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# Iowa's Duty of Land Stewardship

Edward Cox  
*Drake University*

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# Iowa's Duty of Land Stewardship

## **Abstract**

Iowa's courts and legislature have established a strong legal foundation for a duty of stewardship. The brochure was developed as part of the Sustainable Agricultural Land Tenure Initiative, and provides a brief history of how this foundation was laid as well as additional details on Iowa's soil conservation law, conservation incentive programs, and federal conservation compliance laws.

## **Disciplines**

Agriculture | Agriculture Law

plan, makes the future effectiveness of conservation compliance uncertain.

Finally, voluntary conservation programs depend heavily on state and federal funding. The amount dedicated to these conservation programs fluctuates with government budgetary and political trends. A policy often proposed to address the unstable nature of conservation funding is the creation of ecosystem markets that allow landowners and farmers to receive payments for environmental services. Such a system is similar to the Conservation Stewardship Program discussed above, but rather than receiving payment from the government, other businesses would pay farmers for stewardship practices that mitigate environmental degradation caused by the business, such as carbon emissions or water pollution.

#### VII. AGENCY CONTACTS

Iowa's county SWCD's are charged with educating the public about conservation issues, assisting in the administration of conservation programs, and establishing and enforcing soil loss limits. Find your local office at <http://www.cdiowa.org/districtdirectory.html> or call 515-758-3880.

The Iowa Department of Agriculture and Land Stewardship's (IDALS) Division of Soil Conservation administers the state's conservation incentive programs. Visit their website at <http://www.iowaagriculture.gov> or call 515-281-7043.

The Natural Resource Conservation Service (NRCS) is responsible for ensuring conservation compliance and, along with the Farm Service Agency (FSA), for administering several voluntary conservation programs. Visit the Iowa NRCS website at <http://www.ia.nrcs.usda.gov> or call 515-284-4262.

#### ADDITIONAL RESOURCES

**SustainableFarmLease.org** provides more information on tenancy and stewardship law as well as developing a sustainable farm lease contract. Visit the website or call 515-271-2205 to order "The Landowner's Guide to Sustainable Farm Leasing."

The Leopold Center for Sustainable Agriculture at Iowa State University, at [www.leopold.iastate.edu](http://www.leopold.iastate.edu) or 515-294-3711, can help locate additional information on ensuring a sustainable farm operation.

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Groundwater Protection Act, the Leopold Center supports the development of profitable farming systems that conserve natural resources.



The Drake Agricultural Law Center is internationally recognized for providing

opportunities to study how the legal system shapes our food system and influences the ability of the agricultural sector to produce, market and utilize agricultural products.

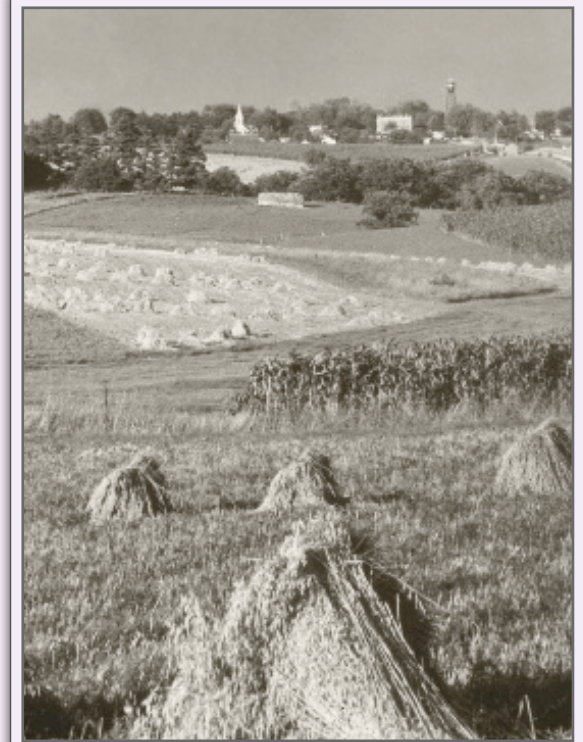
Cover Photo Courtesy of USDA NRCS.

#### CONTACT INFORMATION

DRAKE AGRICULTURAL LAW CENTER  
2621 CARPENTER AVENUE  
DES MOINES, IOWA 50311  
(515) 271-2205  
EDWARD.COX@DRAKE.EDU  
[www.law.drake.edu/aglaw/](http://www.law.drake.edu/aglaw/)

# IOWA'S DUTY OF LAND STEWARDSHIP

## A DRAKE AG LAW PRIMER



#### LESSON PLAN

- I. A Brief History of Iowa's Duty of Stewardship
- II. County Conservation District Soil Loss Limits
- III. Stewardship on Leased Farm Land
- IV. Federal Conservation Compliance
- V. Conservation Incentive Programs
- VI. Practicalities and the Future of the Duty
- VII. Agency Contacts and Additional Resources

## I. A BRIEF HISTORY

The environmental catastrophe of the “Dustbowl” of the 1920s and 30s spurred the federal government to create a model conservation district statute. Iowa was one of the first states to adopt a form of this statute and has since established a firm legal foundation for a duty of stewardship. This duty is built upon three pillars.

**The first** is the 1943 ruling in *Benschoter v. Hakes*, where the Iowa Supreme Court upheld the state’s authority to regulate farm tenancies by requiring advanced notice of termination. The Court’s analysis is premised on the importance of soil to the state and the relation between short-term farm tenancies and soil exploitation.

**The second pillar** is the Soil and Water Conservation District (SWCD) law, which requires each district to establish enforceable soil loss limits and sets out a procedure for enforcement. The law also makes it the duty of each landowner to comply with these limits or face regulatory action by the district.

**The third pillar** of Iowa soil stewardship law was written in 1979 when the Iowa Supreme Court upheld enforcement of a mandatory soil loss limit against a claim it was an unconstitutional taking. In *Woodbury County Soil Conservation District v. Ortner*, the Court upheld the requirement as being within the state’s police power given the public interest in soil and productive farmland.

Iowa has enacted other laws that help enable landowners to fulfill their duty of stewardship, such as the Resource Enhancement and Protection act, which provides funding for open spaces and conservation. The USDA also offers conservation assistance and requires conservation practices on environmentally sensitive land in order to participate in certain farm programs.

## II. SWCD SOIL LOSS LIMITS

Under the authority of Iowa Code section 161A every county in the state has established a SWCD and soil loss limits. Each district has been established the limit as five tons per acre in a year, the maximum soil loss considered sustainable and commonly referred to as T.

Inspection of land for compliance with soil loss limits can occur for two reasons. First, a landowner who has been damaged by sediment from erosion on adjacent land can make a complaint to the SWCD. Second, an inspection can occur at the discretion of SWCD commissioners.

There are two circumstances in which the district commissioners have the authority to require the implementation of soil conservation practices or changes in land use in order to reduce soil erosion. In the first, erosion exceeds the district soil loss limits and is causing damage to adjacent land. In the second scenario, there is no damage to adjacent land, but soil loss is more than two times the established limit.

The district cannot require soil conservation practices on land unless cost-share money has been approved and made available. These financial incentives are limited to the lesser of 50 percent of the estimated cost or 50 percent of the actual cost of establishing the practices.

## III. STEWARDSHIP ON LEASED FARM LAND

Who is responsible for fulfilling the duty of stewardship on leased land? Landowners are responsible for ensuring compliance with county soil loss limits, but Iowa courts have also recognized the right of landowners to require a certain level of stewardship from tenants. This right is derived from what is commonly referred to as the “covenant of good husbandry.” While the covenant requires tenants to prevent waste and farm in a “proper and tenant-like manner,” the standard is based on the commonly used farm practices in a community and does not necessarily ensure a sustainable operation.

A quote from an Iowa farmer sums up the practical relationship between landowners, farmers, and the duty of stewardship. “Landowners are responsible for ensuring the conservation of the land. Stewardship is something farmers are responsible for implementing on the land.” This quote recognizes the long-term interest in, and control of, the land rests with the landowner, but also points out that the farmer is responsible for implementing the stewardship practices.

Such an approach requires an attentive landowner and a willing farmer. To ensure the conservation of the land, the owner can include specific requirements and restrictions in the lease agreement but should also recognize their capacity to enable the farmer to fulfill the duty of stewardship. The “Additional Resources” on the reverse side provide information on such lease contracts.

## IV. FEDERAL CONSERVATION COMPLIANCE

Conservation compliance laws require producers to refrain from certain agricultural activities or apply

approved conservation systems on environmentally sensitive land in order to receive certain USDA benefits.

Soil conservation compliance applies to Highly Erodible Land (HEL). This describes land that has potential erosion equal to or greater than eight times the rate at which the soil can sustain productivity. Owners and operators of highly erodible land must develop and maintain a conservation plan with assistance from NRCS.

If renting the land and not receiving farm program payments, it is still important for landowners to be involved in developing, and ensuring compliance with, the conservation plan. Non-compliance can result in loss of eligibility for conservation programs as well as other USDA farm program payments for future tenants.

## V. CONSERVATION INCENTIVE PROGRAMS

Both the state and federal governments have a number of voluntary conservation incentive programs. Incentives generally fall under three categories of programs.

- ❖ Cost-sharing arrangements for constructing or adopting new conservation practices, such as USDA’s Environmental Quality Incentives Program (EQIP).
- ❖ Payments for providing environmental benefits from programs like the Conservation Stewardship Program (CSP).
- ❖ Rent for retiring environmentally sensitive land, such as that provided by the Conservation Reserve Program. (CRP).

Contact the agencies on the reverse side to explore these examples and other programs further.

## VI. PRACTICALITIES AND THE FUTURE OF THE DUTY OF STEWARDSHIP

Despite Iowa’s strong legal foundation for a duty of stewardship, challenges remain regarding enforcement and implementation of conservation practices.

Knowledge and enforcement of district soil loss limits are not widespread and many landowners, farmers, and district commissioners express a preference for incentive programs rather than enforcing mandatory regulations.

Monitoring and enforcement of federal conservation compliance faces funding and personnel shortages. Further, increased reliance on subsidized crop insurance, which does not require compliance with a conservation