owners of land, the corners or boundaries of which are lost, destroyed or in dispute, desire to have the same

established, they may bring an action in the district court or the county…." where the property is located. The Code provides the procedure for giving notice to the parties and for resolving disputes. The law gives the court authority to appoint one or more disinterested surveyors to serve as a commission to hold a hearing and to establish the disputed corners or boundaries. The commission is given 60 days to file a report with the district court. The court may then hold an additional hearing and hear testimony after which it shall issue an order decreeing where the corner and boundary is located. The decree is binding on the parties and establishes the boundaries although the decree can be appealed.

Iowa Code §650.17 provides for boundaries by agreement whereby a written agreement signed and acknowledged by all the parties affected, can be recorded, if accompanied by a plat of the properties and it "shall be binding upon the heirs, successors and assigns …" This is similar to the written agreements allowed for fencing and drainage agreements.

#5 - Ten things to know about Drainage Law in Iowa

1. Drainage is a natural process and involves issues of rainfall or precipitation and gravity. There are three important basic concepts to understand about drainage. These are: first, the dominant estate, meaning land with a higher elevation; second, the servient estate, meaning adjoining land which is downhill or lower than the dominant estate; and third, the idea of natural flow.

2. Iowa law establishes a series of basic drainage rules. The first important rule is the dominant estate has the right to drain water onto the servient estate. The second rule or corollary is the servient estate has a duty to accept water off of the dominant estate. This means the servient estate owner cannot block the water forcing it to flow back onto the dominant estate. At the same time the dominant estate cannot collect water from other locations and have it enter the servient estate at a place or manner to cause damage.

3. The Iowa courts have resolved dozens of drainage disputes over the years, and the case law created by these court decisions establish a series of principles of drainage law. These principles relate to various types of circumstances that can arise between parties such as when they have altered the natural drainage course, or allowed obstructions to build up in the drainage systems.

4. Most drainage will flow in a natural course, meaning it will collect and flow downhill through a ditch or waterway ultimately entering into a stream or creek and finding its way on to a river or in some situations an impoundment like a lake. In addition to natural watercourses, landowners can create artificial water courses, such as ditches or other types of drainage systems.

5. The neighbors can agree to an allocation of the drainage responsibilities between their properties and use those agreements to allocate who is responsible for maintaining the drainage. These agreements can either be express or can be implied by the neighbors actions, and over time they may establish what are known as easements to allow the drainage to continue as it has been for a number of years.

6. If there is a dispute between neighboring property owners over the drainage, the person bringing the action has the responsibility to prove their

property has been damaged and it was caused by a violation of some principle of Iowa drainage law.

7. Iowa law allows for the creation of drainage districts, which are common in the flatter portions of the central and northern part of the state. The purpose of a drainage district is to collect revenue from the property owners in the designated area and use the funds to construct artificial drainage systems, such as a network of drainage ditches, to remove the surface drainage to a natural outlet.

8. If you own land within a drainage district, then you are subject to the authority of the district, which can mean being assessed to pay money for the creation and maintenance of the drainage systems. Drainage districts are considered to be a form of special purpose local government entity. The districts can be managed by a set of trustees appointed from the land owners in the drainage district, or as is done in most situations, the trustees can be the board of supervisors of the county in which the district is located.

9. Use of drainage tile is common in Iowa, covering perhaps as much as 12 million acres. Installing drainage tile is unregulated, meaning no permits are required, and the right to tile is protected under Iowa law. Landowners are even given the right to place tile on a neighbor's property to connect to other existing tile or drainage systems. Iowa Code in §468.600 contains provisions referred to as individual drainage rights. Section 468.600 is titled "Drainage through lands of others – application", and sets out a process for landowners who desire to install tile across the land of another to file an application with the county auditor describing the land and the intended project. The law sets out a detailed procedure for providing notice, a hearing by the board of supervisors for a determination, a right to appeal, and payments of any costs and damage. If the neighbors agree to the project there is no need to use this contested case procedure.

10. If the neighbors enter into drainage agreements to allocate their responsibility, these agreements can be reduced to writing and filed with the county recorder. In that case the recorded drainage agreements will become part of the land title and binding on future owners.

#6 - Ten Things to Know about Iowa Land Use Law

1. Your land may be subject to zoning by a city or the county depending on where it is located and whether the local political body has enacted a zoning ordinance – over 2/3 of Iowa counties have enacted county zoning and almost all towns of any size have land use and zoning ordinances

2. County zoning law in Iowa includes an important "agricultural exemption" that covers most traditional forms of farming and livestock production and makes them exempt from the application of zoning rules – such as a requirement to obtain a permit to build a machine shed. This means as long as what you are doing on the land is agriculture zoning rules should not apply.

3. The agricultural exemption has been subject to a number of court cases and is broadly defined by the courts. It has been used to limit local attempts to impose zoning regulation on things like livestock confinement facilities. However because some farming activities can interfere with how neighbors use and enjoy their property, it is important to understand when zoning might apply.

4. The law giving cities the power to zone does not include an exemption for agriculture and farms may come under the zoning rules of nearby cities and towns. This can either through annexation of the land such as when a city grows by changing its boundaries – or through what is known as "extra-territorial" reach which allows cities to apply zoning rules to land located within 2 miles of the existing city limits – so landowners need to stay aware of land uses changes in your area.

5. When current farming activities become subject to zoning or to new zoning rules, the activities are typically "grandfathered" in – and considered non-conforming uses – which means they are allowed to continue but any growth or changes may be restricted. The farming uses may come under scrutiny from new neighbors especially if residential development happens nearby.

6. If a zoning ordinance does apply to your land the typical zoning method is to map the land into different districts – such as Agricultural and Residential. Then for each district the ordinance sets out a list of principal permitted and

accessory uses, as well as other detailed guidelines and definitions for how the zoning rules work.

7. The zoning ordinance is developed by a local planning and zoning commission, which holds public hearings and creates a comprehensive plan. The zoning rules are designed to implement the plan. The zoning ordinance is enacted – and can be amended - by the locally elected political body such as the county board of supervisors or the city council.

8. Once a zoning ordinance is in place most of the legal and political activity for zoning concerns the various methods by which landowners can apply to the local authorities to let them make changes in how the zoning rules might apply to their property. Zoning ordinances often include several different ways for the zoning rules to be made more flexible to accommodate landowners desires – as long as they are reasonable and don't impact the neighbors.

9. Most decisions to allow landowners to make land uses changes not otherwise allowed under the zoning rules – such as building closer to the property line than a set back rule requires - are made by what is known as the "board of adjustment." This committee of local residents is appointed by the political body – such as the city council – and given the authority to grant variances or exceptions under the zoning rules.

10. To obtain relief from a zoning restriction – a landowner applies to the board which will notify the neighboring landowners of the request and hold a public hearing, after which it can grant or deny the request. Decisions of the board can be appealed to the local district court. As a general rule neighbors are often happy with existing zoning rules and can be expected to oppose requests to allow changes – that is why it can be very important to talk with the neighbors to get support for any desired change. The other major way zoning rules can be altered is by amendments enacted by the local political body which is ultimately responsible for the zoning rules.

Bonus – Introduction to Iowa Nuisance Law

What is It, Why Have It, and How Does it Work?

One legal topic most landowners are aware of is the concept of nuisance or disputes between neighbors over activities they might find

disruptive. This section briefly explains the basics of nuisance law and what you as a landowner need to understand about it, and provides information on Iowa's "right to farm" laws designed to protect certain agricultural activities.

Nuisance is a legal term for an activity causing unreasonable and substantial interference with another' quiet use and enjoyment of property. In other words, something that makes it difficult for the neighbor to live there. The doctrine is based on two corresponding legal principles: 1) land owners have the right to use and enjoy property free of unreasonable interferences by others, and 2) land owners must use property so as not to injure that of adjacent owners. The doctrine of nuisance is a common law concept, meaning it has developed over the centuries as judges settled disputes between individuals. The law of nuisance was created to protect individual property rights and to resolve disputes involving different land uses. Because nuisance law reflects the needs of society and the values of judges, it continues to evolve as courts resolve nuisance disputes. Because nuisance law is often judge made, the legal rules vary between states. Nuisance law is of special importance to agriculture because historically many cases have involved farming, usually allegations concerning odors from livestock production.

Nuisance law makes it possible to sue a neighbor whose actions adversely affect the complaining party's property. But not everything a neighbor may find objectionable is a nuisance. Only those activities a court or jury finds to be "unreasonable" and which cause a "substantial interference" with the property are treated as nuisances. Whether a complained of activity, such as spreading manure, results in a "substantial" and "unreasonable" interference with another's property will depend on the facts of each case and the legal rules used in the state.

What are the keys to understanding nuisance law?

The first key to understanding nuisance is the basic principle as a landowner you may not use your property to injure that of another. Without the nuisance doctrine, your property rights would not be protected from a neighbor's actions making it impossible for you to use and enjoy your property. Without the protection of nuisance law, the neighbor could make your property unlivable, in effect taking your property without paying for it. When viewed this way nuisance law is an important protection for all property owners. While nuisance is an important protection for property

rights it can also restrict economic activities. Property uses with the potential to affect a neighbor's land are more susceptible to nuisance suits than activities that do not. This is why livestock operations have historically been the subject of nuisance complaints.

A second key to nuisance law is just because an activity is legal or licensed by the state does not mean it cannot be a nuisance. An otherwise legal activity can be operated so as to cause substantial and unreasonable interference with another's property and can be declared a nuisance. Even if you have all of the state permits needed to operate your feedlot, it can still be declared a nuisance if it unreasonable interferes with your neighbor's property. This is true because nuisance law is a private legal remedy between individual landowners.

A third key is to understanding that "nuisance" and "negligence" are not the same thing. When someone acts negligently they are said to have violated a standard of care the law imposes on people to act reasonably and not cause harm to others. For example, it would be negligent to fail to inspect your waste lagoon to keep it from getting so full it overflows onto a neighbor's land. The impact of the spill, the odors and water pollution, would result from your negligence and you could be ordered to pay damages. The same lagoon, even if operated properly and not overflowing, could result in odor problems that could lead to a nuisance suit but it would not result from your negligence instead it results from the impact your conduct has on the land of another – even if your conduct is reasonable and lawful it can still be a nuisance if the interference is substantial.

Right to farm laws are designed to protect existing agricultural operations by giving owners who meet certain legal requirements a defense in nuisance suits. Right to farm laws were developed because of concerns about the loss of agricultural land due to the movement of conflicting uses, such as residential developments, into farm areas. Without some legal protection a court can rule a farm, even if in operation for years, a nuisance and order it closed. As you might imagine, the "right to farm" idea is popular with Iowa law makers and over time Iowa has adopted three different versions:

- Chapter 172D to protect feedlots;
- the nuisance protection for lands within an "agricultural area" as created under Chapter 352, and
- the protection in Chapter 567.11 applying to any livestock facility meeting the Iowa environmental rules.

#7 - Ten Things to know about Iowa Water Law

To begin it's important to recognize there are three important questions to consider about the role of water in Iowa agriculture: who has the right to use water, who has the right to drain water from their property, and how do we protect water quality?

1. Iowa is known historically as a riparian state, meaning the right to use water was a function of being a property owner adjacent to it, for example withdrawing water from a river or stream running through or next to your property. The riparian system is in contrast to the prior appropriation system of water rights used in the West, which allocates water based on who was the first to put it to use, and not based on being a riparian owner.

2. Today Iowa uses a state permit system for water use, enacted in the 1960s. Under that law all water in the state was declared to be the property of the public, meaning the right to use it is controlled under state law and may require a permit. The provisions of the law can be found at Iowa Code §§455B.261, et seq.

3. Knowing when water use permits are required is the central question under Iowa water law. To begin there are a number of important exemptions to the permitting requirement. The key distinction is the difference between regulated uses and what are considered to be non-regulated uses.

4. Regulated uses are defined as those using more than 25,000 gallons of water a day, and these generally need a permit. To obtain a permit you must apply to the Department of natural resources and the permit will be subject to conditions that the DNR may place on the timing and method of withdrawal. If a use is less than 25,000 gallons a day it is considered to be nonregulated and no permit requirement applies. This category is especially important for most farmers, landowners and households because they use less than 25,000 gallons a day.

5. If a permit is required, a person must apply to the DNR and follow their procedures for determining the availability of adequate water supply in the sources from which you will be withdrawing water.

6. The DNR will investigate the potential impact of a permit application on the water supply and its impact on other uses. The state does not have to

approve a permit if there are limited supplies or other issues concerning the planned withdrawal.

7. The right to use water is tied to the property on which the permit is being applied, meaning permits can't be used to obtain water to be shipped elsewhere. Unlike some states which allow what are known as inter-basin transfers, Iowa law requires water be used where it is being withdrawn.

8. The water in farm ponds can be used by the landowners, without a requirement to obtain a permit. Depending on the size of the dam involved, in constructing a pond it may be necessary to obtain a permit to ensure the safety and stability of the dam.

9. Water uses are classified by priority, which can be important in times of drought or severe water shortages. If that should occur the DNR has the authority to order water users with a lower priority to limit their withdrawals. Under Iowa law use of water for irrigation is given a low priority, while use of water to supply livestock and households has the highest priority.

10. Iowa law requires a permit to use groundwater or surface water and doesn't make a distinction between them for purposes of water rights. This means if you will be withdrawing water from a well you may need to apply for a permit before the well is drilled. The regulations adopted by the EPC to administer the water use and allocation law [IAC 567 – Chapter 38] contain provisions relating to well drilling permits, see IAC 38.14.

The key to understanding water law is to recognize it is a question of state law and under the control of the Iowa Department of Natural Resources. More information about Iowa's water permit system can be found on their website.

#8 - Ten Things to Know About Farm Leasing and Conservation

1. Importance of farm leasing

Farm leasing has always been a central part of Iowa agriculture, though the amount of land being leased and the types of leases commonly used have changed over time. Today over half of Iowa cropland – more than 12 million acres – is farmed under some form of lease – most often cash rent. Farm leases in Iowa are typically one year, even for written leases – although the parties can agree in writing to longer periods. As for oral leases which are still common oral, the statute of frauds, means they can only bind parties from one year to the next. Although farm leases may be legally binding for only one-year, the reality is farm tenancy relations often last many years, as the parties agree to renew the leases each year or the lease continues because of the failure to provide notice of termination.

2. Changes in the terms of a lease – Importance of Sept. 1st

Under Iowa law September 1st is the statutory date for making changes in farm leases. The date applies for both landowners and tenants – so if you want to add new lease terms, raise the rent, or end the agreement next March 1st you need to act prior to September 1st. The procedures for farm leases and notification are provided in Chapter 562 of the Iowa Code.

This is why the legal requirement to provide notice by September 1st is important. If neither party gives notice of termination or sets new terms prior to the date then the lease automatically continues for the next crop year on the existing terms. Of course if the parties can agree, new terms such as a different rent amount, can be made later. The important point is one party may not unilaterally change the rent or end the agreement after September 1st if legal notice was not given. One exception to this rule is for failing to pay rent. The obligation to provide notice to terminate a lease applies to both landlords and tenants.

3. What terms can be in a lease?

The lease renewal deadline creates an important opportunity for landlords and tenants to think about what terms are in the lease. If you ever look at a standard form lease – such as the Iowa Bar Association farm lease – who will find it contains dozens of clauses covering most potential issues that might arise between the parties.

As a legal contract and a conveyance of real property for the term – the lease is an important mechanism for communicating the parties' expectations and goals. Anything can be included if the parties agree. Most attention focuses on the amount of rent and the timing and method to pay. Economics are important, especially in times of economic stress like we face now, but our history as a farm state tells us there is more to good farming than just the highest yields and dollars and cents.

4. Including conservation in a lease – questions to consider

A farm lease can – and arguably should - address many other aspects of tenancy relations – including conservation. When it comes to soil conservation and land stewardship a range of topics can be addressed. From the perspective of the landlord – questions to ask might include: how do you want the land farmed, should the tenant adopt a conservation plan or follow nutrient management rules, and do you want the farm enrolled in applicable USDA conservation programs? From the tenant's perspective key questions might include: will the landlord help pay for conservation and water quality practices like planting cover crops, or if less productive acres are converted to permanent habitat will the rent or number of acres be reduced?

There is no one correct answer for questions like these – instead the most important step is for the parties to talk about them. Iowa's farmland owners and the tenants who farm their land both have critical roles to play in stewarding land and water. If Iowa's owners and tenants don't discuss conservation then we are missing an important opportunity to improve how the land is farmed and to protect long-term soil fertility and water quality.

5. How is conservation addressed in typical farm leases?

If much of Iowa's farmland is farmed by tenants, how can a landlord protect the land under lease and require soil conservation measures be applied?
The parties to a written lease can include whatever terms they want to concerning how the land is to be farmed. Many farm leases currently in use are form leases such as those made available by Extension officials or the state bar association. These standardized leases generally contain provisions concerning good husbandry and soil stewardship. For example, the Iowa State Bar Association form farm lease includes these provisions:

5. Proper Husbandry; Harvesting of Crops; Care of Soil, Trees, Shrubs and Grass: Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event the tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent.

…..

Tenant shall comply with the terms of the conservation plan and any other required environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion, including, but not limited to, the maintenance of existing watercourse, waterways, ditches, drainage areas, terraces and tile drains, an abstain from any practices which will cause damage to the Real Estate.

Tenant shall distribute upon the poorest tillable soil on the Real Estate, unless directed otherwise by Landlord, all of the manure and compost from the farming operation suitable to be used. Tenant shall not remove from the Real Estate, nor burn any straw, stalks, or stubble or similar plant materials, all of which shall be recognized as the property of the Landlord. Tenant may use these materials, however, upon the Real Estate for the farming operations.

As you can see, including written terms like these as part of the lease contract stabled guidance to use if a dispute arises.

6. A lease can include more detailed terms for how land is to be farmed

An Iowa case demonstrates landowners concerned about how the land is farmed may include detailed protections in the lease and bring a legal action for damages if the lease is breached. In *Quade v. Heiderscheit*, [391 N.W. 2d 261 (Iowa App. 1986)] a landlord very concerned with how his land was farmed included in a three-year written lease, provisions concerning specific practices, including: a prescription against cutting alfalfa after September 1st; a restriction on using atrazine on any ground not being planted to corn the following year, with a limit of two pounds per acre application rate; the

identification of areas for new seedings; the implementation of a rotation system based on contour strips balancing new seedings, corn and alfalfa; a limitation on the number of cattle to be pastured; and a requirement a steep twelve acre field be planted to corn for only one year. The lease also included traditional provisions concerning the tenant's duty to farm the land in a good and farm like manner, to keep the premises in good repair, and to return the property to the landlord at the end of the term in good condition.

Shortly after the tenant began farming, disagreements developed between the parties concerning the tenant's farming methods. During the first crop season the parties entered an agreement to terminate the lease and to release each other from any claims for the remainder of the lease period. The landlord then brought an action against the tenant for damages caused during the one year the tenant farmed the ground. At trial the landlord claimed the tenant's farming practices violated the lease and damaged the property. The tenant claimed he had not caused any damages, and in fact his practices benefited the landlord by improving the land. The trial court awarded the landlord damages totaling over $7,000 and the tenant appealed.

7. Courts will typically uphold specific conservation requirements

The Iowa Court of Appeals affirmed the trial court's grant of damages. It ruled the evidence shows the oat nurse crop died due to the carryover effect of the three pounds of atrazine applied. The court also agreed the tenant violated the lease by cutting the alfalfa in September resulting in winter kill damage and poor growth the next year. The court held cutting the alfalfa was sufficiently late to support a finding it violated the lease clause requiring good farming practices. The court did not accept the tenants' argument his farming methods added nutrients to the soil.

The court upheld the award of $2,000 for erosion damages to existing grass waterways and $300 for repairs. The tenant argued awarding damages for soil erosion would make all tenants the guarantors of their landlord's farmland such that any notable erosion would make them liable. The court disagreed, noting the trial court did not award damages for natural soil loss but instead the damages were due to the tenant's practice of having plowed up and down hill on the steep twelve acre field rather than on the contour. The court also rejected the tenant's argument the landlord intentionally inflicted emotional distress by harassing him about his farming methods.

The *Quade* case is evidence landlords concerned about how their land will be farmed can incorporate detailed provisions into the lease specifying how the land should be treated. The case also shows if there is a breach of the lease, such provisions may provide the basis for recovering damages. However, it must be recognized the *Quade* ruling is somewhat unique because most farm leases do not include such detailed provisions. Few other reported farm leasing cases involve a court awarding damages for farming related practices.

8. If the lease is silent on soil conservation or it is an oral lease, the law may impose a duty on tenants to protect the soil from erosion

Iowa law recognizes what are known as implied covenants. These are legal promises created by the nature of the parties' legal relationship, even if they are not specifically included in the written lease, or when the lease is oral and not in writing. For example, Iowa courts recognize an implied covenant the landlord is entitled to rent and to get the property back in the same condition at the end to the lease. The duty to protect soil from erosion when land is farmed under a lease reflects an implied covenant of good husbandry.

9. If there is an implied covenant of good husbandry in farm leases does it require the tenant to conserve the soil?

When the parties to a lease use a written form that includes clauses such as those on property husbandry and care of the soil contained in the Iowa bar form lease, there is little doubt the reasonableness and impact of the tenant's farming practices are subject to review by the courts. While such clauses may establish somewhat ill defined standards, in the case of a dispute, they at least provide the court and the parties with a standard from which to work. A more difficult issue is whether there is an implied covenant of good husbandry or care of the soil when the lease does not specifically provide one, such as where the agreement is oral or a very simple written lease.

As a general rule, under American common law an implied covenant of good husbandry does exist in the leasing of farm land. Several states have held all tenants are required to care for the land and farm it property regardless of the lease terms. This finds its origin in the legal doctrine of waste, a common law concept requiring individuals with some form of joint ownership interest in real property even separated by time such as life tenants have a duty to use property so its value is not reduced.

10. Have the Iowa Courts held there is an implied covenant in a farm lease requiring tenants to protect the soil?

The Iowa Supreme Court has shown a particular sensitivity to issues involving the misuse of agricultural land and has noted on several occasions the preservation of the states' productive soil is fundamental and within the public interest. The Court noted this in upholding the constitutionality of the statute requiring tenants be given advance notice of the termination of a farm lease. [*Benschotter v. Hakes,* 232 Iowa 1354 (1943)] The court writing in 1943, used language that could be applied to the debate over water quality:

> It is quite apparent that during recent years the old concept of duties and responsibilities of the owners and operator of farm land has undergone a change. Such persons, by controlling the food source of the nation, bear a certain responsibility to the general public. They possess a vital part of the national wealth and legislation designed to stop waste and exploitation in the interest of the general public is within the sphere of the state's police power. Whether this legislation has accomplished, or will in the future accomplish, the desired result is not for this court to determine. The legislature evidently felt that unstable tenure leads to soil exploitation and waste. The amendment aims at security of tenure and is therefore within the police power of the state.

The court restated this view in 1979 in *Woodbury County Soil Conservation District v. Ortner*, upholding the constitutionality of the law making it the duty of every landowner in the state to protect their land from soil erosion. The Iowa Supreme Court in upholding the constitutionality of the law noted, "[T]he state has a vital interest in protecting its soil as the greatest of its natural resources, and it has a right to do so." While the statutory provision applies to landowners it also evidences the state's concern for the protection of soil resources and would underpin a covenant of good husbandry being found the farm lease context.

9 - Ten Things to Know About Farm Managers and Farm Management Agreements

1. Who do Farm Managers Serve: Non-Operating Landowners

Many people who own farmland may not live on or near the land or do any of the actual farming. The commonly used descriptor for this type of owner is a "non-operator landowner" or NOLO. One common challenge NOLOs face is in how to manage the land and take care of it – especially if they don't live nearby to visit regularly or are unable to do any of the physical labor needed – such as mowing weeds or repairing fences. In some situations, there may be other family members to perform these functions or perhaps there is a long-standing relation with a trusted farm tenant. When there isn't someone the owner can count on to do the needed tasks then other arrangements must be made. The most common approach is to use a farm manager – a person you hire as your agent to take responsibility for managing the land. Farm managers can provide a variety of services depending on what you need.

2. Role of the Farm Manager

Farm managers are essentially responsible for managing all of the activities on the farm, from the day-to-day physical production to the farm finances. The services a farm manager offers can vary, depending on the company or the individual farm manager. A farm manager's services could include offering advice and information on conservation practices, providing information on how to comply with the law, overall farm maintenance, investment advice, record keeping, negotiating land leases, paying bills, ensuring maintenance and repairs are carried out, crop planning, marketing, bulk purchasing, and other necessary management tasks.

A key role of a farm manager is to supervise the lease and rental agreements with the tenants. Farm managers can help you evaluate lease alternatives if you believe the current lease is unfavorable to your personal goals for the farmland. Farm managers should visit your land regularly to ensure the lease agreement is being followed.

3. Distinguishing Custom Farming from Farm Leasing

Custom farming is where an owner hires someone else to perform certain farm operations for a per acre fee. For legal purposes it is not considered a lease because no "conveyance" is involved and the custom operator does not have any legal right to occupy the land, as would a tenant. It is also not an employment relation but instead is like an independent contractor hired for specific operations but performed under their own guidance with their equipment. Custom harvesting such as when you hire a neighbor to combine the corn or you bale hay for a neighbor are examples of custom farming. It would be possible to hire someone or more than one person to till the ground, plant the crop, spray it and harvest it – all at custom or per acre rates. Whether it would return more than renting the ground would depend on many factors. In any case, someone would still need to locate the custom operators, arrange for their services, pay them, and manage the marketing of the crop. So whether this is easier or more profitable for a NOLO than using a farm manager may be doubtful.

4. Establishing Your Goals for the Land

Before searching for a farm manager, you need to identify what your goals are for the land to help determine who may be right for you. Is your key goal to maximize production and income, is it to conserve the soil and protect water and wildlife; or is it to transfer the land to another family member or to help a new farmer get started? Whatever combination of goals you have, make them clear to any potential farm manager so that they can help you achieve them.

5. Choosing a Farm Manager

Because the farm manager will play a critical role in the economic performance of your land and in conserving the soil and the land's value, it is important to give serious consideration to who you choose as a farm manager. In most places there will be several from which to choose – some with a local focus, others with a regional or state-wide reach and even some as national companies.

1. Ask about the manager's prior experience and if they are an Accredited Farm manager. An ASFMRA Accredited Farm Manager has the highest level of education in the industry.

2. Research customer reviews and ask for client references to determine the integrity of the company or farm manager.
3. Check to be sure the Farm Management Company has a range of resources and staff that could replace an absent manager, so the farm activities continue to run smoothly on a daily basis.
4. Inquire about how the communication between you and the farm manager will happen because it will be open and tailored to what you want. What type of updates do you want to receive about your land, such as reports on yield and soil conservation.
5. Consider using a company within close proximity to the location of your land. The manager should have a broad range of knowledge on the area weather, price trends, land values, and soil types.

6. Farm Income and Farm Manager Fees

Farm managers are paid a fee for their services, usually based on a percentage of the annual gross revenue from rent or the net profit of crop sales. Some farm managers may instead charge a per acre fee for their services. It is important to understand the fee structure and determine what farm expenses you will be responsible for paying, what services the fee covers, what extra charges you may incur, and when you will receive your portion of the farm income.

7. Legal Relationship: Agent

Farm managers are typically agents of the landowners –not employees or partners. As your agent they have the authority to act on your behalf and their decisions can legally bind you. The exact nature of the authority and responsibilities of the farm manager will be spelled out in the contract you sign, which is why it is important to read and understand the agreement. For example, it would authorize the farm manager to enter or terminate a lease for the land, but it would not give them authority to sell the land. The contract will also include provisions as to whether the farm manager can assign responsibilities to another farm management company.

8. Enrolling Land in Conservation Programs

Farm managers typically provide information on government programs and crop insurance and can sign the farm up for the appropriate programs. Conservation programs can be valuable for improving and maintaining soil health and water quality on your land. In order to enroll your farm in

government programs, you may need to sign required legal forms, such as the Power of Attorney form from USDA. Giving this authority to your farm manager will allow them to utilize programs to help achieve your goals for the land.

9. Important Provisions to Understand in the Management Agreement

The contract used by each farm management company will vary and reflect how it does business. There are several key provisions to be sure to understand, some of which have already been discussed: farm management services, legal relationship, fee structure, and the use of government programs. Here are some additional terms to consider in your farm management agreement:

1. Term (length) and method of termination, especially if advance notice of a certain period is required, or automatic renewal is included.
2. Is a farm management trust account established to which the income will be deposited and expenses charged?
3. Creation of an annual farm budget to predict how income may be spent on farm improvements such as soil fertility maintenance and conservation.
4. Nature of financial reports and accounting, such as quarterly reports and an annual accounting within 60 days of the end of a year.
5. The standard of care for the farm manager’s decisions and liability for possible damages.
6. Insurance coverage required to be obtained by the farmland owners or the farm manager.

10. Remain Active

The last thing to understand about using a farm manager is that even though you may not be actively farming the land or engaging with the tenant, it is important to communicate with your farm manager. Reviewing the farm activity and reports with your farm manager will help ensure your wishes for the land are clear and remain a priority for the farm manager.

#10 - Ten Things Women Landowners Should Consider about Conservation, Concerns, Communications

1. Women Landowners Play a Critical Role in Iowa

Women have always played an essential role in Iowa agriculture as mothers, wives, and as farmers. Perhaps even more importantly, studies show women own over half of Iowa's farmland, making them the decision makers as to how the land is used and who will be its future owners.

2. Gender Roles are Evolving

Even with this critical role of women in Iowa agriculture, it is important to acknowledge many people, from politicians to legislators, from business owners to educators, traditionally view agriculture and farming as a male dominated, with men as farmers, land owners, and decision makers. In recent decades, women have claimed a larger role in business, politics, and society and the traditional male-dominated views of farming have begun to change. However, the idea the men are in control can still present challenges in how people think about agriculture and how people communicate around key issues. Given the significant reality of women as landowners, it is important to think about how issues of gender may be revealed in connection with owning farmland.

3. Many Resources are Available to Women Landowners

As the role of women as farm landowners continues to increase, legal advisors, educators, and government programs must recognize women as landowners and tailor information and programs in ways to fit their needs and interests. The creation and growth of organizations such as the Women Food & Ag Network (WFAN) and Iowa Women in Agriculture (IWIA) are playing important roles in creating educational materials, conferences, and workshops specifically designed to address the concerns of women landowners and farmers.

4. Ask Questions and Learn

Being a landowner is a big responsibility—asking questions and communicating are important to understanding your role and opportunities. Some people involved with owning land and farming may assume they

know all there is to know, but if you have questions you should never be shy about asking them. Learning the answer and other information will help strengthen your confidence as a landowner.

5. Communicate Your Ideas and Desires

If you have definite ideas for how your land should be farmed, about who should have the opportunity to buy it, or whom you plan to leave it to—you have the power to make it happen. In order to help you achieve your goals for the property, it is important to share them with your family members and others who may be affected. By communicating with those around you, whether a spouse, a child, a tenant, or a service provider, you can be sure people are aware of your ideas and desires. They might not agree with you, but they won't be confused as to what you think.

6. The Landowner Has Control

If you are the landowner, you have the power and right to make decisions and act. Over my years as a professor, I have often received calls from women landowners that go like this: "My sister and I have inherited a farm from our parents and we have some concerns with how the tenant is farming the land. Is it okay if we tell him how we want the land to be farmed?" My answer always is, "Of course, as the owners you are entitled to determine how the land will be farmed and by who!" But the reality may be this is easier than it sounds. The male farm tenant may be used to getting his way and finding the courage to confront this sense of entitlement may not be easy. The key to remember is if you own it, you are in the driver's seat—you can always change the terms of the lease or look for a new tenant.

7. Respect is a Two-Way Street

Recognizing the historic gender imbalance in agriculture is really at the heart of these calls. The farmer may think he knows best and he may well know more about growing crops or government programs than the woman owner does. However, the owner ultimately gets to decide how the land should be farmed, and if the tenant doesn't agree, he may soon be looking for a new farm. Respect is a two-way street, but the relations between landowner and tenant is not a relation between equals. If you are the owner you have both the right to decide important issues, and you have an obligation to yourself and whoever entrusted you with the land.

8. Treat Each Woman Landowner as an Individual

The historic dominance of men in agriculture doesn't necessarily mean within all families and marriages, women have been treated unfairly or not given an equal voice. We all know the family dynamics and roles we create, but the key is not to be bullied or buffaloed by someone trying to take advantage of you. Many provisions of the law, such as the protection of wives in divorce or probate, and laws to prevent elder abuse are designed to help insure people are not mistreated either physically or financially.

9. Turn Your Vision into Action

Which leads me to the ninth point: turn your vision into action. If you have definite ideas for how your land should be farmed, about who should have the opportunity to buy it, or about whom you plan to leave it to – you have the power to make it happen. The decisions you make and how they are communicated through the terms of your lease, the provisions of your will, or the donation of land for preservation will mark your ownership on the face of the land. Taking control of these acts is an important part of being a landowner.

10. Seek Professional Advice

To help you develop and carryout decisions about your land, you can rely on professionals and advisors. You should work with an attorney to develop your lease or estate plan. You might decide to work with a farm manager to help develop your lease or an attorney to develop an estate plan. In these situations, you are paying for the services, and these people owe you a legal duty to carry out your wishes and to look after your interests. Of course, you can also rely on other people you know and trust, perhaps a long-term farm tenant, neighbor, or family members.

#11 - Ten Things to Know About Iowa Soil Conservation Law

1. Soil and Water Conservation Districts, created in the 1940s, exist in all Iowa counties and are responsible for implementing Iowa's soil conservation laws and assisting landowners in helping protect soil and water resources in the state. The districts are administered locally by elected soil and water district commissions, responsible for enforcing Iowa laws on soil stewardship.

2. Under Iowa law, Section 161A.43, it is the duty of all Iowa landowners to protect their land from excessive soil erosion by complying with the soil loss limits established by the county and to do so by implementing sound soil conservation practices. Many landowners do so by developing conservation plans for how the land will be farmed.

3. Each district has established annual soil loss limits at 5 tons per acre – the amount considered "acceptable" – and employs a staff of conservationists and technicians to work with landowners to develop conservation plans and to establish conservation practices – such as building terraces and maintaining grass waterways. While the law provides for some level of soil loss many landowners recognize any level of soil erosion is damaging and should be avoided if possible

4. Under Iowa law if someone believes their land is being damaged from excessive soil erosion coming from a neighbor's field they can file a complaint with the local soil district. The law provides a detailed process the district officials will follow to investigate such complaints and craft a remedy so the excessive soil loss can be stopped.

5. The law allows the district commissioners to come on to a farm to investigate complaints of excessive soil loss and to hold an administrative hearing to decide if the soil protection rules have been violated. The law allows the commissioners to investigate potential excessive soil losses on their own motion, without needing a complaint from a neighbor or citizen.

6. If the commissioners determine excessive soil loss is happening, an administrative order can be issued giving the landowner six months to bring their land into compliance by any method they choose. However if a landowner does not act or refuses to comply, the commissioners have the

power to order soil specific conservation practices – such building terraces or taking a hilly field out of production – be taken.

7. The Iowa courts have upheld the state soil conservation law and such orders, as constitutional. The Iowa Supreme Court has ruled protecting the soil is one of the state's most important duties, and can be required, even if landowners will need to spend money or change how they are using the land.

8. To assist landowners in carrying out the duty to protect the soil the state and federal government have a developed a number of programs providing technical advice on how to do so, such as help in conservation planning. The soil conservation programs also provide cost-share funding to help landowners pay to implement conservation practices. The procedures to apply for cost-share are implemented by the county offices.

9. The Iowa soil conservation law is separate from but works in cooperation with the federal soil conservation programs implemented by USDA. The county soil and water conservation districts typically share offices with the USDA Natural Resources Conservation Service (NRCS). The employees working in the district offices are typically paid by the state or federal government, which can make soil conservation programs a bit confusing.

10. The key difference is participating in federal soil conservation programs is considered to be voluntary – a landowner doesn't need to participate or comply – although doing so is a condition of receiving federal farm program benefits. On the other hand the Iowa soil conservation law is not voluntary but instead makes soil stewardship the legal duty of all landowners.

#12 - Ten Points to Understand about Environmental Law

1. The first question to ask is what is the resource or activity involved – is it related to water quality, pesticide use, soil conservation, wildlife habitat or some other topic? The law will provide different rules and protections depending on the resource involved.

2. The second question to consider is – what type of duty or action is required or imposed on a landowner by the law? For example, does it require you to get a license or permit before doing something – like constructing a confinement facility, or require a license – such as to use certain pesticides – or does it require you to refrain from taking certain actions – such as a draining a wetland?

3. The third issue concerns who is responsible for enforcing the law in question – is if the state DNR, the federal government such as the USDA or EPA –or is it a local issue? This answer will help identify who you can contact to learn more about what is required.

4. The fourth issue concerns what are the risks of failing to comply with the law – what can happen if you are in violation? Most environmental laws have some form of sanction or penalty – for example you may lose eligibility for farm program payments, or face a possible fine – or in some situations such as illegal stream straightening possibly be ordered to restore the resource to its previous condition.

5. A fifth question concerns who has an interest in seeing the law is enforced? In most situations rules are enforced by government agencies, but many environmental laws include "citizen suit" provisions which allow individuals and interested groups to bring enforcement actions. For example the water quality suit involving several Iowa drainage districts was brought by the Des Moines Waterworks. This means you can't take it for granted your conduct is legal just because an agency doesn't take action.

6. A sixth question concerns whether there might be public funding available to help you comply with the law – especially if it requires you take some action to help protect natural resources. This type of public "cost-sharing" is very common for soil conservation and water quality efforts.

7. A seventh idea to remember is an environmental law may set just the minimum of what is required to protect different natural resources – but that doesn't mean you as a landowner can do more. For example, it may be legal to plow up a pasture or cut down part of a timber – but that doesn't mean a landowner should do so.

8. The eighth idea to recognize is a landowners possible environmental duties can arise from sources other than state and federal statutes – they can also be found in legal agreements you might enter. For example, a typical farm lease will include language about complying with environmental laws – and may establish duties not even covered by the law. When you sign up for a USDA program the contract requires certain acts on your part – so the key is to think about what might be sources of other environmental duties.

9. A ninth point to recognize is potential environmental liability may exist for a landowner even if you are not the one who acted illegally. As a landowner you can ultimately be responsible for what happens on your land – so if your tenant drains a wetland, the chemical applicator pollutes a creek, or manure being spread causes a fish kill you might also be on the hook. This is why you need to be aware of what others are doing on your land and be sure they follow the law.

10. A tenth and final point to consider is to know there are organizations who can help you comply with environmental laws and carryout your stewardship wishes. Most of the commodity groups have people who specialize in helping farmers meet environmental rules and private conservation organization like the Iowa Natural Heritage Foundation have staff and resources available to assist landowners interested in protecting the land.

#13 - Ten Things to Understand about Water Quality and the Iowa Nutrient Reduction Strategy

1. What is it – what is the purpose

The Nutrient Reduction Strategy is a plan for trying to address water quality issues, in particular the movement of nutrients into Iowa's rivers and streams flowing down to the Gulf of Mexico. The development of a state plan like this was required by a 2012 EPA ruling to address the Gulf Hypoxia zone.

2. Who developed it and what was the basis

The plan was developed largely by scientists at Iowa State University and by officials with the Iowa Department of Agriculture and Land Stewardship. Public officials from the Iowa Department of Natural Resources were given less opportunity to be involved, but some farm groups, most notably the Iowa Farm Bureau Federation, played a large role in developing the NRS

3. How is it supposed to work

The NRS sets the goals of reducing the nutrients entering Iowa's rivers and streams by 45% with 41% of the reduction from nonpoint sources such as agricultural land and 4% of the reduction coming from points sources such as municipal sewage treatment plants. The NRS developed a series of scenarios reflecting various levels of necessary changes in farming practices – for example planting cover crops - and used scientific and economic models to predict how the changes might reduce the nutrients moving into the waters. Based on the different scenarios the NRS set out possible ways the goals could be reached. The NRS also projected what the costs might be to actually implement the strategies.

4. What is the goal and how is it measured

The goal is the 45% reduction but the issue of how it is to be measured and when it is to be achieved as somewhat mysterious. The NRS contains no timelines or objective measures for determining how progress might be made. The NRS does not involve any tools to monitor water quality and includes a somewhat illogical conclusion there is no possible role to be played by regulations in implementing the NRS.

5. What type of farming practices are reflected in the scenarios for its implementation

The various scenarios use a variety of conservation and farming practices to project potential improvements in water quality, including such practices as: planting of cover crops, the use of N inhibitors with the application of fertilizer, the movement of water from tile drained fields through constructed wetlands, and the widespread use of bioreactors. The various scenarios are given different costs and rates of adoption depending on which combination of practices might be use. However there is no actual strategy or plan for where or how any farmers or landowner who decide to implement any specific practice. Instead the implementation is based on providing education to landowners and farmers about practices and expecting them to adopt them voluntarily over time, usually with public financial assistance,

6. What is the legal status of the NRS and how is it enforced

When it was first developed the NRS was simply a report or plan developed by ISU and the state, and endorsed by the state agencies. It had no legal status and was not a regulation or an official government action. However that changed in 2018 when the Iowa Legislature enacted a new water quality bill which codified the NRS and made it an official statement of Iowa law, see for example Iowa Code §466B.42. The effect of putting the NRS in the Code is to elevate it as official state policy, however the law is written so future changes are left to ISU and the agencies responsible for developing it.

7. How will the various practices be funded

The issue of funding is an important question because depending on the scenario being used the annual cost of the NRS could be hundreds of millions a year with a total cost of up to $4 billion – as well as annual costs to maintain practices. Regardless of which scenario is used or the practices involved the costs of addressing Iowa's water quality issues will be significant. However the state funding to implement the plan still amounts to around $30 million a year and state leaders have failed to identify additional funds – such as by raising the sales tax to fund the Natural Resources Trust Fund. This program would provide as much as $100 million a year in funding for soil and water conservation efforts like implementing the NRS. In addition to the state funds, the money from some of the USDA conservation programs can be considered as helpful in

implementing aspects of the NRS. However, large federal land retirement and conservation programs like the Conservation Reserve Program are not designed primarily to address water quality and have at most a marginal relation to the NRS. If public money is not provided then the funding for the NRS will have to come from private landowners.

8. How does the NRS relate to other water quality and soil conservation programs

As noted the NRS has some relation to other federal conservation programs, in addition to the state funding for a variety of programs with impact on water quality. Whether federal funds are tied directly to the NRS or not, state officials count all of the funding and any possible water quality impacts toward the goals of the NRS.

9. Are there limitations to the NRS and can it be improved

The major limitation with the NRS is while it is based on science there is very little in it that is an actual strategy to implement the science and there is almost nothing in it to work as a policy to see the NRS implemented in a timely manner. Part of the resistance to including any policy provisions is the opposition many farm and political groups have to using regulatory approaches to address water quality.

10. What is the future of the NRS and what happens if it doesn't work

The future of the NRS is largely still to be written. Relatively little actual progress has been made under the NRS in farming practices changes or improved water quality. There are examples of progress, most notably the increase in acres of cover crops planted, although is it still only 10% of what is projected as needed under the NRS. There have been many meetings held about the NRS and officials point to surveys showing more people have heard about it. But after 10 years there is relatively little improvement in water quality directly tied to the NRS. Unfortunately during this same period, studies show the amount of nutrients in Iowa rivers has more than doubled – meaning the reality is water quality is not improving and Iowa's contribution to the Gulf Hypoxia problem is not getting better.

#14 - Ten Things Landowners Can Do to Promote Wildlife Habitat

One great joy of being a landowner is the opportunity to see wildlife – whether songbirds gathered at the feeder, the flock of wild turkeys emerging from the woods at dusk, or spying a red fox skulking through a draw. Iowa has a rich and diverse wildlife history, but many once common populations – like pheasants and quail - have declined in recent years due primarily to the loss of habitat as more fields are plowed up for crops and fence lines are bulldozed for bigger fields. The story is true as well for many fish populations, especially those in our rivers and streams, as deteriorating water quality and increasing siltation makes survival and reproduction more difficult. But the story does not need to be so sad because helping improve wildlife populations – be it birds, butterflies, fish, or mammals is something every landowner can do if interested.

1. Think about wildlife when planning your actions

The first idea is to keep wildlife in mind when thinking about your land how your decisions may impact them. Ask yourself some questions before you take an action that might endanger wildlife, destroy their habitat, or limit their opportunities. What impact will it have if you tear out the fencerows and bulldoze that small grove of trees? When should you mow a road ditch if you are concerned about birds still being on their nests? By thinking about wildlife you will take a first important step.

2. Create new habitat or leave it in place

Making room for wildlife is an important consideration in how you manage your land. Getting rid of a pond you no longer need because you sold the livestock may be appealing – but stop to consider how many different species might be using it – from frogs to muskrats, from migrating ducks to the resident raccoons? That oak savanna you have saved these many years may be an important stop for migrating songbirds headed to the northern forests, just like the plum thicket in the fencerow is a home to quail.

3. Turn non-productive acres into habitat

As more farmers employ yield monitors and other devices to determine how their fields produce it is becoming clearer many farms may have a few spots – the wet side hill, the sandy knoll – that never produce a crop –or at least

enough of one to make a profit or justify the cost of seed and fertilizer. These small tracts may make ideal place for wildlife habitat – whether it is milkweeds and other plants used by butterflies, or food plots for use by deer and other game. These small sites can play a critical role in providing wildlife the oasis thy need to survive in a sea of corn and beans, and they might be eligible to bid into federal conservation programs like the CRP.

4. Use stream side buffer strips to create linear corridors

One promising conservation practices to help address water quality is planting vegetative buffers along rivers, streams and ditches. The great news is these buffers are also an excellent way to promote wildlife habitat. Many animals travel across wide areas when feeding or searching for mates and they often use watercourses to move. Having linear corridors of vegetation along the streams makes this movement safer and more attractive.

5. Restore or create a new wetland or restore an oxbow

Many Iowa farms have fields that were once wetlands, especially in north central Iowa. It may also be common for farms containing streams or rivers to have former channels or oxbows now being farmed. By restoring a wetland or oxbow a landowner can overnight create a productive and attractive place for all types of wildlife to gather and live. Wetlands are especially valuable as habitat and they have the added benefit of helping improve water quality.

6. Think about wildlife and their needs when you harvest

There are several things farmers can do to aid wildlife on the fields being cropped. Avoiding fall tillage and removing crop residues from fields will help leave places for birds and small animals to feed and survive the winter. Leaving a row or two of corn on the side of the field next to the timber or stream will play rich rewards as a food plot for all types of game. Making a little room for wildlife and nature isn't hard to do.

7. Take advantage of public conservation programs supporting wildlife

Many of the practices suggested above, such as planting buffer strips, restoring wetlands, and creating habitat for wildlife are included in conservation programs offered by the USDA NRCS – such as EQIP and

CSP. If you ask your county soil and water conservation office or the county conservation board, they will be happy to tell you more about possible federal and state programs available to support wildlife. These officials know the vast majority of land in Iowa is privately owned so if we are going to improve the prospects for wildlife it will take the cooperation and actions of landowners.

8. Get some expert advice if you need help

The state Department of Natural Resources is responsible for enforcing Iowa's game laws and for promoting wildlife populations. DNR employees have great expertise in all types of wildlife and are happy to answer questions and offer advice for landowners who want to be friends to those with fur, feathers or fins! Other private organizations like the Audubon Society, the Izaak Walton League, and the trout fisherman groups may have great advice to share at helping create opportunities for wildlife.

9. Work with interested sporting groups on land conservation

There are many organizations in Iowa devoted to hunting, fishing, and other forms of wildlife enjoyment. Pheasants Forever and Ducks Unlimited are two groups well known for helping fund the acquisition of public hunting areas in the state – and these groups are happy to work with private landowners interested in improving the habitat and populations of game species.

10. Consider using public programs to make land available for public use

Both the state and federal government have programs to provide annual compensation for landowners who make their private lands open for hunting or fishing by the public. The Iowa DNR has a program to purchase easements along trout streams and for farm ponds to allow fishing. The key is there are ways private land can be made available for limited use by the public and under Iowa laws on Recreational Use, participating landowners are protected from any possible legal liability if visitors are injured or have an accident.

#15 - Ten Things for Landowners to know about Soil Health

In recent years a great deal of attention has been directed to the topic of soil health, which focuses on the qualities of the soil – from carbon content, to microbial activity, to water infiltration, and related factors. Soil heath helps broaden the discussion of soil conservation from just looking at the quantity or amount of soil to examining what makes the soil most valuable for crop production, water quality and other factors. Here are Ten Things Landowners should know about the topic of soil health.

1. Recognize soil health is distinct from controlling erosion

The first step is to recognize the idea of soil health and how it broadens the traditional discussion of addressing soil erosion to actual examine what is in the soil. Every landowner knows the soils and fields are not all the same and soil health is one important factor influencing how well the soil performs. Thinking about soil health adds many new dimensions to managing land.

2. Understanding the components contributing to soil health

Soil health can be determined by many features, but the most important measures include such things as the carbon content or the organic matter which directly influences soil fertility, the water infiltration rates which determine how well the soil can absorb precipitation, the microbial activity of the millions of living organisms which aid in making nutrients available for plants and supporting plant growth, and the soil structure, such as compaction and soil composition, which influence plant health.

3. Measuring the health of your soils

In order to consider how to improve soil health it is important to have a baseline understanding of where you are now. Landowners can conduct a number of soil tests – beyond just nutrients - to develop an understanding of their soil health. By testing for carbon content, water infiltration rates, and other measures you will be able to identify possible opportunities for improvement and be able to measure progress from future action.

4. Understand what is impacting your soil health

Once you examine the current health of your soils you can also identify what actions may be negatively impacting their quality. If the carbon content or organic matter is lower than hoped perhaps the lack of crop rotations or not including cover crops may be the cause. If soil compaction is a concern then using conservation tillage to reduce field trips may be an answer.

5. Consider the key strategies available to improve soil health

The keys to helping improve soil health are not mysterious but instead are farming practices already being used on millions of acres. Conservation tillage such as no-till or reduced tillage can play a role as can the use of cover crops and other practices to increase plant and root activity in the soil. Organic farming and reducing the reliance on synthetic chemicals can also help stimulate microbial activity. Many activities can help feed the soil, such as restoring grasslands and adding new crops to your rotation.

6. Integrate livestock into your operation

In past most farms included livestock, a key to improving soil health. Livestock provide a source of natural organic fertilizer and support the production of grass and forage crops. Their hooves and grazing activity can encourage life in the soil. You can consider if there is an opportunity to add livestock to your operation but if not you can consider acquiring livestock waste from a neighbor or even arranging to have someone graze their livestock on the cover crops you add to your cropland.

7. Diversify your crop rotations

Many experts feel relying on a two-crop rotation of corn and soybeans contributes to declining soil health. Adding cover crops can spur additional plant growth and root activity for more of the year. Adding new crops to the rotation – such as small grains, forage crops, and even opportunities such as hemp can also create important ways to improve soil health.

8. Develop a "soil health plan" to go with your conservation plan

Most landowners who care about their soil use a conservation plan to help limit erosion and protect their land. One valuable idea is to develop a soil

health plan identifying the steps you can take to improve soil health. By testing your soil periodically you can look for improvements such as with more organic matter and better water holding capacity.

9. If you lease land talk with the tenant about soil health

If you do not farm your land it means you either have a tenant or perhaps a farm management company helping make the farming decisions. If you believe soil health is an important consideration then you should have a conversation about it with the others involved in your farming operation. Help them understand the value of soil health and how it can improve your farm's performance and increase the value and sustainability of the land. In 2015 the NRCS published a valuable information sheet "5 questions landowners should ask their farmers about soil health" – this publication and other resources can be found on the NRCS web site under "Unlock the secrets in the soil."

10. Stay aware of new developments in soil health

The topic of soil health is a relative new issue in soil conservation and there is a great deal of exciting experimentation and research happening on the topic. This means you can expect new resources and new ideas to be developed in coming years. By staying on top of the new information you can help get the most out of your land and help feed the soil so it is healthy and productive.

#16 - Ten Things to Understand About Conservation Easements

1. What is a conservation easement?

A conservation easement is a legal agreement transferring the right to make a defined use of real property to another party. For example, the goal of a conservation easement could be to permanently protect a prairie and to prevent it from being plowed up or converted to crops or housing. This goal could be achieved by granting a conservation easement on the property to an organization or agency that would see the goal is achieved. The real value of the conservation easement is not in allowing new uses of the property but instead is by restricting certain things from happening. Anyone who in the future would acquire the deed or title to your property – such as an heir or a future buyer – will be bound by the restrictions contained in the easement. You will also be subject to the restrictions once they are in place as will be your tenant or anyone using the property subject to your direction.

2. What organizations are interested in acquiring conservation easements?

Several different organizations commonly hold conservation easements in Iowa. The Iowa Department of Natural Resources can hold conservation easements, although it is more commonly interested in owning the full fee title so the public can use the property. Your county conservation board may also be interested in holding a conservation easement, especially if there is the opportunity to acquire the remaining legal rights to the land at some point in the future. The USDA also holds conservation easements, most notably for land placed in WRP or Wetland Reserve Program, now the Agricultural Land Easement program.

The fourth type of organization frequently involved in conservation easements is a private non-profit land trust, such as the Iowa Natural Heritage Foundation (INHF). The INHF currently holds over 200 conservation easements protecting over 20,000 acres. Other land trusts like The Nature Conservancy and Bur Oak Land Trust in eastern Iowa hold conservation easements on private land. In the interest of full disclosure, I have been on the INHF board for over 30 years and worked with INHF to create Hamilton Prairie in cooperation with the Adams County Conservation Board.

3. How is a conservation easement enforced?

Under the terms of the easement, the party holding it will have the right to come on to the property to inspect it to insure the terms are not being violated. Typically, groups holding conservation easements inspect or monitor them once a year. One reason they do so – other than to make sure the donors' wishes (and their goals) are observed – is because under Iowa law conservation easements can be treated as abandoned, if they are not regularly monitored.

4. Why consider having a conservation easement?

The main reason is because you will not always be here to protect the land and see your objectives carried out. The conservation easement isn't designed to limit you but instead to see your goals continue in the future – when someone else owns the land and can decide its fate. By creating a conservation easement and transferring it to a third party you can be certain the terms will be enforced. In many cases the terms may not have any immediate impact on your use of the property because you continue to own and use it subject to the terms in the easement. The real value of the easement is what happens in the future.

5. Are there financial reasons to consider granting a conservation easement?

Many benefits may come with the conservation easement, such the peace of mind knowing your desires will continue. Because the easement restricts how the property can be used, it may reduce the market value. Under federal and Iowa law landowners may be able to obtain a credit or deduction on their income taxes for the value of property interests donated for conservation.

6. Will I get paid for my conservation easement?

In most situations that answer is no – the landowner agrees to the conservation easement restrictions and typically donates the easement rather than selling it. In order to get a tax deduction you will need to be making a charitable gift. It might be possible to be paid for an easement but this will depend on what rights are being created, their value, and who is acquiring the easement. Landowners who work with USDA to create agricultural land easements do "sell" the conservation easements to USDA and do get paid. But in those cases the land

may be retired from row cropping and converted to a permanent wetland. This means the changes in economic value can be very large – and most people won't agree to such a reduction in value without being paid.

7. Can the public use land subject to a conservation easement?

A conservation easement does not open your land to use by the public. The terms of the easement will contain specific provisions on who has the ability to enter the property – such as the right to monitor the easement. You could decide to include a provision allowing for public use – such as to fish in a pond – or to hike along a designated trail, but that would depend on your wishes and the goal of the party holding the easement. The Iowa DNR does have a program to buy permanent easements to allow fishing in trout streams running through privately owned land.

8. What are the most important provisions to understand in a conservation easement?

The conservation easement is a legal conveyance of property and in most cases will be in perpetuity and binding on your heirs or assigns. That is why it is important to understand what you are agreeing to. These are the key issues to address when negotiating the terms of a conservation easement:

- Who is the easement granted to and what happens to the conservation easement if that entity ceases to exist
- What is the length or term of the agreement, is it perpetual?
- What is the legal description and amount of property being conveyed?
- What activities are allowed on the property and what activities are being restricted?
- Who is responsible for paying the property taxes?
- Who has the right to come on the property, when and for what purposes?
- Who is responsible for maintaining the property, such as mowing the weeds and repairing the fences?

Because each easement will be unique to the property and the parties involved, the answers to these questions will vary. These are the types of issues you will want to discuss with your attorney as well as with the representatives of the group with whom you are dealing.

9. How is the existence of a conservation easement communicated?

Some people will have actual knowledge of the easement, such as the person who created and signed it and most likely their children. In any case, the way people discover the existence of legal interests in property like conservation easements is by examining the county land records. Once the conservation easement is signed, the party "acquiring it," for example the INHF, will take the easement to the county courthouse and file a record of its existence with the county recorder. The easement will be recorded as a conveyance for the parcels of land involved and by the name of the grantor. In this way, the existence of the easement will become part of the title to the property. This means in the future any party, such as a prospective purchaser, if the land is still in private ownership, will discover the existence of the easement when checking the title. Recording the easement puts everyone on notice it exists and will inform them who holds the easement (and has the right to enforce it). It also puts prospective purchasers on notice they will not be acquiring the full fee title to the property, if they acquire it.

10. What happens if someone objects to the easement, such as my children who discover an easement restricting the use and value of their inheritance?

If this should occur your children may be unhappy with you (or your memory) but there is nothing they can do to reverse the easement. So long as the grantor (you) has clear title to the property interest being conveyed, is not a minor (over 18 years old), and is mentally competent – the easement or any other property transfer for that matter will be valid. Unless the person can prove some form of illegal coercion or undue influence was involved in the transfer (both very difficult to establish) the easement will be enforced.

(Bonus) 11. Do both spouses need to sign the easement?

Yes, the best rule involving real property transfers is for both of the spouses to sign, even if the property is legally held by only one of the parties. The reason it is important to have both spouses sign is because under Iowa law when one spouse dies, the other has a legal claim to inherit a share, often known as a dower interest, of the real property owned by the other spouse.

#17 - Ten Things to Consider on How to Improve Iowa's grasslands and use conservation programs to support livestock

Iowa is a leader in agriculture, we consistently raise more corn and soybeans than any other state in the country. Yet, Iowa's fertile landscape produces much more than just row crops. Over 3.1 million acres of pastureland help make Iowa a leader in cattle production. Our ability to efficiently and sustainably raise livestock depends on the health and resiliency of the grasslands the animals graze. Here are ten things landowners can do to improve Iowa's grassland and use conservation programs to support grazing.

1. Understanding the Natural Condition and Restoration Needs

The first idea in improving grasslands, is understanding the natural condition and history of the land: what is the land's natural state and how has it been used over the years? Tallgrass prairie once covered 30 million acres in Iowa, but over time the prairies were converted for agricultural production and development. Now, less than 1% of Iowa's native prairies remain but we still have several million acres in grass. Understanding the natural state of your land and how it has been altered will help you identify the most effective way to restore or improve your grasslands.

2. Recognizing the Opportunity of Healthy Grasslands

A second idea for landowners to consider is how healthy grasslands can provide an opportunity for environmental and economic gains benefiting all of Iowa. Farmers who graze livestock in addition to raising crops can diversify income and be better prepared for slumps in the agricultural economy. Further, covering ground with perennial grasses helps reduce erosion, enhance biodiversity, provide wildlife habitat, and improve water quality, thereby providing broad public benefits to Iowa. Thinking about how your farm can benefit from grazing can raise many new opportunities.

3. Develop a Grazing Plan

When including livestock in a farm operation it is important to have a plan to addresses potential issues that may arise. A key way to improve grasslands is to develop a grazing plan. You can work with a NRCS technician to inventory the resources you have and identify what you may need. For instance, what forages are present on the farm and will they be able to support a herd? What water sources do you have available for

livestock? How will you prevent overgrazing? What is your manure management plan? Will you need fencing to keep the cattle out of streams? How will you adapt to weather events, such as snow, excessive mud, or drought? These are questions you should consider and an NRCS technician can help provide you answers to develop a sustainable grazing plan.

4. Conservation Reserve Program - Grasslands

A fourth idea for improving pasture and developing a grazing plan is how you may be able to use public conservation programs. USDA offers technical and financial assistance to farmers and landowners who want to restore or preserve grasslands. The Grasslands Reserve Program is a special subprogram for grasslands in the Conservation Reserve Program and is part of the Agricultural Conservation Easement Program. Similar to traditional CRP, the Grasslands program offers a contract providing rental payments and cost share support in exchange for keeping grass cover on the land. Unlike traditional CRP, however, land enrolled in the grassland program may be used for grazing subject to NRCS guidelines. This program is an excellent tool for mitigating the economic risks and challenges of taking land out of crop production.

5. ACEP - Agricultural Land Easements

A fifth idea for landowners to consider for protecting grasslands is using the Agricultural Conservation Land Easements program. Unlike CRP, where the farmer receives rental payments for a period, ACEP facilitates a transfer of a conservation easement, a legal interest in the property. Landowners partner with a third party, such as a land trust, which holds the easement, and the federal program pays the landowner compensation for restrictions on using the land. For a more comprehensive explanation of conservation easements, see the section on Ten things to understand about conservation easements. What is important to know is the growing support for programs like ACEP to prevent grasslands from being converted to row crops.

6. Conservation Programs can help supply needed infrastructure

Raising livestock requires additional agricultural infrastructure such as fences, water systems, and shelters. Federal conservation programs provide cost share support and technical assistance for installing equipment necessary to raise livestock. Taking advantage of the available programs may allow you to make valuable improvements on the land.

7. Meet with a NRCS technician to determine programs best for you

The suite of conservation programs available for improving and restoring grasslands are administered on a local level at the county NRCS office. Several programs have a competitive application process and are awarded to farms most able to maximize the environmental benefits. Many of the conservation programs can be combined to help you implement conservation practices. Meeting with the local conservation officials is the best way to determine what programs you will be eligible for and how you may be able to leverage multiple programs.

8. Grazing Cover Crops

In addition to conservation programs, there are other ways farmers can enhance their grazing operation. Cover crops are growing in popularity as a practice to improve soil health and protect land used for row crops. Cover crops may also offer a promising opportunity for livestock producers in need of grazing land. Cereal rye, winter wheat, oats, and barley provide nutritious feed for cattle while providing the land with year-around cover. Consider planting cover crops or working with a neighbor to plant cover crops that can be grazed by your herd.

9. Opportunities for premium markets and direct farm marketing

Another way farmers can strengthen their cattle operation is by taking advantage of premium markets, such as for grass fed beef. Consumers are becoming more and more interested in where their food comes from and what goes into producing their food. Some consumers are willing to pay a premium for leaner beef produced with environmental benefits. While it may take extra effort to identify markets and build customer relationships, raising grass fed beef may help to make your cattle operation more profitable.

10. Grazing programs can be used for livestock other than cattle

In Iowa we think of cattle when talking about grazing, but the same programs we have discussed can be applied to other types of livestock. For example, goats have become more popular as they are able to eat the brush and undergrowth cattle and other ruminants will not. Incorporating different types of livestock into your grazing plan is another way to balance the use of your land and get the most out of your grasslands.

#18 - Ten Things for Landowners to Know about Working on a Local Watershed Project

One of the most important tools for addressing water management issues – from water quality to flooding – is the watershed. A watershed is the geographic area of land draining to a water body - a lake, river, or stream. Watersheds come in all sizes such as the Mississippi River watershed draining into the Gulf, or the local fields draining into your pond. The government characterizes watersheds using a Hydrologic Unit Code or HUC. A HUC 8 watershed is a large area such as the over 2 million acres draining into the North Raccoon River while a HUC 12 watershed is the smallest unit involving smaller stream segments. Iowa has over 1600 HUC 12 watersheds meaning they average about 20,000 acres. Most public efforts to improve water quality are organized at the watershed level, meaning it is important for landowners to understand what this is. Here are Ten Things Landowners should know about local watershed projects.

1. Recognize the HUC 12 watershed for your land

The first important step in thinking about watersheds is recognizing the one where your land is located. You already have a good idea where water leaving your farm may flow – and where water you receive originates – but it is likely you don't know the boundaries of your watershed. Watersheds are not like other political creations – such as counties or school districts because the lines are determined by topography of the land. This means the watershed may involve land and people you may not know.

2. How you can identify your HUC 12 watershed

The good news is there are handy web tools to help identify the actual HUC 12 watershed where your land is located. The most valuable is operated by the U.S. Geologic Survey or USGS under the link "Science in Your Watershed" where there is a section on locating your HUC 12 watershed. The interactive maps will let you drill down and identify other neighboring lands in the watershed. If your experience is like mine you may be surprised to learn exactly where water leaving your land flows. One benefit of knowing the boundaries of the watershed is helping identify what government agencies such as the county soil and water conservation districts may be most active in watershed projects available to you.

3. Speak with other landowners in the watershed

Because your HUC 12 watershed will naturally involve adjacent land and neighboring landowners these people will be a good starting point for learning more about their possible interest in a watershed project – or discovering what may already be underway. Speaking with other landowners will help identity how many people farm or own land in the watershed and what they are doing for soil conservation and water quality.

4. Talk with state and local soil and water conservation officials

Similarly, you should contact the local soil and water conservation officials to see if they have considered anything involving your watershed. You should also consider contacting other public officials involved in watersheds –such as the Iowa DNR, IDALS and the regional Resource Conservation and Development (RC&D). All these agencies are involved in watershed projects. The conversations will help determine what opportunities are available for creating a watershed project for your land.

5. Inventory the water quality needs of the watershed

If your conversations reveal there are landowners, farmers, and local officials interested in a possible project then a valuable next step will be to inventory the needs of the watershed. For example, what are the main water sources and what is the current water quality? Are there streams or lakes listed as “impaired” meaning they have quality issues? Do any communities obtain water supplies or do any industries or businesses have water treatment systems? Undertaking this type of physical examination will help identify possible challenges and opportunities relating to water quality. The value of using a HUC 12 watershed is the small size makes an investigation manageable. Public officials may be able to help undertake an inventory.

6. Start the water quality conversation

If your conversations show there has not been any activity on a local watershed project then you can be the catalyst to get started. Iowa’s water quality efforts will only be successful when landowners become engaged. Every HUC 12 watershed in Iowa could benefit from efforts to address water quality. Public officials can play an important role – and public funding to implement practices – but it takes landowners to make it happen.

7. Identify the water quality assets in your watershed

Addressing water quality and soil conservation are not new issues – in fact Iowa farmers and landowners have been doing this work for over 75 years. As a result, in most watersheds a great deal of water quality related infrastructure is already in place – miles of terraces, countless small ponds and impoundments, buffer strips, and other conservation practices. Any new watershed project going forward will naturally build on what has already been put in place. so inventorying these assets is an important step.

8. Learn what tools and resources are available

The state and USDA are devoting significant resources and programming to water quality and much of this work will be focused at the watershed level. The state's Nutrient Reduction Strategy places a priority on using the watershed approach and the USDA uses watersheds to evaluate applications for various NRCS cost sharing and assistance programs. By talking with public officials landowners in a watershed can learn if financial assistance might be available in planning and implementing a watershed-based project.

9. Learn from the experience in other watersheds

The exciting news is there are many valuable HUC 12 watershed-based projects underway in Iowa, with a number of them funded by the state as demonstration projects. One of the best ways to learn what might be possible in your watershed is to study the experiences in these projects and see how their lessons can be replicated in your area. Creating a new watershed project might seem like a big task but experience shows many Iowa farmers and landowners are having success.

10. Join together, develop a plan and get to work

The key to a local watershed project is the leadership of farmers and landowners, working with public officials, to develop a plan. Seeing fields planted to cover crops, new buffer strips on streams, and other actions make the project real. Knowing these steps are helping improve water quality can provide an important sense of purpose and accomplishment. Improving water quality is not someone else's job and working in local watersheds is an effective way to meet a responsibility to the land. Each landowner can help.

#19 - Ten Things for Landowners to Know about Working with NRCS

The nation has placed a priority on addressing soil erosion and land degradation since the Dust Bowl in the 1930's. The agency responsible for leading these efforts is the Natural Resources Conservation Service of the USDA. The NRCS administers a broad range of education, technical assistance and financial programs for landowners. Here are Ten Things Landowners should know about working with the NRCS.

1. Understanding the purpose of the agency and how you find it

The NRCS is the agency within USDA created for the purpose of helping farmers and landowners protect the nation's soil and water resources while promoting productive agricultural uses. The agency was created in the early 1930's and was formerly known as the Soil Conservation Service (SCS). The NRCS has offices in almost every county in the United States and these can found in the county seat, often co-located with the other USDA offices, such as the Farm Services Agency. NRCS is responsible for implementing the conservation programs established by Congress in the Farm Bill. The recently enacted 2018 farm bill made several important changes in the programs the NRCS administers.

2. Understanding the relation of the NRCS to the county SWCDs

When the nation's farm programs and soil conservation efforts were developed in the 1930s the states were encouraged to pass state laws to create local soil and water conservation districts to help administer the programs. All the states enacted such laws and in Iowa we have Soil and Water Conservation Districts for each county. The districts are run by locally elected soil and water conservation commissioners who help make decisions on how state soil and water conservation funding is used at the local level. The SWCD and the USDA NRCS share the same offices and some staff members at the local level, which can make it confusing as to who you are dealing with. The key to remember is state soil conservation laws like Iowa's apply to all landowners and are the responsibility of the districts, while the NRCS staff is responsible for administering the USDA programs which are voluntary.

3. Knowing the difference between the NRCS and the USDA Farm Services Agency (FSA)

NRCS and FSA are both part of the USDA, but FSA is responsible for farm programs – often referred to as the safety net. This includes financial assistance, farm program payments and some lending. On the other-hand the NRCS administers the various soil and water conservation programs, focusing on technical assistance, education, and cost sharing. There is one important conservation program – the Conservation Reserve Program using long-term land retirement - administered by FSA, although NRCS is still involved in developing the guidelines for the CRP.

4. The main NRCS soil conservation responsibilities

One main role given to NRCS is to determine whether landowners and operators who want to participate in other USDA programs, such as the safety net program of farm payments, crop insurance and disaster assistance are complying with soil conservation requirements to protect fragile land and limit soil loss from highly erodible fields. These programs such as wetland protection or swampbuster, sodbuster to protect unplowed ground, and the designation of Highly Erodible Land or HEL to determine which lands need a conservation plan – were all created by the 1985 farm bill. They are administered today through the use of USDA form AD 1026, a document every farmer and landowner wanting to maintain eligibility for participating in federal farm programs, must sign. The form "certifies" the participant agrees to not have violated any of the rules and be in compliance with the conservation requirements. Remember, participating in the NRCS programs is voluntary and a landowner can choose not to file an AD 1026, but by doing so the landowner and the land will be ineligible for an array of valuable USDA financial supports, including crop insurance.

5. The key NRCS programs of interest to landowners

The NRCS administers an array of programs – some deal with conservation on land retired from production for a period such as the popular Conservation Reserve Program – and others are known as "working lands" programs such as Environmental Quality Incentives Program which offers cost sharing to help landowners and farms cover the cost of implementing soil and water conservation practices – or the Conservation Stewardship Program or CSP – which provides payments for farmers who take additional

conservation steps on their cropland. The USDA also operates programs for placing conservation easements on land, such as the Wetland Reserve Program and farmland protection effort, all of which are now combined into an Agricultural Easement program.

6. NRCS offers technical assistance and web tools to use the programs

The NRCS staff is dedicated to working with farmers and landowners to implement conservation efforts. To do so the agency devotes considerable resources to providing technical assistance and education on what is available. For example, NRCS has a very useful tool called “5 Steps to Get NRCS Assistance” designed to serve as a portal for farmers and landowners interested in using NRCS programs. The tool is dividing into five parts – planning, application, eligibility, ranking and implementing. It can be found at www.nrcs.usda.gov/portal

7. How the NRCS relates to landowners

The NRCS relation with landowners is to serve as a source of information and support. This support includes technical assistance such as developing conservation plans and designing conservation practices to be installed; financial cost sharing in the form of funds to reimburse landowners who implement approved practices; and funding for long-term protections such as the annual payments to landowners who place land into programs such as the CRP. Many NRCS programs have limited funding available, and applications are evaluated on a competitive basis to select participants.

8. NRCS programs are voluntary

All the various cost sharing and technical assistance programs – such as EQIP and CSP - are entirely voluntary and available for landowners who want to use them and apply to do so. Some other NRCS programs such as sod buster and using a conservation plan on HEL are also “voluntary” in the sense you cannot be made to comply, but remember if you choose not to, you can lose eligibility for a variety of other USDA programs.

9. Using USDA conservation funds creates a long-term obligation

When a farmer or landowner accepts federal or state funding to implement a conservation practice, such as building a terrace, there is a contract signed

with the USDA or SWCD which sets out the responsibilities of the parties. One provision is the Maintenance Agreement, where the landowner agrees to maintain and not destroy or remove the conservation practice for a set period, known as the useful life of the project. These may vary depending on the practice from 5 to 20 years. If the project is removed, such as by bulldozing out a terrace, the party who signed the agreement is legally bound to refund all or a portion of the public funds used. The idea behind this requirement is because public funding for conservation is limited and made available on a competitive basis, it does not make sense to allow tax payer funds to be wasted by landowners using the money and then destroying the practices later.

10. NRCS promotes use of cover crops to protect water quality and renewed attention to soil health.

The work of the NRCS has evolved over the years and in recent times its focus has broadened from simply addressing soil erosion to issues of water quality protection and newer issues. As a result, the NRCS is very involved in protecting water quality, such as by planting cover crops, and in addressing soil health. Other sections in the workbook address soil health and working on local watershed projects. In coming years you can expect the NRCS to be actively involved in developing programs for farmers and landowners to address the effects of climate change.

#20 - Ten Questions to Ask if you are a prospective land buyer

If you are interested in buying property, an important goal is to try to obtain as much information as you can and to answer any questions you may have about the property so you will know what you may be getting into. Here are ten issues prospective purchasers of land should consider.

1. How large is the property? Remember property descriptions may include such terms as tillable acres, taxable acres, or even the term M/L which stands for more or less.

2. If buying farmland, it is important to understand the history of the property, in particular the participation in federal farm programs. This can be very important for purposes of understanding the crop and acreage bases as well as for possible crop insurance applications. These records can be obtained from the USDA or from the seller.

3. What is the conservation plan and the conservation history of the property? For example it would be important to know whether or not there are any wetlands, prior converted wetlands, or farmed wetlands, or are there any fields designated as HEL for highly erodible land. This information will be important in understanding what your opportunities may be for federal farm programs.

4. It is important to understand whether there are any existing USDA contracts applying to the property. These could include the property being enrolled in the conservation reserve program or CRP or whether it has been put into the EQIP or CSP program which might have continuing obligations.

5. One reason to explore the existence of current or past USDA contracts is to understand whether any public cost-sharing funds have been used on the property to install conservation practices. If these were permanent practices like a terrace, it is likely there is a maintenance agreement requiring you as the landowner to maintain the practices for a certain period of time.

6. What are the current boundaries of the property? It is important to get on the property and walk it if possible. This will allow you to identify any potential problem areas or possible uncertain boundaries, as well as other

natural conditions such as the existence of timberland, wetlands, or other unique features.

7. Are there any streams or other natural features on the property which might limit its use or require you to comply with state rules before they could be altered?

8. What is the condition of the fences or do they even exist? If there are internal fences these might be of value in connection with possible livestock operations. Because all property has neighbors at some point it's important to understand whether there are partition fences and what are the condition of those fences. Understanding whether or not there are road fences may also be valuable.

9. Who are the neighbors and what are the uses being made of their properties? If the adjacent land is being used for farming then there is less likelihood of some potential conflict. However if adjacent properties are being used for other purposes or appear to be in a process of being developed or having the uses changed, this is something to be aware of.

10. Are there any existing agreements with the neighbors, such as for the allocation of fences or drainage, or with other third parties, such as a wind turbine easement, a utility easement allowing other parties to make use of the property, or a conservation easement limiting what can be done with the land. For example if the land has been crossed by a pipeline this will be an important limitation about which you will want to be aware.

It is your obligation to find out all you can before you purchase a piece of property so you can avoid surprises or be faced with the reality that oftentimes buyers should beware.

Notes and Questions

Law for Landowners
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Presenter: Prof. Neil Hamilton, emeritus professor of law, former director Drake University Agricultural Law Center
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Hosted by Dallas County Soil and Water Conservation District, in cooperation with the Iowa Natural Heritage Foundation and the Conservation Districts of Iowa

All Workshops from 9:00 to 12:00 p.m.

- **Marion** – Thursday April 14th; 9 – 12:00, Lowe Park,
- **Clarinda** – Wed. April 20th; 9 – 12:00, City Library
- **Centerville** - Thursday April 21st; 9 – 12:00, Sharon Bluffs State Park Nature Center
- **Okoboji** – Monday April 25th; 9-12:00, Univ. of Iowa Lakeside Laboratory, in Waitt Lab
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