

# RURAL LANDS AND RURAL LIVELIHOODS: USING LAND AND NATURAL RESOURCES TO REVITALIZE RURAL AMERICA

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## I. INTRODUCTION: CONSIDERING THE CONNECTION BETWEEN LAND AND RURAL DEVELOPMENT

The nature of rural America, and our appreciation for the people, places, resources and culture comprising it, is going through a period of reassessment and renewal.<sup>1</sup> A variety of forces contribute to this rural rediscovery. The continued growth in urban America, with attendant challenges to daily life from traffic congestion to housing costs, mean the frustrations of urban living give new allure to what people perceive as the relaxed and unstressed ideal of “rural” living. The movement of the baby boom generation into a period of, if not outright retirement, at least repositioning and transformation, means people are more mobile and less tied down. The opportunities for career changes are made more possible by the accumulation of wealth, pension funds, real estate gains and declining responsibilities for children. Increased mobility makes moving to the country, perhaps even back home, more feasible. “Back home” and “the country” are often rural areas, and moving there is more inviting if high speed internet, access to quality health care, and other amenities are available.<sup>2</sup>

A third critical factor in the rural renewal is the “natural” dimension – lakes, grasslands, forests, mountains, desert vistas – often viewed from a beautiful, manicured golf course. Rolling prairie hills and broad timbered bottoms support natural pursuits from horseback riding to hunting, from fishing to bird

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1. The material for this article and the ideas reflected in it were developed from a class of the same name taught by the author and former Iowa Governor Thomas Vilsack in May 2007, as well as from a two day conference on these themes sponsored by Drake University in Des Moines, Iowa on September 20 and 21, 2007. See Drake Law Rural Lands Conference, <http://www.law.drake.edu/centers/aglaw/?pageID=ruralLands> (providing information about the conference and links to presentations made at the conference); see also Neil D. Hamilton, *Emerging Issues of 21st Century Agricultural Law and Rural Practice*, 12 DRAKE J. AGRIC. L. 79 (2007) (discussing modern agricultural legal issues affecting rural practicing attorneys).

2. The availability of internet service to address the digital divide between rural and urban areas has been of increasing concern to members of Congress and the USDA Rural Development agency for some time. The 2002 Farm Bill, in section 6103 “Enhancement of Access to Broadband Service in Rural Areas,” amended the Rural Electrification Act of 1936 (7 USC § 901) to add a new Title VI on Rural Broadband Access. Farm Security and Rural Investment Act of 2002, H.R. 2646, 107th Cong. § 6103 (2002) (enacted). Proposals for the 2007 Farm Bill continue the efforts to increase availability of internet access as a key component of rural development. See generally Philip Brasher, *Harkin Prepares Push for Rural Development*, DES MOINES REGISTER, Sept. 9, 2007, at D4; Rand M. Fisher, *Expand Funding, Options for Development of Rural Areas*, DES MOINES REG., June 4, 2007, at A9 (outlining the opinion of the President of the Iowa Area Development Group, an organization led in part by Iowa’s rural electric cooperatives to support business growth).

watching, to gardening and the like – all attractive lifestyle activities for large segments of the nation’s population. These natural resource-based activities can serve as recreation, relaxation, hobbies – and even new enterprises – for active and environmentally attuned refugees from cities, businesses, and stress-racked careers. Expanding these opportunities can serve like a magnet drawing people home to rural areas, adding their talents and energy to the population who never left.<sup>3</sup> The heritage of rural land use is based on natural resource production associated with open lands such as timber, coal, and oil, as well as our history of farming and food production. These uses, in particular agriculture, are in reality the activities that fill up the landscapes of rural America, the places many people view as “unoccupied” and underutilized.

Two other factors contributing to the new found interest in rural America flow directly from using land for economic purposes. One is the growth in alternative energy and the surging interest in ethanol, bio-fuels, and wind – the new sources of renewable energy our nation is anxious to tap as we look to free America from the grasp of foreign oil.<sup>4</sup> Citizens from politicians to farmers are banking on renewable energy to provide new sources of prosperity and employment for rural America. The second relates to food, health and our growing recognition of the value of fresh locally grown food (which is often organic). This factor also involves the economy of small farms, farmers’ markets, chefs, cheese makers, vintners, and other food artisans, as well as, the consumers fueling the explosive interest in local and regional food. The connections between food and its production to rural land, and between owning land and having a personal sense of place, are elemental and defining for many who choose to live in rural America.

These human factors – relief from urban stress, newly mobile retirees, nature seeking citizens, growing environmental concerns, desire for healthier foods and lifestyles, demand for renewable energy – are combining into a potent social movement.<sup>5</sup> This renewal is opening new opportunities in rural America,

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3. The USDA’s Economic Research Service has conducted significant work on the issue of rural population and amenity-based development. See, e.g., Env’tl Research Serv., USDA, *Rural Development Strategies: Amenity-Based Development* (updated Oct. 23, 2006), available at [www.ers.usda.gov/Briefing/RuralDevelopment/AmenityBased.htm](http://www.ers.usda.gov/Briefing/RuralDevelopment/AmenityBased.htm); DAVID MCGRANAHAN, USDA, AG. ECON. REPORT NO. 781, NATURAL AMENITIES DRIVE POPULATION CHANGE (1999), available at <http://www.ers.usda.gov/Publications/AER781/>.

4. The energy producing potential of America’s farm fields and rural lands has captured the attention not just of rural landowners but the general public as well. See, e.g., Tom Yulsman, *Grass is Greener*, AUDUBON, Sept.-Oct. 2007, at 80 (discussing the potential for the use of prairie grasses, like switchgrass, to produce alternative fuels).

5. See generally PAUL HAWKEN, *BLESSED UNREST: HOW THE LARGEST MOVEMENT IN THE WORLD CAME INTO BEING AND WHY NO ONE SAW IT COMING* (2007) (providing a recent discussion of these issues in the global context and their potential as a potent political movement).

creating new challenges for those who live or move there, and adding new pressures on the land. It is giving the nation a new opportunity to consider and appreciate the critical roles land and natural amenities play in our lives. Importantly the trends raise or implicate a variety of legal issues ranging from the more mundane and traditional – such as enforcing claims of property owners and resolving conflicting interests<sup>6</sup> – to the more empowering and creative – such as organizing and financing a new enterprise of a community wind project, or litigating the right to use net metering to promote on-farm wind development.<sup>7</sup> Other issues are important, among them questions of promoting private stewardship for land and natural resources, and working with landowners to protect the habitats and natural areas they create. Addressing the existing challenges and realities of rural America requires attention. Issues of poverty and economic opportunity, access to education, health care availability, transportation, and communication all loom as important challenges for rural residents. The new interest in rural America will create pressure to address these realities.<sup>8</sup> Ironically, the movement may provide part of the solution by mobilizing and injecting the people, talents, creativity, and money (as well as political voice) needed to elevate these concerns, many of which are long standing but resistant to treatment, to the political and cultural agenda of the nation.

The goal of this article, the first in a series, is to identify key legal and policy issues and provide a road map and progress report for understanding where we stand in addressing them. The articles will examine six main themes giving life to the ideals of rural lands and rural livelihoods. First is the role of natural resource amenities in providing the basis for a rural revitalization. Whether it is restoring prairies or creating wildlife habitat, or any of the many other natural pursuits, an increasing amount of rural land in states like Iowa is being purchased and managed by landowners whose goals go beyond traditional row crop production. These new rural interests reflect not just different types of landowner values, but also represent opportunities for new enterprises, a trend

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6. See, e.g., *Orr v. Mortvedt*, 735 N.W.2d 610, 612-13 (Iowa 2007) (providing an example of how traditional property law theories can complicate the ownership and use of natural features with multiple uses or users. In *Orr*, the Iowa Supreme Court had to resolve a dispute between multiple owners of lake property formed by an abandoned quarry involving property claims and the ability to mark boundaries of their respective portions of the lake.).

7. See, e.g., *Windway Techs., Inc. v. Midland Power Coop.*, 732 N.W.2d 887 (Iowa Ct. App. 2007); *Windway Techs., Inc. v. Midland Power Coop.*, 696 N.W.2d 303 (Iowa 2005) (for decisions concerning the issue of net metering for local wind projects).

8. For example, efforts to expand business opportunities in rural America can be found in most states and regions, see, e.g., Donnelle Eller, *Businesses Help Spark Rural Revitalization*, DES MOINES REG., June 10, 2007, at D1 (discussing increases in agriculturally related business opportunities in Iowa).

perhaps most vividly reflected in the growth of wineries across Iowa. The second theme concerns private land stewardship and the tension between private ownership and expanding public expectations for the protection and use of rural lands. Rather than focus only on the tensions, the article identifies several innovative public/private collaborations to increase opportunities for public use of privately owned lands and accommodate private landowners' desires. The development of recreational trails and focused efforts to protect significant natural resource areas, such as the Loess Hills, the Whiterock Conservancy, and the Honey Creek State Park Resort project, are specific examples to consider. These two issues (the potential of natural resource amenities and the promotion of private land stewardship) are the focus of this article.

Future articles will address other emerging themes concerning rural revitalization, such as the growth in renewable energy and the dominant role being claimed and played by agriculture. The range of opportunities in this area, as well as the legal and policy challenges they raise, will fill many volumes of future law reviews, such as the planned symposium in the *South Dakota Law Review* relating to ethanol.<sup>9</sup> One focus will be on the development of Iowa's wind resources, in particular the idea of "community wind" based on local ownership of wind resources.<sup>10</sup> The race to promote wind generation in Iowa is challenging the capacity and understanding of political leaders and the legal community, as well as threatening the potential for this new energy source to provide much needed long-term benefits to rural America.<sup>11</sup>

A related topic is the growth in the carbon economy, especially entrepreneurial activities such as carbon trading, off-set programs, and green tags which

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9. The *South Dakota Law Review* has a forthcoming 2008 symposium issue titled "*Emerging Trends in Agricultural Law: The Law and Policy of Ethanol*." For a similar article, see L. Leon Geyer, Philip Chong, & Bill Hxue, *Ethanol, Biomass, Biofuels and Energy: A Profile and Overview*, 12 *DRAKE J. AGRIC. L.* 61 (2007).

10. There are many excellent resources on the topic, but among the most helpful are JESSICA A. SHOEMAKER & CHRISTY ANDERSON BREKKEN, *FARMERS LEGAL ACTION GROUP, COMMUNITY WIND: A REVIEW OF SELECT STATE AND FEDERAL POLICY INCENTIVES* (2006) and the Windustry website, [www.windustry.org](http://www.windustry.org). To learn more about a property's wind potential, the Iowa Energy Center offers a wind map identifying potential wind energy capacity of any tract and a calculator to determine annual energy production from existing wind turbines. Iowa Energy Ctr., *Wind Energy in Iowa*, <http://www.energy.iastate.edu/Renewable/wind/>.

11. For readers interested in obtaining a more fundamental understanding of how the nation's system for generating and consuming electricity functions, see PHILLIP F. SCHEWE, *THE GRID: A JOURNEY THROUGH THE HEART OF OUR ELECTRIFIED WORLD* (2007). See also ROBERT WHITCOMB & WENDY WILLIAMS, *CAPE WIND: MONEY, CELEBRITY, CLASS, POLITICS, AND THE BATTLE FOR OUR ENERGY FUTURE ON NANTUCKET SOUND* (2007) (for a timely discussion of some of the sharp political issues raised by proposals to develop alternative energy sources).

seek to commodify environmentally beneficial conduct.<sup>12</sup> Programs creating economic benefits for farmers and rural landowners are of special interest.<sup>13</sup> Innovative efforts like the Iowa Farm Bureau Federation's creation of Agra-Gate, a carbon-based business platform, provide ways to consider both the legal and policy issues presented by this development,<sup>14</sup> and also a proposal to develop a homegrown Iowa-based carbon offset green credit program.<sup>15</sup>

A fifth area for discussion concerns the continued growth in the local and regional food movement in the United States.<sup>16</sup> The topic of our evolving food democracy has been the focus of several earlier articles,<sup>17</sup> but new policy developments, in particular the relation between the "healthy food movement" and rural economic development, provide new avenues for inquiry.<sup>18</sup> Initiatives such as the "Buy Fresh Buy Local" marketing campaign, which is underway in over twenty-five states in 2007, and the continued growth in state and local food policy councils, are just two examples of how food policy can be used to create economic opportunity.<sup>19</sup> The rapid growth in wineries throughout the nation and the

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12. See, e.g., Anja Kollmus, *Carbon Offsets 101*, WORLD-WATCH, July-Aug. 2007, at 9 (A growing body of information is available on these topics.); Bruce Barcott, *Green Tags: Making Sense of the REC-Age*, WORLD-WATCH, July-Aug. 2007, at 15.

13. See Marc Ribaud, Robert Johansson, & Carol Jones, *Environmental Credit Trading: Can Farming Benefit?*, AMBER WAVES (USDA/Econ. Research Serv.), Feb. 2006.

14. See, e.g., Dal Grooms, *AgraGate Enters Carbon Market with Edge*, IOWA FARM BUREAU SPOKESMAN (Des Moines, Iowa), July 25, 2007, at 1 (describing the farm bureau's new business venture in carbon trading). For further information about AgraGate, including a copy of the contract used by farmers to sell carbon credits based on farm tillage practices, see Agragate Climate Credits Corporation, [www.agragate.com](http://www.agragate.com).

15. For information about existing carbon offset programs, see [www.ecobusinesslinks.com/carbon\\_offset\\_wind\\_credits\\_carbon\\_reduction.htm](http://www.ecobusinesslinks.com/carbon_offset_wind_credits_carbon_reduction.htm) (providing a database of businesses with Ecobusiness projects). For examples of some of these specific projects, see [www.carbonfund.org](http://www.carbonfund.org) and [www.savegreeneearth.com](http://www.savegreeneearth.com).

16. The number of books written about the role of food in American society has increased greatly in recent years, illustrating the increased importance and recognition of food as a cultural determinant, as well as an indicator of the role it plays in modern life. Three of the best books on this theme are: BARBARA KINGSOLVER, *ANIMAL, VEGETABLE, MIRACLE: A YEAR OF FOOD LIFE* (2007); MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006); and DAVID KAMP, *THE UNITED STATES OF ARUGULA: HOW WE BECAME A GOURMET NATION* (2006).

17. See Neil D. Hamilton, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9 (2004); Neil D. Hamilton *Food Democracy II: Revolution or Restoration?* 1 J. FOOD L. & POL'Y 13 (2005).

18. See, e.g., Darcy Maulsby, *Local Food Networks Reflect Progress and Potential*, NEW FARM, Aug. 9, 2007, available at <http://www.newfarm.org/features/2007/0807/localiowa/maulsby.shtml>.

19. For current information about the expansion of the Buy Fresh Buy Local program and a list of the states with marketing efforts, see Food Routes Network, <http://www.foodroutes.org/>.

variety of programs being implemented by state and even local governments to expand the wine industry is another. Efforts to create rural food businesses by supporting food entrepreneurs and promoting culinary tourism will be examined.<sup>20</sup>

The sixth and final topic relates to federal policy, in particular, the 2007 farm bill working its way toward what should be the final approval by Congress in late 2007.<sup>21</sup> This legislation is significant because it reflects the visible results of the periodic, or episodic, attention Congress and the public devote to developing farm policy and showing concern for rural America. The relation between the farm bill and the themes of this series are many, but the ideas and innovations in three of the titles, Title VI on Rural Development, Title II on Conservation, and Title IX on Energy will provide the main focus.<sup>22</sup> These provisions will lay the foundation for national efforts signaling new directions for federal programs, such as support for organic farming and rural entrepreneurs. New provisions will assist states and individuals, such as through value added agricultural grants to

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20. In 2005, the Leopold Center for Sustainable Agriculture at Iowa State University funded a research project at the University of Northern Iowa titled, "A Study of Place Based Tourism in Northeast Iowa Communities." A copy of that report may be found on the University of Northern Iowa's website, [http://www.uni.edu/step/reports/place\\_based\\_food.pdf](http://www.uni.edu/step/reports/place_based_food.pdf). In 2007, a new electronic newsletter titled "Green Routes: Authentic Traveler," which bills itself as "where cuisine, culture and conservation come together" was established. The newsletter is part of a larger initiative to combine farming, tourism, and conservation for economic development. See *Renewing the Countryside*, <http://www.renewingthecountryside.org>. See also Sarah Bzdega, *From Farm to Fork*, DES MOINES BUS. RECORD, July 1, 2007 (discussing experiences of small farmers, such as Matt Russell of Coyote Run Farm near Lacona, in meeting the needs of chefs and restaurants in the Des Moines area).

21. At the time of writing this article, the Senate was taking up consideration of the Farm Bill following the July passage of the House version, H.R. 2419. See, e.g., John Nichols, *Farm Bill Showdown*, THE NATION, Aug. 27, 2007. Information about the content of the law and the status of Congressional action can be found on the websites of the respective agriculture committees, as well as on the websites of the USDA and many of the dozens of organizations involved with the legislation. See, e.g., House Committee on Agriculture, <http://agriculture.house.gov/inside/2007FarmBill.html>.

22. The 2007 farm bill includes a wide array of proposals designed to improve the opportunities in rural America and address significant conservation and environmental issues. One issue is the impact current demand for grain production is having on the protection of grasslands in the United States. Some observers question how well existing conservation provisions, such as sod buster work in protecting fragile grasslands from conversion, and a new "sod saver" protection, have been developed. The General Accountability Office has produced a study discussing these issues. See U.S. GEN. ACCOUNTABILITY OFFICE, REPORT NO. GAO-07-1054, AGRICULTURAL CONSERVATION: FARM PROGRAM PAYMENTS ARE AN IMPORTANT FACTOR IN LANDOWNERS' DECISIONS TO CONVERT GRASSLAND TO CROPLAND (2007).

wineries and wind projects, as well as authorize creation of a biomass reserve and fund wetland protection.<sup>23</sup>

Collectively, the 2007 Farm Bill will represent another step toward developing a rural policy for America, but only a step.<sup>24</sup> We do not have a comprehensive policy for rural America, and one may never be achieved. The interests of the nearly ninety million citizens who call small towns and rural America home are much broader, and if numbers of people and voters count for anything, arguably more politically deserving than the concerns of the agricultural community.<sup>25</sup> The challenge and opportunity to develop a rural policy for America awaits future Administrations and politicians. For now, the topic of how rural lands can be used creatively to support rural livelihoods and satisfy public expectations and demands for environmental stewardship offers fruitful and enjoyable ways to consider the needs of the people and the lands of rural America.

## II. USING NATURAL RESOURCE AMENITIES AS THE BASIS FOR RURAL ECONOMIC DEVELOPMENT

The focus of this article is on the land and our attitudes about it. While the examples and experiences are drawn largely from Iowa, the general themes and ideas are applicable to most rural areas from Maine to Montana.

### A. *The Premise – Recognizing the Diversity of Rural Land-Based Enterprises*

Across Iowa there exist a wide range of rural economic initiatives related to the availability and use of land not planted in traditional agricultural crops.

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23. The House version of the 2007 Farm Bill is H.R. 2419, which was passed by the House of Representatives in July and the Senate in December 2007.

24. The political needs of rural America have taken on new significance in recent months as the campaign for the 2008 presidential election has accelerated. Given that many of the states with early primaries and caucuses, such as Iowa, New Hampshire, and South Carolina, have significant rural populations, most of the candidates have staked campaign positions on rural America. While the positions vary in the level of detail, and the approaches being proposed, common themes include addressing the delivery of broadband access to rural areas, the availability of health care, and the need for additional investment and entrepreneurship. See, e.g., John Edwards 08: Restoring Hope to Rural America, <http://www.johndwards.com/issues/rural/>; Barack Obama on Rural America, <http://www.barackobama.com/issues/rural/>.

25. Efforts to develop a broad-based coalition to speak for rural America can be seen in the network of twenty-five national organizations forming the "Campaign for a Renewed Rural Development" lobbying for increased rural development funding. In September 2007, the group sent a letter to Senator Harkin, chair of the agricultural committee, with the signatures of over 550 national, regional, and local organizations from all fifty states seeking full funding for the Rural Development Title. See Campaign for a Renewed Rural Development, [www.ruralcampaign.org](http://www.ruralcampaign.org).



The landscape of rural Iowa is checkered with land devoted to a range of natural uses or non-traditional enterprises, the restoration of native prairies and savannahs, the proliferation of wineries and new viticulture operations, owning and managing land for hunting, fishing, and other recreational enterprises, and the expansion of farming enterprises for crops like fruits, vegetables, flowers, and other foods. Attention to renewable energy production from agriculture is stimulating interest in the production of bio-fuel crops such as switch grass, hybrid poplars, and other vegetation, with the potential to bring additional variations to the rural landscape and balance sheet. Individually, these activities are often the source of economic enterprises and the livelihoods for the owners and operators of the land. Alternatively, these lands are where owners engage in rewarding personal activities by managing their land for recreation and natural resource enjoyment. One common feature of all of these land uses is that they are based on owning or managing rural lands to enhance natural amenities – appreciating wildlife, restoring natural landscapes and plant communities, improving habitat, and recreating based on enjoying natural beauty or culinary tourism, such as with wineries and farm-stays.

You do not have to own rural land or live in rural Iowa to experience the benefits of these amenities. Farm fields and pastures create the landscapes and scenic beauty of the countryside. Many people enjoy the beauty and scope of rural landscapes by using publicly owned land and waters for biking, hiking, canoeing, and fishing. Our enjoyment of these activities is directly influenced by how the privately owned rural lands surrounding the public resources are used.

All these various methods of managing, using, and enjoying rural lands are based on protecting and enhancing natural amenities. Collectively, these amenity-based activities represent a significant development and opportunity for rural residents as well as all Iowans. Our state is fortunate to have a wide range of public and private organizations working to expand the existence and enjoyment of natural resources and rural landscapes. These groups include private organizations like the Iowa Natural Heritage Foundation (INHF) and Pheasants Forever. In its almost thirty year existence, the INHF has been involved in over 650 different projects in Iowa which have protected over 95,000 acres of unique lands, many of which have been passed on to public ownership by the state or counties.<sup>26</sup> Two factors have been critical in the Foundation's success of land

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26. For more information about the work of the Foundation, see Iowa Natural Heritage Foundation, <http://www.inhf.org>. See, e.g., Perry Beeman, *Conservation Group Buys Fish Habitat*, DES MOINES REGISTER, Sept. 23, 2007, at B1 (concerning an announcement that the organization had completed a \$7 million fundraising campaign necessary to purchase the critical ninety-three acre Angler's Bay property on Spirit Lake to protect the fish habitat from commercial development and add to existing public park, trails and wetland resources).

protection. One is the ability to work directly with individual landowners to consider the range of legal tools available for protecting their land,<sup>27</sup> such as the increasingly common use of conservation easements.<sup>28</sup> The second is having the flexibility and financial capacity to serve as an intermediate purchaser to assist public agencies, such as the Iowa Department of Natural Resources or county conservation boards, acquire priority properties coming on the market.<sup>29</sup> In recent years the Foundation has often partnered with private organizations, like Pheasants Forever, whose members help raise part of the funding to acquire much needed wildlife habitat projects.<sup>30</sup>

Iowa has an array of public bodies with responsibility for working to protect natural resources and promote private stewardship. Soil and water conservation districts exist in all counties,<sup>31</sup> and regional Resource Conservation and Development Districts (RC&Ds) blanket the state.<sup>32</sup> Perhaps the most interesting, and potentially significant, entities are the county conservation boards created by the state in the 1920s to promote the protection of natural resources and the creation of a widely available network of public parks.<sup>33</sup> Iowa's county conservation boards manage over 1700 individual sites totaling over 170,000 acres. The projects vary from restored prairies and wildlife hunting areas, to nature centers and restored wetlands ranging from 2 to 2,000 acres in size. A variety of Iowa

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27. IOWA NAT. HERITAGE FOUND., *LANDOWNERS OPTIONS: SAFEGUARDING IOWA'S NATURAL RESOURCES FOR THE FUTURE* (Cathy Engstrom, ed., 6th ed., 2007) (one of the most popular and valuable resources prepared by the Foundation).

28. For a discussion of the increased use of conservation easements in agricultural settings, see Hamilton, *supra* note 1, at 91-92.

29. The combination of an annual appropriation and budgetary process and restrictions on entering multi-year debt obligations, make it extremely difficult for public agencies to react quickly when property comes on the market for immediate sale such as auctions to settle estates. The Foundation is often requested to purchase properties on public priority acquisition lists. At any given time the Foundation may hold and manage for public benefit a wide inventory of land eventually headed for public ownership. If public ownership is not an option, properties can also be sold to conservation buyers after legal restrictions are placed on the title to insure protection of the conservation values such as maintenance of wetlands, protection view sheds, or restrictions on consumptive uses and development.

30. See Pheasants Forever: The Habitat Organization, <http://www.pheasantsforever.org> (The national group sponsored Pheasant Fest, a trade show and educational conference, which was held in Des Moines in 2007.).

31. IOWA CODE § 161A.44 (2008) (creating authority for the districts). See generally Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210 (1993) (for a discussion of the potential role of soil conservation districts to promote soil stewardship).

32. See 16 U.S.C. §§ 3451-3460 (2006) (authorizing these unique entities, which combine the work of the USDA Natural Resources Conservation Service and county boards of supervisors).

33. See IOWA CODE ch. 350 (2008).

based organizations are working to expand economic development and the opportunities available in rural communities. Private organizations like the Iowa Network for Community Agriculture, and research initiatives like the Community Vitality Center<sup>34</sup> and the Leopold Center for Sustainable Agriculture,<sup>35</sup> both located at Iowa State University, have undertaken projects to expand rural development.<sup>36</sup> Public agencies such as the Iowa Department of Economic Development<sup>37</sup> and USDA Rural Development<sup>38</sup> have initiatives to expand opportunities for rural residents to find meaningful employment and develop profitable businesses.

The convergence of these two efforts – expanding interest in amenity-based enterprises and traditional rural economic development – provides a basis for optimism about what may result, especially if we develop more focused initiatives to examine, promote, and build on the examples and experiences of Iowa's rural citizens. As an example, in August 2007, the Director of the Iowa Department of Economic Development convened a one day round table discussion in the Loess Hills for local and state stakeholders to consider how the natural amenities of the hills, the Missouri River, and the surrounding bottom lands can be used to promote tourism and economic development for the area.<sup>39</sup> Another ex-

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34. See Community Vitality Center, <http://www.cvcia.org>.

35. See Leopold Center for Sustainable Agriculture, <http://www.leopold.iastate.edu>. For more information about the Leopold Center, which celebrated its twentieth anniversary in 2007, see Jerry Perkins, *Leopold Center Places its Emphasis on Iowa*, DES MOINES REG., Feb. 18, 2007, at D4.

36. The Community Vitality Center was involved in promoting the creation of the Endow Iowa Program, which uses gaming revenues to fund creation of community foundations in Iowa counties without licensed gaming operations. See Endow Iowa Program, <http://www.iowalifechanging.com/endowiowa/>. The legal authority creating the program is found in IOWA CODE §§ 15E.301-.306. The state's efforts include both reallocation of gaming proceeds but also a program of state tax credits to support local economic development. See, e.g., Donnelle Eller, *Quick Disappearance of Tax Credits Causes Donors to Hold Back*, DES MOINES REG., July 26, 2007, at D1. The Iowa Council of Foundations and the Iowa Gaming Industry have partnered to promote the expansion of the community foundation initiative in Iowa and recently published a report "Building Iowa's Communities Through Philanthropy: A Snapshot of the 2005-2006 County Endowment Fund Program." See [www.iowacommunityfoundations.org](http://www.iowacommunityfoundations.org).

37. See generally, Iowa Dep't of Econ. Dev., Iowa Life Changing <http://www.iowalifechanging.com/community/> (last visited May 1, 2008).

38. See USDA, Rural Dev., Iowa, <http://www.rurdev.usda.gov/ia/> (last visited May 1, 2008) (for information about the wide range of programs administered by USDA Rural Development); USDA, RURAL DEV., REACHING NEW LEVELS TO ADVANCE RURAL IOWA: 2006 Annual Report (2006), available at [http://www.rurdev.usda.gov/ia/2006\\_Annual\\_Report.pdf](http://www.rurdev.usda.gov/ia/2006_Annual_Report.pdf).

39. See *\$54,000 available for Loess Hills Economic Development*, MO VALLEY TIMES, Sept. 21, 2007, [http://www.zwire.com/site/news.cfm?newsid=18842594&BRD=326&PAG=461&dept\\_id=449012&rfti=6](http://www.zwire.com/site/news.cfm?newsid=18842594&BRD=326&PAG=461&dept_id=449012&rfti=6); see also Iowa Department of Economic Development, Cities and Regions: Loess Hills Hospitality Association/ Loess Hills Visitors Center and Gift Shop,

ample is a relatively new state program from the Iowa Department of Natural Resources to provide grants to entrepreneurs to support the creation of enterprises based on the development of natural resources, such as wineries and ecotourism.<sup>40</sup>

### *B. The Importance of Land and Natural Resource Amenities*

Why focus on the natural resource amenities and land as a component of rural development? This question provides the opportunity to identify the values and justifications for a heightened attention to natural resource amenities and offers a way to examine the motivations and opportunities of the landowners who gird this development. The following ten justifications help answer this question.

#### *1. Places and Projects Rather than Jobs at any Cost*

In the past, Iowa has not focused on natural resource amenities as a key to rural development. Doing so now creates the chance to ask a variety of policy questions and examine new economic models not extensively considered. Much of Iowa's history of economic development efforts the past thirty years has focused on "jobs, jobs, jobs." To some observers, the 1980s and 1990s approach to economic development can be summarized as the "Triple P" of pork, prison and poker. But the low paying jobs, and other social problems associated with these "opportunities," made them less than ideal to support sustainable economic development. Today, it appears Iowa may be moving to a new Triple P of places, people and projects. The key recognition is that to support economic development, places where people want to live must be created, and one way to do so is with natural resource-based projects. This shift in approach is reflected in programs like the "Great Places" initiative of the Iowa Department of Cultural Affairs,<sup>41</sup> and through projects like the Honey Creek State Park and Resort near

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[http://www.traveliowa.com/travelapp/aec/aecdisplayform.asp?strProcess=ShowDetails1&id\\_attraction=113&selCity=639&txtStartDate=&txtEndDate=](http://www.traveliowa.com/travelapp/aec/aecdisplayform.asp?strProcess=ShowDetails1&id_attraction=113&selCity=639&txtStartDate=&txtEndDate=) (providing information and links organized by the Iowa Department of Economic Development regarding the Loess Hills region and the Department's region therein) (last visited May 1, 2008).

40. See Iowa Dep't of Nat. Res., DNR Grants, <http://www.iowadnr.com/grants/index.html> (last visited May 1, 2008); see also 2007 Sideboards for Project Development, <http://www.iowadnr.com/forestry/pdf/RDTFgrant2007.pdf>. Under the program, the only eligible applications are county conservation boards or RC&Ds, but a review of the grants indicates that most are to private businesses, applied through local public agencies.

41. The Iowa Great Places program was created by Governor Tom Vilsack through issuance of Executive Order 39 on January 11, 2005. The idea is to identify areas of the state willing to partner with the state agencies and focus financial resources, business planning, and other tools to develop plans for regional development. Over 1000 citizens participated in Great Places

Centerville.<sup>42</sup> One effect of moving to a “places” approach of development is that it requires citizens to consider what it takes to make an area or region an attractive place for people to live and employers to seek.

## 2. *Long-Term Natural Investments*

Enterprises, or land uses based on some dimension of natural resource amenities, are typically long-term and have a natural or living dimension. For example, many common initiatives involve planting of trees or grasslands, establishing vineyards, or restoring prairies.<sup>43</sup> When an enterprise involves making long-term investments in constructing landscapes or establishing natural features which may take years (or decades) to mature, the investments are in most cases more permanent and stable. The expenses and planning involved in establishing a vineyard or restoring a prairie are significantly different than deciding whether to plant corn or soybeans. The extensive participation of Iowa landowners in long-term conservation programs, such as the Conservation Reserve Program and the Wetland Reserve Program, indicate many Iowa landowners are comfortable with making long-term land management decisions.<sup>44</sup>

Investments in natural resource amenity based businesses can take many forms. The acquisition of rural lands is the main example, but other enterprises can be based in the development of new or existing public resources. Bike trails and developing streams and rivers for canoeing and kayaking are two key examples of how amenity-based outdoor recreation can be expanded.<sup>45</sup> Over the last twenty years Iowa has invested millions of dollars in the development of an ex-

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forums held around the state, and over 145 places submitted invitations to partner with the state and seventy-four submitted offers to the Citizen Advisory Board. In October 2005, the board identified the first pilot Iowa Great Places – Clinton, Coon Rapids and Sioux City. In 2007 an additional nine places were selected for designation. See IOWA DEP’T OF CULTURAL AFF., IOWA GREAT PLACES: SUPPORTED PROJECTS (2005), available at [http://www.state.ia.us/government/dca/greatplaces/assets/gp\\_all\\_projects\\_to\\_08.pdf](http://www.state.ia.us/government/dca/greatplaces/assets/gp_all_projects_to_08.pdf).

42. See Iowa Dep’t of Nat. Res., Honey Creek Resort State Park, <http://www.iowadnr.com/parks/honeycreek/index.html> (last visited May 1, 2008).

43. See Mike Kilen, *Women Nurture Prairie*, DES MOINES REG., July 15, 2007, at E1 (providing an example of the human interest and individual motivations involved in landowner decisions to restore natural land features through the story of the restoration of the 480-acre Indian-grass Hills prairie in Iowa County).

44. In 2006, Iowa had over 1.95 million acres in the CRP (seven percent of the state’s crop ground) and Iowa landowners received over \$206 million in CRP annual rent payments. See FARM SERVS. AGENCY, USDA, CONSERVATION RESERVE PROGRAM: SUMMARY AND ENROLLMENT STATISTICS FY 2006 13-14 (2007).

45. See, e.g., Mike Kilen, *Iowa River Called Endangered, but ‘Opportunity’ Awaits*, DES MOINES REG., Apr. 18, 2007, at B1 (concerning a New Mexico native, Rod Scott, who moved to Iowa to open a canoe outfitter business on the Iowa River).

tensive network of bike trails, often using abandoned railroad right of ways.<sup>46</sup> In recent years, the state has created a new program to fund the creation and marking of a network of water trails designed to increase the public use of rivers and streams.<sup>47</sup>

### 3. *New Enterprises Bring Jobs and Money to Rural Areas*

Activities based on natural resource amenities can be the basis for new economic enterprises. These new enterprises can create jobs, profits, and economic activity for individuals and families. Much of the money flowing through these businesses works its way back into and through rural communities.<sup>48</sup> There are a variety of new enterprises being supported on the land, with wine production or tourism being two of the most prominent in Iowa. The role of wineries is especially important in rural America because they reflect a convergence of three major themes: diversification of agriculture, the production and marketing of high value food products, and the development of rural businesses based on natural resource amenities. This is why Iowa, like many other states, has created a special fund to support research and promotion needs of the growing viticulture sector.<sup>49</sup> Whether it is the construction of a new winery, or the opening of a ca-

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46. See Lisa Hein, Iowa Nat. Heritage Found., Connecting the Dots: Iowa's Trail Network, Presentation at the Rural Lands Rural Livelihoods Conference, Drake Univ. Law School, Sept. 20-21, 2007, available at <http://www.law.drake.edu/centers/aglaw/?pageID=ruralLands> (this presentation discusses the current state of Iowa's bike trails). Trail funding is a continuing issue in Iowa, especially the need to identify funds needed to maintain trails previously established. See, e.g., Editorial, *Snip Red-Tape Snarl; Fix up Neal Smith Trail*, DES MOINES REG., May 28, 2007, at 8A (discussing the political fight between different governmental units over maintaining a popular central Iowa trail).

47. See Iowa Dep't of Nat. Res., Water Trails Grants Program, <http://www.iowadnr.com/watertrails/grants.html> (last visited May 1, 2008); see also, Nate Hoogeveen, Iowa Dep't of Nat. Res. Water Trails Coordinator, Rivers, Streams and Recreation, Presentation at the Rural Lands Rural Livelihoods Conference, Drake Univ. Law School, Sept. 20-21, 2007, available at <http://www.law.drake.edu/centers/aglaw/?pageID=ruralLands>. See Mike Kilen, *Native Son Returns to Value Iowa's Hushed, Tame Beauty*, DES MOINES REG., Aug. 8, 2007, at E1 (noting that Iowa officials believe the revival of Iowa's waterways is just beginning).

48. An excellent example of a successful economic enterprise based on natural resource amenities is the production and marketing of native seeds used in restoring prairies or establishing native grasses. See, e.g., Jerry Perkins, *Family Farm Pulls State Back to its Roots*, DES MOINES REG., Aug. 7, 2007, at D1 (discussing the Allendan Seed Company located near Winterset, Iowa, which is a successful family run seed company developed to grow and market native prairie seeds, wild flower seed, and other conservation materials).

49. IOWA CODE § 175A (2008) (Iowa law enacted to promote the grape and wine industry).

noe outfitter, natural resource businesses provide new employment opportunities.<sup>50</sup>

#### 4. *New Enterprises Add Diversity and Create Identity for Locales*

Many of the new land-based enterprises being created in rural areas result from the creativity and innovation of the owners. As a result, they are often “new” or unique activities for a region, such as the first winery, bed and breakfast, or farmstead cheese maker.<sup>51</sup> The creativity and innovation in these businesses often provides the source for additional innovation by other local businesses. One antique shop becomes three, then five, then an older home is restored as an inn, and then a new café is opened and the process continues to snowball until a community becomes a regional tourist destination. The result is that new enterprises help create an identity or define attractiveness for a region that can be marketed. Collectively, the effect is to bring diversity to the economy and add distinguishing features to the quality of life. These features can be as diverse as covered bridges, water trails for canoeing, collections of antique shops, or preserved barns.<sup>52</sup> A series of enterprises can create the critical mass or foundation to attract new residents, visitors, or business people who seek areas with unique amenities when they consider where to locate.<sup>53</sup>

The Whiterock Conservancy is a land trust created to hold and administer the Garst family’s 5,000 acres and protect the scenic and natural resource val-

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50. An interesting example of the creative economic opportunities such businesses can generate is the increasingly common practice for Iowa wineries to invite volunteers to help harvest the grapes, in some instances charging them for the experience. See, e.g., Donnelle Eller, *Wine Lovers Have Such Fun, They Pay to Help Harvest Grapes*, DES MOINES REG., Sept. 6, 2007, at D1.

51. See, e.g., Tom Perry, *Farm Crawl Welcomes Folks*, DES MOINES REG., Sept. 26, 2007, at E1 (This piece concerns a one-day rural tour of five farms all located within six miles of each other along the Marion-Lucas county line. One is Reichert’s Dairy Air Farm, which produces handmade small batch goat cheese, sold primarily at the Des Moines Farmer’s Market.).

52. See Iowa Farm Bureau Found., About the Iowa Farm Barn Foundation, [http://www.iowabarnfoundation.org/about\\_ibf.htm](http://www.iowabarnfoundation.org/about_ibf.htm) (last visited May 1, 2008) (The Iowa Barn Foundation was created in 1997 to save the barns which help define the history, culture, and scenic beauty of the Iowa countryside.).

53. One of the most common ways to create an identity for an area is to feature foods and food products associated with an area and promote the culinary identity of local chefs, food artisans, and related businesses. A new publishing venture is helping spur this trend through a series of “Edible” magazines named for various regions. Currently, a network of thirty-three magazines such as *Edible Atlanta* and *Edible Iowa River Valley* exist, and more are planned. See Marian Burros, *How to Eat (and Read) Close to Home*, N.Y. TIMES, Aug. 29, 2007, at F1; see also Editorial, *‘Minnesota Cooks’ Promotes Local Food*, MINNEAPOLIS STAR TRIB., Aug. 30, 2007, at A16 (on the one day initiative at the Minnesota State Fair to feature Minnesota grown food and the “eat local movement”).

ues as well as the rural culture of the Raccoon River Valley in west central Iowa, near Coon Rapids in Guthrie County. The land is rich in resources, ranging from oak savannahs, river bottoms, grasslands, and wildlife habitat, as well as six miles of river. The economic model of the Conservancy is to use the land as the base for eco-tourism and recreation, thereby helping underpin rural development in the Coon Rapids area.<sup>54</sup> The effort recently received a significant infusion of public support, with approval by the Vision Iowa Board of a Community Attractions and Tourism (CAT) grant of \$1.7 million for a project titled "Opening Whiterock: A Public Private Partnership for Rural Tourism."<sup>55</sup> Other examples of targeted initiatives to protect high quality natural resource areas can be found in the land protection efforts underway in the Loess Hills of western Iowa,<sup>56</sup> and along the Upper Iowa River in the far northeast portion of the state.<sup>57</sup>

##### 5. *Resource-Based Businesses Protect Environmental and Natural Features*

The development of natural resource-based businesses has a circular effect as it relates to political and economic support for environmental protection and concern for natural heritage. Because the enterprises are based on investments in land and natural features, they have a direct positive impact on the environment. If the business is to promote hunting and agritourism, then the habitat and natural features necessary to support the enterprises must be present. However, the positive environmental effect goes beyond the land or property owned by any one business. Because the new natural resource based amenities provide evidence for the value of protecting or enhancing natural resources, they provide an economic motivation for environmental protection. State initiatives to promote wildlife habitat are examples of how working with landowners to increase

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54. See Whiterock Conservancy, [www.whiterockconservancy.org/mission.htm](http://www.whiterockconservancy.org/mission.htm) (last visited May 1, 2008).

55. See Press Release, Chet Culver, Governor, Governor Culver Announces \$4.8 Million in Vision Iowa Grants, (Sept. 12, 2007), [http://www.governor.iowa.gov/news/2007/09/12\\_1.php](http://www.governor.iowa.gov/news/2007/09/12_1.php).

56. The Loess Hills is a unique geologic formation of hills of glacial blown soils found in Iowa's western counties along the Missouri River. The Loess Hills have been the topic of considerable debate in recent years and have been the subject of targeted state funding for a Loess Hills Alliance. IOWA CODE §§ 161D.1-13 (2008). See Loess Hills National Scenic Byway, <http://www.goldenhillsrca.org/projects/byway/> (last visited May 1, 2008) (A variety of projects are underway in the area and these activities will be discussed in a future research report from the Center.).

57. See Joe McGovern, Iowa Nat. Heritage Found., The Upper Iowa River – Protecting Iowa's Most Scenic River Corridor, Presentation at the Rural Lands Rural Living Conference, Drake Univ. Law School, Sept. 20-21, 2007, available at <http://www.law.drake.edu/centers/aglaw/?pageID=ruralLands> (discussing the recent land protection efforts along the Upper Iowa River).



environmental protection can also help create new natural resource based attractions.<sup>58</sup> The reality is that promoting activities such as river-based recreation will lead to efforts to clean up and protect the river just as prairie restoration diversifies the landscape.<sup>59</sup>

The economic motivation to enhance environmental quality can be a valuable alternative and addition to traditional regulatory approaches, for example, cleaning up a creek can be in a region's economic self-interest rather than something done only under judicial threat. Some of the best examples of efforts to identify and build on natural amenities are scenic byways using surrounding natural beauty, and existing roadways to create touristic drawing power.<sup>60</sup> The establishment of a scenic byway creates its own set of motivations to protect and enhance the natural features comprising the scenic values: be it open spaces, picturesque landscapes, or historic buildings. The cumulative effect is that the activities contribute to increased stewardship and sustainability in the area. An excellent example of the community building and economic development available from scenic byways is the effort in west central Iowa to reestablish portions of the White Pole Road, a registered highway route dating back to 1910, prior to current highway numbering.<sup>61</sup>

#### 6. *New Enterprises can Supplement Existing Agriculture*

In some situations, economic development can involve choices between otherwise competing uses for scarce resources. In many cases, the type of land-based activities being discussed are non-consumptive and complimentary to existing land uses. Hunting, fishing, canoeing, horse-back riding, bicycle trails, and

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58. Iowa Dep't of Nat. Res., Iowa State Wildlife Grant Success Stories, [http://www.fishwildlife.org/success\\_pdfs/iowa.pdf](http://www.fishwildlife.org/success_pdfs/iowa.pdf) (last visited May 1, 2008) (stating that since 2001, "Congress has appropriated \$4.6 million in State Wildlife Grants to Iowa," and "[t]his has been matched with at least \$3 million state and partner dollars"). See Perry Beeman, *New Bird Habitat Plan Targets Landowners*, DES MOINES REG., June 14, 2007, at B5.

59. Renewing our commitment to rivers as natural features used for recreation and enjoyment was a major theme of the Des Moines Register in 2007. See, e.g., Mike Kilen, *Iowans Cleaned a River, and Began a Movement*, DES MOINES REG., Feb. 4, 2007, at 1OP; Richard Doak, *Reconnect With Rivers, Our Great, Untapped Asset*, DES MOINES REG., Apr. 15, 2007, at 1OP.

60. See IOWA DEPARTMENT OF TRANSPORTATION, SCENIC BYWAYS OF IOWA (2007), [http://iowadot.gov/iowasbyways/scenic\\_byways.pdf](http://iowadot.gov/iowasbyways/scenic_byways.pdf) (The Iowa Department of Transportation has created a pamphlet that provides descriptions and maps for eight scenic byways the state has created – all of which involve rural areas. The booklet also presents information on the two National Scenic Byways in the state, the 220 mile long Loess Hills Scenic Byway, and the 326 mile long Iowa Great River Road.).

61. See Tom Perry, *White Pole Road Exudes Americana*, DES MOINES REG., Sept. 9, 2007, at E1; see also White Pole Road Dev. Corp., White Pole Road, <http://www.whitepoleroad.com/> (last visited May 1, 2008).

many other outdoor activities co-exist with traditional agricultural practices and, in many cases, benefit from the act of farming, which creates large open spaces. This means, in many cases, new activities and enterprises they support can be woven into existing patterns of land ownership and farming operations rather than replace them. You do not have to take the cattle off the pastures to enjoy the land through other uses. Bike trails and rivers flow through agricultural landscapes without interfering with its uses. While some activities such as wetland or prairie restoration might not accommodate row crops, our system of property ownership leaves the choice to the owner of what crop to raise, or whether to raise anything at all. This is why landowners' conservation motivations and desires are critical for private land stewardship. In addition to interweaving new public-type activities with existing farms, there are significant opportunities for agritourism, with new ventures being directly farm-based. The interest in having visitors stay on the farm and experience rural life, engage in harvest activities, festivals, and other similar activities has seen a significant upsurge in recent years.<sup>62</sup>

#### *7. New Enterprises Bring New Talents and Leadership to Local Communities*

One reality of political life in many rural areas is the declining population, especially among young and educated residents. As young people move away or fail to return home after college, the talent pool of the area may be reduced, placing even more demands on the individuals who remain. The truth is that many rural areas do not lack good ideas as much as the people needed to carry them out – to chair the committee, write the grant, and organize the festival.<sup>63</sup> One benefit of attracting and creating new natural resource-based enterprises is that the individuals engaged in them can be the source of new community leadership. The new energy, ideas, and economic motivation of these entrepreneurs can give new leadership capacity to the organizations most responsible for supporting local development. From an institutional perspective, the entities to promote natural resource development already exist in the form of county conservation boards, soil and water conservation districts, local economic development boards, and Resource Conservation and Development Districts. But what

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62. See Nat'l Agric. Law Center, Reading Room: Agritourism, <http://www.nationalaglawcenter.org/readingrooms/agritourism/> (The National Agricultural Law Center's Reading Room on the issue of Agritourism incorporates a rich diversity of resources ranging from state laws, court cases, articles, books, and research reports.).

63. See, e.g., Editorial, *Nurture the Revitalization of Rural Iowa: Population Losses in Non-Urban Areas Preview Statewide Struggle*, DES MOINES REG., Dec. 17, 2006, at 1A (discussing the challenges associated with declining rural populations).

these groups often need is more local involvement and new individuals with the energy and ideas to make things happen.

#### 8. *Natural Resource-Based Activities Connect People with Nature*

The types of activities commonly associated with natural resource amenities, such as fishing, hunting, hiking, bird watching, biking, and horseback riding are experiential and require people to be outside and in contact with the natural world. As a result, people are engaged with natural resource amenities and the land. This direct contact serves as a form of education about nature, while creating new allies in the public debate, such as funding natural resource investments. If you get people out on the rivers or into the countryside to enjoy the experience, they may become supporters of efforts to expand funding for natural resource protection, such as Iowa's Resource Enhancement and Protection (REAP) program.<sup>64</sup> The issue of nature-based education is especially significant for today's youth, who in an age of computer games and the internet are increasingly separated from the natural world.<sup>65</sup> The fears about the environmental illiteracy of children, known as "nature-deficit disorder," have created support for new initiatives, such as "No Child Left Inside" programs of some conservation organizations.<sup>66</sup>

#### 9. *Utilize Valuable Natural Factories Rather than Building New Ones*

One of the most common models of economic development is to seek out new businesses in the hope they will build a new factory and hire hundreds of people. This smoke-stack chasing can yield results if a community succeeds, but the costs of the effort in terms of tax incentives and other subsidies that are required to compete (and the long odds of being successful) can make it a frustrating and often unrewarding approach. One value of focusing on natural resource

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64. The REAP program was created in 1989 and was intended to provide \$20 million a year for funding public land acquisition and conservation efforts, although funding only reached that level in one year, 1991. In 2007, the General Assembly increased REAP funding to over \$128 million and promised even larger increases for future years, however the issue may be conflated with the sustainable funding initiative. See Iowa Code §§ 455A.15-.20 (2008) (providing the legal authority for the program); see also Iowa Dep't of Nat. Res., Resource Enhancement and Protection (REAP) Introduction, <http://www.iowadnr.com/reap/index.html> (providing information about REAP, about the grant application process, and how the funds have been used).

65. See RICHARD LOUV, *LAST CHILD IN THE WOODS: SAVING OUR CHILDREN FROM NATURE-DEFICIT DISORDER* (2005) (the book responsible for bringing this concern to national attention).

66. See Univ. of Mont., ECOS Program – No Child Left Indoors!, <http://www.bioed.org/ecos/> (providing an example of efforts to increase educational opportunities for children).

based development is to facilitate a change in attitudes that recognizes all rural communities are surrounded by millions of dollars of investments in natural factories. The farm fields, forests, grasslands, and rivers of rural America are valuable and productive resources, many of which are almost impossible to recreate. But what is often missing is the recognition of these values and the willingness to consider new ways to unlock or harness their economic potential. By focusing on natural resources and land, we can take advantage of the natural “factories” already existing in rural areas – the land, water and sunlight – and utilize the products these factories produce, from wildlife and switch grass to forest products and recreation experiences. Turning part of the focus of rural development to land and natural resource amenities would mean not having to find new money for buildings and factories, but promote investing in the natural factories already present in rural areas. The effort to reconnect Iowans with the extensive network of rivers and streams flowing through the state is a perfect example of the opportunities available by using existing natural resources.<sup>67</sup> One of the most fundamental lessons to be drawn from the rapid expansion of ethanol plants in the rural Midwest is a recognition that the regions are not as wealth or capital poor as many like to believe. Instead, what ethanol investments show is the need for the right economic keys to unlock accumulated land wealth and promote investments in rural areas.

#### 10. *New Generation Landowners Bring New Attitudes and Expectations for Land Use*

One of the most significant social forces underway in rural Iowa is the transition of land ownership to a new generation. Recent studies by Professor Mike Duffy at Iowa State University reveal an increasingly concentrated land ownership pattern by an aging population with over twenty-five percent of Iowa’s rural land owned by people over seventy-five and perhaps as much as fifty percent owned by those over sixty-five.<sup>68</sup> Natural processes of aging and death mean a significant amount of land both in percentage and acres will be changing hands in the next decade.<sup>69</sup> This period of transition creates both prom-

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67. See, e.g., Mike Kilen, *Webster City Paddles to River for a Rebirth*, DES MOINES REG., June 7, 2007, at E1 (Webster City recognized the value of the long overlooked Boone River.); see generally Mike Kilen, *Rapid Rise in River Paddlers Keeps Rolling Along*, DES MOINES REG., Aug. 6, 2007, at E1.

68. Mike Duffy, Iowa St. Univ. Extension, *Trends in Iowa Farmland Ownership*, (Oct. 2004), available at <http://www.extension.iastate.edu/agdm/articles/duffy/DuffyOct04.htm> (providing information about land values and land ownership patterns in Iowa).

69. See Community Vitality Center, *Iowa Transfer of Wealth*, <http://www.cvcia.org/content/wealth.transfer/index.html> (studying wealth transfer in Iowa and developing an interactive

ise and peril for those concerned about the future of natural resources. The peril is that the transition and the current high land values may place additional pressures to convert natural lands, pastures, timber, and grass waterways to corn production. There is also promise in this transition, especially if land is acquired by new owners with different objectives for using it. At least a portion of the people buying land in rural Iowa (from small market farmers to nature lovers and hunters) bring different attitudes and expectations to the land and its management than traditional farmland owners.<sup>70</sup> Many of these new owners have a longer term, multi-use perspective, and are seeking to enhance natural amenities. In time, these landowners and rural residents may represent a new political voice. At least some of them may be more willing to consider non-traditional approaches to resource management and stewardship, such as collective management of privately owned land to promote non-competing forms of public use like trails.

### III. PRIVATE LAND STEWARDSHIP AND THE CONTEXT FOR EXPANDING PUBLIC USE

To understand the opportunity for expanding the use of natural resource amenities to support rural economic development it is important to consider the context of private property ownership and attitudes toward stewardship on private lands. The starting point in the U.S. property rights system is the essential bifurcation of land being either:

- a) private property, with all the rights and restrictions this entails; most significantly, the owners right to exclude all other users from the land; or
- b) public ownership with all this entails, in terms of public use, control, and management, as well as cost of acquisition and maintenance.

One effect of this approach means there has been little if any development of a middle ground in our attitudes about “who” owns the land. In particular, there has been little effort to develop intermediate models to either allow forms of public use on private land, with or without compensation, or to manage private lands to maximize and produce public benefits. We spend great amounts of public financial resources on private land, such as the billions spent each year

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report making it possible to predict the amount of land and wealth which may transfer in Iowa counties).

70. There are weekly advertisements in the Sports section of the Des Moines Sunday Register titled “Hunting Land and Lodging,” offering land for sale for hunting and outdoor recreation. See Advertising, DES MOINES REG., Sept. 23, 2007, at C15 (Consider the terms of this listing, “Decatur Co – 805 acres with timber, CRP and food plots fenced off from pasture and tillable acres. 11 ponds. Great opportunity to buy a farm managed for big bucks.”).

to fund the CRP, and soil conservation cost sharing programs.<sup>71</sup> Except for limited development at the state level to expand hunting access on private land through the “open fields” model,<sup>72</sup> we have not looked closely for opportunities to use publicly funded conservation programs to obtain more direct public use benefits.

As a result, there are only limited examples of coordinated programs to promote public use of private land. More significantly, there is a perception that public use and private ownership are in conflict and non-compatible. The one exception has historically been for farmers to allow hunting as long as permission is requested. But even this tradition may be changing as more interest develops for fee hunting, which raises its own issues as to public land access. The public/private property issue is exacerbated in the United States by the legal status of wildlife and hunting issues. Wildlife is considered a public resource, but much of the habitat on which it resides is private land. The public has to buy a license from the state (and perhaps federal government) to hunt, but then also has to find land on which to hunt. For the most part, landowners have little economic incentive either to enhance wildlife habitat or to make their land open for hunting.<sup>73</sup> This means that for hunters the options are either the traditional free use of private land (if you can find willing landowners), the use of public hunting refuges, or the increasingly common “fee hunting,” where hunters pay landowners to hunt on the land – though not for the wildlife (this is the difference between hunting on private game farms or reserves). The effect is to increase competition for hunting land, to increase the pressure on limited public land, and to increase the possible costs of hunting, or have larger tracts of private land “locked up” with private leases.<sup>74</sup> An even more costly alternative is for hunters to buy tracts of rural land specifically for hunting. This trend has driven up land values in many parts of rural America and raises its own set of challenges, such as conflicts be-

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71. See USDA, Conversation Reserve Program: Monthly Summary – Aug. 2007, [http://www.fsa.usda.gov/Internet/FSA\\_File/aug2007.pdf](http://www.fsa.usda.gov/Internet/FSA_File/aug2007.pdf) (providing information about the current level of enrollment in CRP).

72. The “open fields” idea is to create programs to compensate landowners who keep their land open for use by hunters. For information about the initiative, including an article titled *Guaranteeing Public Access for Hunting and Fishing Through “Open Fields,”* and information about efforts to include federal authorization in the 2007 farm bill, see Theodore Roosevelt Conservation Partnership, [http://www.trcp.org/ea\\_openfields.aspx](http://www.trcp.org/ea_openfields.aspx).

73. The version of the 2007 Farm Bill passed by the House, H.R. 2419, includes section 2302 – “Voluntary Public Access and Habitat Incentive Program” – adding an open fields program and authorizing \$20 million per year for use in incentives for landowners. Food, Nutrition, and Bioenergy Act of 2007, H.R. 2419, § 2302 (2007).

74. See, e.g., Jerry Perkins, *Hunters Gaining Ground: With Recreational Areas Scarce in Iowa, Sportsmen Turn to Leasing Land*, DES MOINES REG., May 20, 2006, at D1.

tween locals and absentee owners; however, it may create opportunities for the use or management of the land during non-hunting times.<sup>75</sup>

The split view of public and private land has many effects. It makes many private owners fearful of allowing any form of public use due to worries about liability if someone is injured, or not wanting to place any restrictions on the use of their land.<sup>76</sup> The effect has been to funnel public efforts to expand opportunities for public land-based activities into acquiring additional land for public ownership. This means the political attention has focused on funding to make acquisitions, such as the current legislative efforts in Iowa to increase funding for REAP, and on finding a mechanism to support sustainable long term conservation funding.<sup>77</sup>

The limitations on the reach of public ownership include the cost to acquire land and the costs and challenges of maintaining it. The limited amounts that can be acquired by the public in turn can lead to over-use and competition for the resource by the public.

Public ownership is certainly justified for many lands and for many uses, such as state parks and campgrounds, but it is clear that land does not always have to be in public ownership to yield public uses. It is also clear that we have never attempted to inventory privately owned land to examine its uses, and then asked what types of public uses might also be accommodated on that land. This inquiry could explore how private owners who want to participate could be compensated for allowing public uses and maintaining or enhancing the natural resources needed to support them. For example, a group of private landowners

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75. See, e.g., Tom Vaughn, *In Illinois, Hunters Discover Ideal Setting for Trophy Bucks*, N.Y. TIMES, Apr. 14, 2007, at D4 (noting that land values in Pike County Illinois have increased over \$80 million in recent years largely due to increased land demand from hunters interested in whitetail deer). A similar phenomenon has been reported in south central Iowa around Lake Rathbun where the "Albia Buck" effect (the world record whitetail deer was shot in this area) is reported to have added at least \$500 an acre to the price of land in a four county area. See Juli Probasco-Sowers, *World Abuzz over Death of Legendary Albia Buck*, DES MOINES REG., Oct. 11, 2003, at B1.

76. The fears relating to potential liability if users are injured have been addressed in the various recreational use laws passed in most states, including Iowa's Chapter 461C "Public Use of Private Lands and Waters." IOWA CODE ch. 461C (2008).

77. See SUSTAINABLE FUNDING FOR NAT. RES. STUDY COMM., FINAL REPORT (Mar. 2008), available at [http://www.iowadnr.com/sustainablefunding/files/07mar01\\_final.pdf](http://www.iowadnr.com/sustainablefunding/files/07mar01_final.pdf). The 2007 General Assembly continued the initiative for another year and the committee has continued to meet to develop ideas for the 2008 session.

could be compensated for establishing and maintaining a set of hiking or horse riding trails along their fields' edges.<sup>78</sup>

The challenge is developing a mechanism to encourage private owners to open their lands for private use. One question to consider here is: What would it take for a private landowner to be willing to allow some forms of public use of a property? Here are some possible answers:

1. Protections from liability for anything that might happen to people while they are on the land, even if compensation is provided.<sup>79</sup>
2. An ability to be compensated if there were damages or other harm that happened, e.g., crops destroyed or fences damaged.
3. Some assurance of adequate supervision or management with increased public safety patrols by the game warden, sheriff, or county conservation board.
4. Clear designations as to which property is open for public use and which is not, such as through signage and other markings, and an indication of the types of activities allowed.
5. A process for establishing well-understood limitations on the extent of public use – such as time and manner restrictions – e.g., permitting walking only on trails or closing land to public use during hunting season or calving.
6. Forms of compensation to provide significant economic benefits or tax breaks for participating in the program.
7. Some form of restriction or record-keeping so users can be identified and informed of the rules, permit fees can be collected, and user rights and obligations communicated.
8. Some method of public recognition and acknowledgement for providing the public benefits.

The effect of our current dualistic approach to private and public lands makes it easy for private landowners to take the view that it is not their responsibility to provide any form of recreational uses for people – that it is the public

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78. See, Jerry Anderson, *Britain's Right to Roam: Redefining the Landowner's Bundle of Sticks*, 19 GEO. INT'L ENVTL. L. REV. 375 (2007) (discussing the issue of access to footpaths, which is established in Britain as the "right to roam").

79. Iowa's law protecting land owners from liability for allowing public use of land provides in part "a holder of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes or urban deer control does not . . . assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons." IOWA CODE § 461C.4 (2008). Because the law does not provide liability protection when users are asked to pay a price or fee for permission to use the land, it will be important for proposals to increase public use to deliver any compensation to landowners through some form of public benefit, such as a tax credit or direct payment, rather than a user fee paid directly to the landowner.



role. A related view may be that if people want to use land, they should buy their own, since that is what other private landowners have always done.

Another effect of this dual approach is that it makes any public effort to acquire additional land appear as competition with private buyers for the limited amounts of land on the market. One side effect of focusing public efforts for resource protection on land acquisition is the predictable and on-going conflict with political groups and farm organizations such as the Iowa Farm Bureau Federation. These groups oppose taking land out of production and off the tax rolls by placing it in public ownership.<sup>80</sup> It is hard to dispute that there may be some local economic effect when farmland is taken out of agricultural production for other uses, but this effect may be offset by the increase in economic activity associated with other recreation and conservation uses. Consider how different our attitude to public ownership might be if private owners saw the public as an alternative source to finance the cost of land acquisition, or as potential sources of employment and economic activity for their families. For example, wouldn't it be nice to graze your cattle on land owned by the county conservation board rather than having to own the land yourself? This would not negatively affect the public as long as the grazing is managed to promote recreation and wildlife habitat. The grazing might even generate additional funds for the public, and could be beneficial for the land. If open grasslands are not grazed or managed with fire over time, they revert to cedar trees and scrub timber, meaning grazing can actually promote conservation values if done correctly.

There are other concerns and limitations with our current understanding and attitude toward the private/public land ownership and use dichotomy. Perhaps most significant is the need to acknowledge the reality that if we assume public ownership is the only way to protect certain natural resource features (such as wildlife habitat) or to obtain environmental values, then we will never have adequate public funding to do all that is needed. Another serious consequence of this dualistic approach is how it has the effect of letting private landowners off the hook from accepting any duty or responsibility to the public. This is true even though Iowa law has long provided an extensive jurisprudential basis for expecting private landowners to protect land and soil resources.<sup>81</sup>

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80. See Perry Beeman, *Farm Bureau Urges Use of Vacant Land*, DES MOINES REG., Sept. 17, 2006, at B4.

81. *Benschoter v. Hakes*, 8 N.W.2d 481, 487 (Iowa 1943) (in which the Iowa Supreme Court addressed the responsibilities of farmland owners to protect the soil as a function of their public responsibility as landowners); IOWA CODE § 161A.43 (2008) (providing a similar duty relating to soil conservation).

#### IV. CONCLUSION – MOVING BEYOND THE PUBLIC-PRIVATE DIVIDE

To help move beyond the current division we need to acknowledge several important ideas. First, there are many private landowners committed to stewardship on their lands. That is why we have the natural resources we do. The rivers, forest, hills, timbers and other resources the public is interested in seeing conserved or open for public use would not exist if private landowners had not protected and stewarded them over the years. Second, we need to work harder to promote and accommodate the private stewardship needs of existing landowners, such as by providing the resources and technical support needed to protect and enhance their lands. Third, if we fail to even consider how private ownership and public use can co-exist, then we will continue to miss important opportunities to support private stewardship and expand public opportunities to use and enjoy natural resources. Further, we will continue to fuel tensions corroding the debate over expanding private land stewardship and public opportunities for outdoor recreation and conservation. What is needed is an effort to examine the types of models, experiences, examples, and opportunities available to develop more “intermediate” forms of land ownership and use based on private ownership, but also allowing for expanded public uses.

A second way the tensions between private land stewardship and expectations for public protections can be addressed is for individuals to take more responsibility. Citizens can lament the lack of action by the legislature or Governor, but any setbacks in protecting Iowa’s environment are not an excuse to ignore who is truly responsible. The answers to safeguarding Iowa’s natural resources – whether our land, water, soil, wildlife or natural features – are not going to be found only under the Capitol’s golden dome. This responsibility and duty is one we all share as citizens, especially if we own any of Iowa’s land, the foundation of our natural environment.

For Iowa to have a brighter future with clearer rivers and streams, lakes we can enjoy, cleaner air, and more places to recreate and experience nature’s beauty, it will take the efforts of all citizens and landowners. Rather than letting the future be determined by a handful of elected officials, we each have a responsibility to the land. If we fail in our duty of stewardship no public law or regulation will correct our actions or protect the state’s future. However, if landowners embrace the responsibility of private land stewardship and environmental protection, Iowa can reclaim the commitment to land conservation that once defined our state. Here are ten actions individuals should consider to advance private land stewardship goals:

1. Serve on the board of a local conservation organization, such as the soil and water conservation district, county conservation board, or the city park

commission; opposed to complaining about what is happening in your area, be part of the answer.

2. Consider how you manage your property – whether a farm, acreage or home. What are you doing to protect water quality, create wildlife habitat or enhance its natural beauty? What are the long-term stewardship opportunities for your land, how will you leave it, and what will its future be once you no longer own it?

3. If your land has special features, explore the opportunities for its long-term protection. Your land's future doesn't have to be left to chance, or to the promises of the next buyer, or even to your children's whims – there are tools you can use now to determine how the land will be used. The Iowa Natural Heritage Foundation's new book "Landowner's Options: Safeguarding Iowa's Natural Resources for the Future" explains the options and economic effects.

4. Consider volunteering for a local conservation effort, such as a river clean-up, prairie restoration, or trail improvement. Involve a child if you can – yours if you have one, but a friend or relative's as well. Opening the eyes and minds of Iowa's next generation to nature is an important action we can take today.

5. Learn more about your own property – what species live on it, what is the water quality in the pond, and what unique physical features does it bear. Iowa is a state of private property owners so we bear responsibility for the land's future.

6. Decide if there is a way the land you own can be used to create opportunities for public use. If a stream runs through it do you have a place for canoe access? Would it be possible for local residents to use your farm lanes as walking trails? Iowa law protects landowners who allow recreational use from liability. By being creative we can provide new recreation opportunities without always requiring public land acquisition.

7. Join one of Iowa's many conservation organizations such as the INHF, Audubon, Sierra Club, Pheasants Forever, Ducks Unlimited, Nature Conservancy, Iowa Environmental Council, or the Iowa Prairie Network. These groups need you – your time, energy, ideas, passion and even your money – to support their work.

8. Talk about land stewardship with family, friends, and neighbors, as well as in the community. Consider what might happen if we had a state-wide dialogue on how private landowners can make Iowa an even better place to live.

9. Expect more from representatives and organizations in how they address the environment. Does your employer have programs to support protecting land and natural resources? Do your civic organizations, farm group, church, or school make any efforts to assist private landowners in enhancing the environment?

10. Identify how to be involved and take action, any action – write a check, donate an easement, build a trail, clean a stream, talk to local officials – but be engaged. If we each accept our duty of stewardship to protect and conserve the land, Iowa’s future can be brighter and more fulfilling for all our people.