

HOW A NEW FARM BILL WITH A TWIST ON CONSERVATION EASEMENTS CAN SAVE THE ENVIRONMENT AND THE FAMILY FARM

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*“[O]nce in your life you need a doctor, a lawyer, a policeman and a preacher
but every day, three times a day, you need a farmer.” – Brenda Schoepp¹*

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1. BRENDA SCHOEPP, <http://brendaschoepp.com/> (last visited Apr. 5, 2022).

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I. INTRODUCTION

This Comment discusses how a single solution can solve two seemingly unrelated issues.² The first of these issues is the loss of natural lands due to the rapid outward expansion of urban cities permanently damaging the environment.³ The second issue is the federal estate tax inhibiting agricultural landowners from passing their land on to the next generation resulting in forced land sales.⁴ Both threaten private landowners throughout the United States.⁵ Individuals, organizations, and currently enacted programs under the Agriculture Improvement Act of 2018 (the farm bill) have proposed solutions addressing these daunting matters.⁶ However, this Comment is the first to craft a solution for both simultaneously.⁷

Once concrete is poured and skyscrapers are built, one will never recover the land below that once fostered carbon-sequestering plants and soil.⁸ The conversion of Earth’s land surface to urban uses is occurring daily on a worldwide scale and is one of the most irreversible human impacts on the environment.⁹ Since 1910, the urban population has grown by nearly 500%.¹⁰ Meanwhile, the rural population has grown by only 19%.¹¹ As of 2010, 81% of the U.S. population was considered urban.¹² The outward expansion of cities results in the loss of productive farmland, alters the climate, fragments habitats, and reduces biodiversity.¹³ Furthermore, for decades, urban land expansion rates have been higher than urban population growth.¹⁴ “[B]etween 1982 and 2002, the amount of developed land

2. See *infra* Part III.D (discussing the proposed solution).

3. See *Urbanization and Population Change*, EPA, <https://cfpub.epa.gov/roe/indicator.cfm?i=52> (last visited Apr. 5, 2022); see also Karen C. Seto et al., *A Meta-Analysis of Global Urban Land Expansion*, PLOS ONE (Aug. 18, 2011), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0023777>.

4. See JOE L. OUTLAW ET AL., ECONOMIC IMPACTS OF THE SENSIBLE TAXATION AND EQUITY PROMOTION ACT AND THE FOR THE 99.5 PERCENT ACT ON AFPC’S REPRESENTATIVE FARMS AND RANCHES, at 3–5 (June 15, 2021), <https://afpc.tamu.edu/research/publications/files/708/RR-21-01.pdf>; see also JULIA FREEDGOOD ET AL., FARMS UNDER THREAT: THE STATE OF THE STATES (2020), https://s30428.pcdn.co/wp-content/uploads/sites/2/2020/09/AFT_FUT_StateoftheStates_rev.pdf.

5. See *infra* Part II (providing background on the tax structure of conservation easements).

6. See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

7. See *infra* Section III.D (discussing the proposed solution).

8. See *Urbanization - Overview*, EPA, <https://www.epa.gov/caddis-vol2/urbanization-overview> (last visited Apr. 5, 2022).

9. Seto et al., *supra* note 3.

10. See EPA, *supra* note 8.

11. *Id.*

12. *Id.*

13. Seto et al., *supra* note 3.

14. *Id.*

increased at nearly twice the rate of the population.”¹⁵ Each decade since the 1950s, American cities have “expanded by about 10,000 square miles[—]an area roughly the size of Massachusetts.”¹⁶ Accordingly, cities across the world are rapidly expanding outward and consuming the natural environment.¹⁷

Urban expansion places enormous pressure on the development of natural land and productive farmland.¹⁸ It is causing rural land values to increase substantially.¹⁹ In fact, “cropland values have more than tripled since 1997.”²⁰ As a result, farmers, ranchers, and other landowners are tempted to give in to the market pressures created by the development boom.²¹ In the last two decades alone, the nation lost more than 17,000 square miles of ranch land and farmland to development or fragmentation.²² Simply stated, the nation is losing carbon-sequestering land.²³ Conservation easements have been a proven and useful tool for landowners and environmentalists with an interest in conserving land.²⁴ However, these easements have some major pitfalls that make landowners reluctant to adopt them.²⁵

To address the second issue, the federal estate tax, consider the following example: Tom and Jane Thompson operate a farm that has been in their family for five generations. They would like to continue their family heritage and pass the farm on to their children after they pass away. Although they have done everything they could to plan, estate tax legislation is constantly fluctuating, making it hard to determine how much the estate and its beneficiaries will actually owe in estate taxes at the time of transfer.²⁶ Tom and Jane’s land is located near a rapidly expanding city, so their land value has skyrocketed. Sadly, the day has come where Tom and Jane have passed away. While still mourning the loss of their parents, the children, with an intent to continue the farm, receive a crippling estate tax bill worth over one million dollars. The children, as heirs of the estate, have only nine months

15. See EPA, *supra* note 3.

16. Issi Romem, *Has the Expansion of American Cities Slowed Down?*, TERNER CTR. FOR HOUS. INNOVATION (Apr. 18, 2016), <https://ternercenter.berkeley.edu/research-and-policy/has-the-expansion-of-american-cities-slowed-down/>.

17. Seto et al., *supra* note 3.

18. *Id.*

19. See *Texas Land Trends*, TEX. A&M NAT. RES. INST., <https://nri.tamu.edu/programs/land/texas-land-trends/> (last visited Apr. 5, 2022).

20. See OUTLAW ET AL., *supra* note 4, at 5.

21. *Id.*

22. See FREEDGOOD ET AL., *supra* note 4, at 63.

23. *Id.*

24. See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

25. See *infra* Section II.A (discussing frequent federal estate tax fluctuations).

26. See WILLIAM P. STRENG, ESTATE PLANNING, at A-13 (17th ed. 2017). Landowners have no way of determining when they are going to pass away and do not know what the tax law will be at the time of their death when the tax is imposed on their heirs. See *id.* This makes estate planning vastly unpredictable. See *id.*

to pay the tax. The only way for them to come up with enough money is to sell their land and equipment, which they depend on to earn their livelihood. They end up selling the land to a subdivision developer to pay off the tax. The land that was once a productive, natural space that sequestered carbon, contributed to the nation's food and fiber supply, and provided jobs for rural Americans is now gone forever. The heirs, in their mid-thirties with children of their own, have no choice but to find a new way of life.

Unfortunately, this scenario is happening frequently and is likely to be even more prevalent if currently proposed tax code changes are enacted into law.²⁷ Farming and ranching are cash-poor businesses, and while a farmer or rancher may be worth millions of dollars, the vast majority of their asset valuation is in land, livestock, and farming equipment, not money in the bank.²⁸ Further, as cities expand and property values surge, the value of farmers' land has increased substantially while their modest incomes have remained stagnant.²⁹

The federal estate tax burden is causing owners of natural land and productive farmland to have no choice but to sell their property, resulting in more land being developed.³⁰ Agricultural producers are immensely sensitive to changes in estate tax legislation because much of their net worth is traditionally comprised of land and equipment.³¹ Given recent trends in land values, that concern is even more prevalent.³² Proposed changes to the Tax Code that create additional financial burdens on those hoping to inherit family operations could be the final nail in the coffin for family farms.³³

Therefore, Congress should enact a new farm bill with a twist on conservation easements to secure the nation's natural land and food supply. This Comment discusses a new approach to land conservation legislation.³⁴ Comparing the pros and cons of current conservation easements and farm bill conservation programs, this Comment proposes a new conservation tool.³⁵ The proposed program, called the Next Generation Conservation Program, will address the areas where traditional conservation measures fall short.³⁶ With the Next Generation Conservation Program,

27. See OUTLAW ET AL., *supra* note 4, at 15–17; see also North Carolina Farm Bureau, *Estate Tax*, YOUTUBE (May 20, 2021), <https://www.youtube.com/watch?v=3YnhRHmvow0>.

28. OUTLAW ET AL., *supra* note 4, at 5.

29. See *Farming and Farm Income*, USDA ECON. RSCH. SERV. (Feb. 4, 2022), <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/>; see also OUTLAW ET AL., *supra* note 4, at 3.

30. See *infra* Part II (discussing the federal estate tax burden).

31. See *infra* Part II (discussing the federal estate tax burden).

32. ADDIE SMITH ET AL., STATUS UPDATE AND TRENDS OF TEXAS WORKING LANDS, at 1 (Dec. 2019), https://nri.tamu.edu/media/2707/texas-land-trends_status-update-and-trends-of-tx-working-lands.pdf.

33. See OUTLAW ET AL., *supra* note 4, at 15–17.

34. See *infra* Section III.D (discussing the proposed solution).

35. See *infra* Section III.D (discussing the proposed solution).

36. See *infra* Section III.A.1 (discussing conservation easements).

agriculturists will be able to conserve their land for generations rather than giving in to market pressures and selling into industrialization.³⁷ Along with improved conservation, this program also addresses and solves some of the major issues impacting agriculture today.³⁸

In sum, this Comment proposes more effective land conservation legislation through estate tax incentives that should be established in the next farm bill. Part II provides a background on traditional conservation easements and conservation programs currently enacted under the farm bill.³⁹ Section III.A analyzes why landowners are reluctant to donate conservation easements or join the current farm bill conservation programs and how the proposed program (the Next Generation Conservation Program) would be a more effective approach.⁴⁰ Next, Section III.B discusses why agriculture is the solution to land conservation, and Section III.C analyzes the challenges, changes, and hardships faced by agriculture and how this new conservation program can work to solve them.⁴¹ Finally, Section III.D outlines the Next Generation Conservation Program and how it can affect long-term conservation, promote a healthy environment, and secure the nation's food and fiber supply.⁴²

II. BACKGROUND

Providing the right incentives is essential to ensuring landowner participation in conservation practices.⁴³ The current approaches to land conservation are conservation easements and farm bill conservation programs.⁴⁴ Traditional incentives for conservation through these two methods are income tax deductions and cost-sharing.⁴⁵ This section analyzes the traditional incentives used to encourage the adoption of conservation easements and, most importantly, the tax burden that is notorious for inhibiting conservation altogether: the federal estate tax.⁴⁶

37. See *infra* Section III.B (explaining relationship between agriculture and conservation).

38. See *infra* Section III.C (discussing specific challenges to agriculture production).

39. See *infra* Part II (providing background on conservation easements and conservation programs currently enacted under the farm bill).

40. See *infra* Section III.A (analyzing why landowners are reluctant to adopt current conservation methods).

41. See *infra* Section III.B–C (discussing why agriculture is the solution to land conservation, as well as the solution to current challenges in agriculture).

42. See *infra* Section III.D (discussing the proposed solution).

43. See *infra* Part II (discussing the current incentives behind conservation measures).

44. See *infra* Part II (discussing the current approaches to land conservation).

45. See *infra* Part II (discussing conservation incentives).

46. John Newton & Patricia Wolff, *Estate Taxes Are a Threat to Family Farms*, AM. FARM BUREAU FED'N (Oct. 19, 2020), <https://www.fb.org/market-intel/estate-taxes-are-a-threat-to-family-farms>.

A. Conservation Easements

The tax deductions granted to landowners who donate perpetual conservation easements serve as a way to incentivize environmental protection and natural resource conservation.⁴⁷ Currently, conservation easements protect about 30 million acres from development.⁴⁸ However, the Biden Administration has recently outlined a plan with a goal of substantially increasing the amount of land protected from development.⁴⁹ Increased landowner participation is vital to achieve this environmental protection initiative.⁵⁰ In order to get more landowners to voluntarily conserve their land, lawmakers should consider an estate tax exemption.

1. What Is a Conservation Easement?

A conservation easement is a written legal agreement between a landowner and the “holder” of the easement.⁵¹ The holder may either be a government agency or a qualified conservation organization known as a land trust.⁵² Conservation easements permanently restrict land from being developed for the rest of time, even if the property changes ownership.⁵³ Landowners subject to a conservation easement retain legal possession of the land but grant the holder of the easement “the right to periodically assess the condition of the property to ensure that it is maintained according to the terms of the legal agreement.”⁵⁴ A landowner without an easement restriction has the right to manage resources to their liking, change use, and build upon their

47. See *Income Tax Incentives for Land Conservation*, LAND TR. ALL., <https://www.landtrustalliance.org/topics/taxes/income-tax-incentives-land-conservation> (last visited Apr. 5, 2022); see generally C. TIMOTHY LINDSTROM, A TAX GUIDE TO CONSERVATION EASEMENTS (2008).

48. LOGAN YONAVJAK & TODD GARTNER, GAINING GROUND: INCREASING CONSERVATION EASEMENTS IN THE U.S. SOUTH, at 4 (Aug. 2011), https://files.wri.org/d8/s3fs-public/pdf/gaining_ground.pdf.

49. DEB HAALAND ET AL., CONSERVING AND RESTORING AMERICA THE BEAUTIFUL *passim* (2021), <https://www.usda.gov/sites/default/files/documents/conserving-restoring-america-the-beautiful.pdf> (stating a goal of conserving at least 30% of America’s lands and waters by 2030). “Rather than simply measuring conservation progress by national parks, wilderness lands, and marine protected areas in the care of the government, the President’s vision recognizes and celebrates the voluntary conservation efforts of farmers, ranchers, and forest owners.” *Id.* at 6 (quoting the Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and the Council on Environmental Quality).

50. See *id.*

51. TEX. NAT. RES. CODE ANN. § 183.001(2)(A) (providing an example of the Texas statute; however, most states have similar legislation).

52. See *id.* §§ 183.001(2)(A)–(B). For information on agricultural conservation easements, see TEX. PARKS & WILDLIFE CODE ANN. §§ 84.001–.005.

53. TEX. NAT. RES. CODE ANN. §§ 183.001(2)(A)–(B); TEX. PARKS & WILDLIFE CODE ANN. §§ 84.001–.005.

54. See JEFF FRANCEL ET AL., CONSERVATION EASEMENTS: A GUIDE FOR TEXAS LANDOWNERS, at 2 (2003), <https://hillcountryconservancy.org/wp-content/uploads/2009/04/conservation-easements.pdf>.

property.⁵⁵ However, a landowner subject to a conservation easement does not enjoy the same rights, and their land use is permanently restricted.⁵⁶

In legal terms, a conservation easement is a “nonpossessory interest of a holder in real property.”⁵⁷ These easements impose limitations or obligations on the holder for the purpose of retaining or protecting natural, scenic, or historical values of real property or to ensure its availability for agricultural, forest, recreational, educational, or open-space use.⁵⁸ Other purposes of conservation easements outlined in the Texas Natural Resources Code include maintaining or enhancing air and water quality; preserving architectural, archeological, or cultural aspects of real property; and protecting natural resources.⁵⁹ Both federal and state governments recognize conservation easements for legal and tax purposes.⁶⁰

2. Income Taxes: The Current Conservation Easement Incentive

Landowners are drawn to conservation easements because of their tax benefits.⁶¹ Under current law, a landowner who donates a conservation easement is entitled to income tax deductions.⁶² However, to be eligible for the income tax deduction, the easement must be perpetual and apply to all future landowners, be donated to a qualified organization, and meet one of the conservation purposes included in the Internal Revenue Code.⁶³ Income tax benefits are the largest tax benefit of conservation easements.⁶⁴ However, income tax deductions only last for sixteen years, while the conservation restrictions are perpetual.⁶⁵

55. *Id.*

56. *Conservation Easement: A Property Rights Based Tool for Resource Protection*, WECONSERVEPA, <https://conservationtools.org/guides/19-conservation-easement> (last visited Apr. 5, 2022).

57. TEX. NAT. RES. CODE ANN. § 183.001(1)(A).

58. *Id.*; 26 I.R.C. § 170(h).

59. TEX. NAT. RES. ANN. CODE §§ 183.001(1)(B)–(D) (providing an example of the Texas statute; however, other states have passed similar legislation).

60. *Id.* § 183.001(1)(A); 26 I.R.C. § 170(h).

61. *See* TEX. NAT. RES. CODE ANN. § 183.001(1)(A); 26 I.R.C. § 170(h).

62. 26 I.R.C. § 170(h).

63. *Id.* Section 170(h) of the Internal Revenue Code provides an income tax deduction for charitable contributions generally, and section 170(f) imposes limitations on the contributions for which a deduction is available. *Id.* §§ 170(h), (f). Section 170(h) provides a charitable income tax deduction for donations of qualified conservation contributions. *Id.* § 170(h). An easement must satisfy three basic requirements to be deemed a “qualified conservation contribution”: (i) it must be donated to a qualified organization; (ii) it must be granted in perpetuity; and (iii) it must serve one or more of four statutorily prescribed “conservation purpose[s].” *Id.* § 170(h)(4)(A).

64. *Id.* § 170(h).

65. *Id.* § 170(b)(1)(E)(ii).

3. Estate Taxes: A More Sensible Conservation Incentive

Although income tax deductions are the traditional incentive behind conservation easements, there is another tax that specifically burdens landowners' ability to conserve that is not currently prioritized by conservation initiatives: the federal estate tax.⁶⁶ The federal estate tax is a tax imposed on the transfer of property at the time of death.⁶⁷ The amount of estate tax liability is determined by the total net value of the property being transferred.⁶⁸ The estate tax exemption limit in 2020 was \$11.58 million.⁶⁹ This means that estates valued under \$11.58 million were not subject to the estate tax.⁷⁰ While that seems like a lot of money, the amount is easy to reach when a farm or ranch requiring thousands of acres to operate is located near an expanding city with high property values.⁷¹

Further, the current exemption rate is unusually high and only temporary.⁷² Before the Tax Cuts and Jobs Act was passed in 2017, the estate tax exemption was only \$5.49 million.⁷³ Moreover, the estate tax exemption of \$11.58 million per person is set to expire in 2025.⁷⁴ Therefore, in 2026 the estate tax exemption reverts to \$5 million per person.⁷⁵

This reversion is bad news for landowners who earn their living from their land because it means they will be much more likely to have to pay the estate tax. Estate taxes are of particular concern for farmers and ranchers because they are calculated based on the value of the assets in the estate.⁷⁶ Farmers and ranchers often require millions of dollars in land and assets to operate but frequently break even, lose money, or earn very small profits from year to year.⁷⁷ The majority of farmers' and ranchers' net worth is traditionally comprised of fixed assets such as land, livestock, and equipment.⁷⁸ For perspective, combines (machinery used to harvest grain

66. *Id.*

67. *Estate Tax*, IRS (Nov. 15, 2021), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>.

68. *Id.*

69. *Estate and Gift Tax FAQs*, IRS (Dec. 21, 2021), <https://www.irs.gov/newsroom/estate-and-gift-tax-faqs>.

70. *Id.*

71. *See* EPA, *supra* note 8.

72. IRS, *supra* note 69.

73. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017); OUTLAW ET AL., *supra* note 4, at 4.

74. IRS, *supra* note 69.

75. *Id.*

76. *Id.*

77. *See* ROBERT A. HOPPE, STRUCTURE AND FINANCES OF U.S. FARMS: FAMILY FARM REPORT 2014 EDITION, at 42 (Dec. 2014), https://www.ers.usda.gov/webdocs/publications/43913/50364_cib-132.pdf. Many farms have negative incomes from year to year. *Id.*

78. *Id.*

crops) are valued at over \$500,000 each.⁷⁹ Rising land values and asset appreciation have made agricultural producers extremely sensitive to any changes to estate tax legislation.

The federal estate tax burden prevents families from inheriting land and continuing their conservation and sustainable land-use practices.⁸⁰ This tax is notorious for destroying family farming operations and has the power to force heirs to have no option but to sell the land itself just to pay for the tax.⁸¹ A recent study by the Agricultural and Food Policy Center at Texas A&M University found that proposals to repeal the stepped-up basis and decrease the estate tax exemption to as little as \$3.5 million would result in the average farm owing \$1.43 million in additional tax liabilities.⁸² This amount is nearly impossible for farm and ranch families to pay when all of their assets are fixed in land, livestock, and equipment.⁸³

Legislators recognize the estate tax burden imposed on agricultural operations and the important role agriculture plays in conservation.⁸⁴ Accordingly, agricultural conservation easements allow an executor to exclude from the decedent's gross estate up to 40% of the value of land subject to a qualified conservation easement.⁸⁵ However, there is also a requirement that the decedent or the decedent's family own the property for the three years preceding the decedent's death.⁸⁶ Moreover, the amount of the exclusion is limited to \$500,000, which is often far less than the estate taxes owed.⁸⁷ Normally, estate property passes to the transferee on a fair market value basis; however, for conservation easements as to which a 26 U.S.C. § 2031(c) election is made, the transferee takes a carryover basis resulting in higher taxes.⁸⁸ Finally, estate tax incentives only apply if the agricultural easement is perpetual.⁸⁹ Often the only hope to keep land in the family is to restrict it by a conservation easement to make it affordable for the heirs to inherit the property.⁹⁰ This is not voluntary conservation.

79. See *X Series Combines*, JOHN DEERE, <https://www.deere.com/en/harvesting/x-series-combines/> (last visited Apr. 5, 2022).

80. See 26 I.R.C. § 2031.

81. Newton & Wolff, *supra* note 46.

82. OUTLAW ET AL., *supra* note 4, at 3.

83. *Id.* at 4–7. Under stepped-up basis, property is assessed at its current market value, rather than the original price it was acquired for. *Id.* at 3. By ending the stepped-up basis, capital gains taxes would increase. *Id.*

84. See HAALAND ET AL., *supra* note 49, at 6–7.

85. 26 I.R.C. § 170.

86. *Id.*

87. *Id.*

88. *Id.* §§ 170(f)(3), 2031(c).

89. *Id.* § 170(h)(2).

90. See *supra* Section II.A.3 (explaining the problem estate taxes pose on landowners).

4. Changing Tax and Conservation Legislation Under the Biden Administration

As stated above, conservation easements are perpetual.⁹¹ Why then is the tax code constantly changing? The current exemption limit of \$11.58 million is not likely to last long.⁹² The For the 99.5 Percent Act (99.5% Act), introduced in early 2021 by Senator Bernie Sanders, would decrease the estate tax exemption to \$3.5 million.⁹³ Also, the Sensible Taxation and Equity Promotion Act (STEP Act), announced by Senator Chris Van Hollen, proposes to eliminate a stepped-up basis at the transfer of an estate upon death.⁹⁴

The Texas A&M Food and Policy Center conducted a study with the purpose of analyzing the economic impacts of the tax provisions of the 99.5% Act and the STEP Act on farms and ranches.⁹⁵ The study revealed that under current tax law only two of the ninety-four farms and ranches in the study would be impacted by a generational transfer.⁹⁶ Conversely, under the STEP Act, ninety-two of the ninety-four representative farms would be impacted, with additional tax liabilities averaging \$726,104 per farm.⁹⁷ Under the 99.5% Act, forty-one of the ninety-two representative farms would be impacted, with additional tax liabilities averaging \$2.17 million per farm.⁹⁸ If both the STEP Act and the 99.5% Act were simultaneously implemented, ninety-two of the ninety-four representative farms would be impacted, with additional tax liabilities incurred averaging \$1.43 million per farm.⁹⁹

Not only have legislators proposed amendments to the estate tax code, but they have also proposed amendments to conservation easement legislation. Members of Congress have introduced amendments that would disallow many charitable easements and reduce the tax incentives landowners receive for donating conservation easements.¹⁰⁰ Taking away the very incentives that landowners based their decision to donate a perpetual easement on is simply poor public policy. When landowners make their

91. 26 I.R.C. § 170.

92. For the 99.5 Percent Act, S. 994, 117th Cong. (2021–2022).

93. *Id.*

94. Press Release, Chris Van Hollen, U.S. Senator for Maryland, Van Hollen Leads Colleagues in Announcing New Legislation to Close the Stepped-Up Basis Loophole (Mar. 29, 2021), <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-leads-colleagues-in-announcing-new-legislation-to-close-the-stepped-up-basis-loophole>.

95. See OUTLAW ET AL., *supra* note 4, at 6–7.

96. *Id.* at 3.

97. *Id.*

98. *Id.*

99. *Id.*

100. Charitable Conservation Easement Program Integrity Act of 2019, S. 170, 116th Cong. (2019–2020); Charitable Conservation Easement Program Integrity Act of 2021, S. 2256, 117th Cong. (2021–2022); Nancy Ortmeyer Kuhn, *INSIGHT: Charitable Conservation Easements—IRS and Tax Court Act to Shut Them Down*, BLOOMBERG TAX (July 22, 2020, 3:01 AM), <https://news.bloombergtax.com/daily-tax-report/insight-charitable-conservation-easements-irs-and-tax-court-act-to-shut-them-down>.

economic decisions, they count on the tax law not being changed afterwards.¹⁰¹ This undermines taxpayer confidence in the entire system and results in landowners—who would have the ability to make a significant conservation contribution—being deterred from adopting conservation practices altogether.¹⁰² The reductions available to landowners with conservation easements are also constantly changing, although some bills promote higher exemptions for conservation landowners.¹⁰³

In sum, estate tax law is a moving target, making it difficult to prepare for the day a family member is lost and a crippling estate tax bill is received.¹⁰⁴ It is likely that legislators will reduce the estate tax exemption rate by millions of dollars, thus making estate taxes apply to many more family-operated farms and ranches in the near future.¹⁰⁵ If legislators reduce the exemption to \$3.5 million as proposed, almost 75% of the United States' farmable acres will be affected.¹⁰⁶ As described above, many landowners simply cannot afford the tax and will be forced to sell their property.¹⁰⁷ Even if the landowners can pay the tax by acquiring loans and selling assets, their business operation (in an already struggling industry) will experience major setbacks.¹⁰⁸

However, recent governmental actions have shown a desire to provide tax breaks for those who adopt conservation practices.¹⁰⁹ It is essential that these tax breaks strategically target a tax that will naturally encourage long-term conservation: the federal estate tax.

B. Currently Enacted Farm Bill Conservation Programs

The farm bill includes programs that range from support for sustainable farming practices to providing healthy food access to low-income families.¹¹⁰ Congress passes a new farm bill roughly every five years.¹¹¹ It has a significant impact on food production, consumers, and the

101. See Kuhn, *supra* note 100.

102. See *id.*

103. For the 99.5 Percent Act, H.R. 2576, 117th Cong. (2021–2022). For example, H.R. 2576 (to take effect December 31, 2021) would (1) increase the reduction in valuations of farmland for estate tax purposes to \$3 million and (2) increase the maximum estate tax exclusion for contributions of conservation easements to \$2 million. *Id.* It also increases the applicable percentage for such exclusion to 60%. *Id.* In addition to tax benefits provided by the states, beginning December 31, 2021, the Code provides for a federal estate tax exclusion of up to 60% of the value of land encumbered by an easement, subject to a \$2 million cap if certain conditions are met. *Id.*

104. See *id.*

105. *Id.*

106. See OUTLAW ET AL., *supra* note 4, at 3.

107. See H.R. 2576.

108. See *id.*

109. See *infra* Section II.A.2 (explaining the incentive the farm bill has given for land conservation).

110. *What Is the Farm Bill?*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/our-work/campaigns/fbcampaign/what-is-the-farm-bill/> (last visited Apr. 5, 2022).

111. *Id.*

environment.¹¹² President Franklin D. Roosevelt's New Deal legislation enacted the first farm bill.¹¹³ The purpose of the bill was to control food prices, ensure an adequate food supply, and protect natural resources and the environment.¹¹⁴ The same motivations that led to the creation of the original farm bill in the 1930s are still alive today and perhaps even more pressing.¹¹⁵

President Trump signed the 2018 farm bill—also known as the Agricultural Improvement Act of 2018—into law on December 20, 2018.¹¹⁶ Title II of the 2018 farm bill is dedicated to conservation.¹¹⁷ The conservation title includes various programs that provide a means for farmers and ranchers to implement natural resource conservation systems on productive crop and pasture lands.¹¹⁸ The programs included in the 2018 farm bill are discussed in further detail below.¹¹⁹ The conservation programs operated under the current farm bill only make up 7% of the projected funding of the farm bill.¹²⁰ For reference, 76% of the \$428 billion projected for the 2018 farm bill is allocated to the Supplemental Nutrition Assistance Program (SNAP) under Title IV.¹²¹ Previously known as food stamps, SNAP provides a way for low-income Americans to afford food for their families.¹²² Therefore, the conservation title under the Agriculture Improvement Act of 2018 makes up a very small portion of the total expenditure under the farm bill, yet it has the potential to provide enormous benefits for the environment and the world's food supply.¹²³ The following are the main conservation programs currently enacted under the farm bill.¹²⁴

The Conservation Reserve Program (CRP) protects soil, water quality, and habitats by removing highly erodible or environmentally sensitive land from agricultural production through long-term rental agreements.¹²⁵ By signing a CRP contract, farmers agree to remove environmentally sensitive land from production in exchange for a yearly rental payment for a term of

112. *Id.*

113. *Id.*

114. *Id.*

115. *See id.*

116. *Id.*

117. *See Farm Bill*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/farmbill> (last visited Apr. 5, 2022).

118. *Id.*

119. *See infra* Section II.B (discussing current farm bill conservation programs).

120. NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 110. The CSP is also governed by regulations in 7 C.F.R. § 1410.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Farm Bill*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/farmbill/> (last visited Apr. 5, 2022); *2018 Farm Bill Rules*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmbill/?cid=stelprdb1263599> (last visited Apr. 5, 2022).

125. *Conservation Reserve Program*, USDA FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/> (last visited Apr. 5, 2022).

ten to fifteen years.¹²⁶ Rental payments can range from \$10 to \$300 per acre, per year.¹²⁷ The payment amount varies greatly depending on how environmentally sensitive the land is and the respective value of protecting the land.¹²⁸ Data from the United States Department of Agriculture's (USDA) Farm Service Agency reveals that the total annual rental payments under the program in 2020 were nearly \$2 billion.¹²⁹ The CRP is one of the largest conservation programs for private lands in the United States.¹³⁰ This program is most often used to reestablish land cover to help improve water quality, prevent soil erosion, and reduce the loss of wildlife habitat.¹³¹ Similar to a conservation easement, this program works to retire lands from production that are especially susceptible to environmental impacts.¹³² However, land eligible for enrollment under this program must meet certain criteria such as have a high soil erosion index, be located in a conservation priority area, or be cropland capable of being planted in a normal manner to an agricultural commodity.¹³³

The Conservation Stewardship Program (CSP) focuses on promoting sustainable land management.¹³⁴ The CSP helps agricultural producers improve conservation systems and implement additional conservation activities to address natural resource concerns prioritized by the USDA.¹³⁵ This program helps farmers and ranchers increase land productivity by identifying natural resource problems and providing technical and financial assistance to address them.¹³⁶ The CSP is the most commonly used conservation program because it works directly with farmers to address and understand each individual landowner's needs while keeping land productive through sustainable measures.¹³⁷ CSP contracts are for a term of five years, allowing an application for renewal at the end of the contract term.¹³⁸ However, CSP renewals are a competitive process, and not all who wish to conserve under the program are able to do so.¹³⁹ Further, for land to be

126. *Id.*

127. *Id.*

128. *Id.*

129. U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, CONSERVATION RESERVE PROGRAM MONTHLY SUMMARY, at 11 (Sept. 2020), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Conservation/PDF/Summary-September-2020-1.pdf>.

130. *See id.* at 1.

131. *See* USDA FARM SERV. AGENCY, *supra* note 125.

132. *Id.*

133. U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, CONSERVATION RESERVE PROGRAM FACT SHEET, at 2 (Feb. 2022), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/conservation-reserve_program-fact_sheet.pdf.

134. *Conservation Stewardship Program*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/> (last visited Apr. 5, 2022).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *See id.*

eligible for enrollment it must be actively used for producing an agricultural or forest product; all other lands are ineligible.¹⁴⁰ Finally, this program places a cap on the adjusted gross income of prospective applicants.¹⁴¹ In other words, large producers with the most land and most opportunity for environmental impact are not allowed to enroll.¹⁴²

The Environmental Quality Incentives Program (EQIP) provides financial and technical assistance to agricultural producers . . . to address natural resource concerns and deliver environmental benefits such as improved water and air quality, conserved ground and surface water, . . . reduced soil erosion and sedimentation, [and] improved . . . wildlife habitat.¹⁴³

This program works one-on-one with agricultural producers to plan and implement conservation practices.¹⁴⁴ Producers eligible for the EQIP are also eligible for Conservation Innovation Grants (CIG).¹⁴⁵ CIGs are grants that encourage innovation and development of new tools, technologies, and strategies for improved conservation efforts.¹⁴⁶ The one-on-one farm trials provide incentive payments to producers to offset the risk of implementing innovative farm and ranch management practices.¹⁴⁷ However, “[g]rantees must match the CIG investment at least one to one.”¹⁴⁸

The Agricultural Conservation Easement Program (ACEP) “[h]elps landowners, land trusts, and other entities protect, restore, and enhance wetlands, grasslands, and working farms and ranches through conservation easements.”¹⁴⁹ Easement restrictions under this program are similar to traditional conservation easements and are perpetual.¹⁵⁰ This program also has adjusted gross income limitations, making large producers with the most opportunity for impact on the environment ineligible.¹⁵¹

“The Agricultural Management Assistance (AMA) [Program] helps agricultural producers manage financial risk through diversification, marketing[,] or natural resource conservation practices.”¹⁵² The Natural

140. *Id.*

141. *Id.*

142. *Id.*

143. *Environmental Quality Incentives Program*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip/> (last visited Apr. 5, 2022).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Conservation Innovation Grants*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/cig/> (last visited Apr. 5, 2022).

148. *Id.*

149. U.S. DEP’T OF AGRIC. FARM SERV. AGENCY, FARMERS’ GUIDE TO FARM BILL PROGRAMS (July 2019), <https://www.farmers.gov/sites/default/files/documents/FarmBill-2018-Brochure-11x17.pdf>.

150. *Id.* Nonperpetual, thirty-year easements are only available for land owned by an Indian tribe. *Id.*

151. *Id.*

152. *Agricultural Management Assistance*, USDA NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/ama/> (last visited Apr. 5, 2022).

Resource Conservation Service (NRCS) “administers the conservation provisions while [the USDA] Agricultural Marketing Service and Risk Management Agency [(RMA)] implement the production diversification and marketing provisions.”¹⁵³ The AMA helps agriculturists offset the costs of installing conservation practices but has a \$50,000 cap per participant, per year.¹⁵⁴ This program is only available in sixteen states and participants are subject to adjusted gross income limitations, making large producers with the most impact ineligible.¹⁵⁵

C. Agriculturists’ Inherent Motivation to Conserve

Agricultural landowners whose entire income and livelihood derive from the condition of their land are inherently motivated to conserve its natural resources and minimize pollution.¹⁵⁶ These built-in incentives are both personal and economic.¹⁵⁷ For example, landowners often want to preserve historical features of the land and its heritage, ensure the continued availability of clean water and healthy soil, increase land productivity, and conserve wildlife habitats, to name a few.¹⁵⁸

Additionally, sustainability in agriculture requires environmental stewardship of the natural resources that farmers and ranchers rely on.¹⁵⁹ Healthy soil, quality water, and minimized pollution are all vital to a successful agricultural operation.¹⁶⁰ An industry with consistently low margins has an economic incentive to reduce waste as much as possible and use the lowest amounts of water, fertilizer, and other resources by adopting conservation practices.¹⁶¹

To sustain healthy land and soil and to stay in business, modern farming uses state-of-the-art, science-based practices to maximize productivity while minimizing environmental damage.¹⁶² To save money and natural resources, the industry is experiencing a massive shift from traditional industrial

153. *Id.*

154. *Id.*

155. *Id.* AMA is available in sixteen states where participation in the Federal Crop Insurance Program is historically low: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. *Id.*

156. See *Farming for a Sustainable Future*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/what-we-do/our-priorities/provide-food-and-water-sustainably/food-and-water-stories/farming-for-a-sustainable-future/> (last visited Apr. 5, 2022).

157. *Id.*

158. See *Farmers for a Sustainable Future*, AM. FARM BUREAU FED’N, <https://www.fb.org/land/fsf> (last visited Apr. 5, 2022).

159. *Id.*

160. *Id.*

161. *Id.*

162. *What Is Sustainable Agriculture?*, UNION OF CONCERNED SCIENTISTS (Mar. 15, 2022), <https://www.ucsusa.org/resources/what-sustainable-agriculture>.

farming practices to farming systems that use less and produce more.¹⁶³ Through decades of scientific research, key practices have emerged to optimize environmental health and productivity.¹⁶⁴ These include practices such as crop rotation, diversity, planting cover crops, reducing tillage, integrated pest management, and integrating livestock and crops.¹⁶⁵

Nevertheless, agriculture is often painted in a negative light regarding greenhouse gas emissions.¹⁶⁶ However, the agricultural industry's impact is quite low, considering that it feeds the entire world.¹⁶⁷ A 2019 study by the Environmental Protection Agency (EPA) revealed that agriculture was only responsible for 11% of total greenhouse gas emissions.¹⁶⁸ Meanwhile, transportation, electricity, and other industries make up 76% of emissions.¹⁶⁹ Greenhouse gas emissions from agriculture and transportation are often compared but in a flawed way.¹⁷⁰ Unlike transportation and other industries, a large portion of agricultural emissions is made up of natural releases of greenhouse gasses from soil and livestock.¹⁷¹ All things considered, agriculture is at the forefront of environmental sustainability innovation and has the ability to provide enormous contributions to conservation and the well-being of the overall environment.¹⁷²

III. A NEW FARM BILL PROGRAM SHOULD BE ENACTED THAT INCLUDES ESTATE TAX INCENTIVES TO FORM A MORE EFFECTIVE LAND CONSERVATION TOOL

The 2018 farm bill expires in 2023.¹⁷³ The reauthorization of the farm bill provides a tremendous opportunity for the USDA and Congress to improve the effectiveness of conservation programs in conserving agricultural lands.¹⁷⁴ This would allow the strategic changes discussed throughout this Comment to be established in the new legislation.¹⁷⁵

163. AM. FARM BUREAU FED'N, *supra* note 158.

164. *Id.*

165. *Id.*

166. See Frank Mitloehner, *The Bogus Burger Blame*, CLEAR CTR. (Feb. 12, 2021), <https://clear.ucdavis.edu/blog/bogus-burger-blame>.

167. *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Apr. 5, 2022).

168. *Id.*

169. *Id.*

170. Anne Mottet & Henning Steinfeld, *Cars or Livestock: Which Contribute More to Climate Change?*, THOMSON REUTERS FOUND. NEWS (Sept. 18, 2018), <https://news.trust.org/item/20180918083629-d2wf0>.

171. *Id.* Hypothetical: You spend the night in a closed garage with a running car. I will spend the night in a closed garage with a cow. We can meet in the morning to discuss the results.

172. *Id.*

173. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

174. *Id.*

175. See *id.*

The conservation programs under the farm bill have much higher participation than traditional conservation easements—and for good reason.¹⁷⁶ The 2018 farm bill was more successful at providing incentives that landowners actually needed.¹⁷⁷ However, several adjustments should be made to the programs to promote widespread conservation among landowners. There are still benefits that can be derived from traditional conservation easements that do not appear in the farm bill conservation programs.¹⁷⁸ Therefore, the next farm bill should implement the following changes to develop a new conservation tool that promotes agriculture and works to save the environment. There is no question that the government has the motivation and desire to assist landowners in conservation efforts through tax incentives.¹⁷⁹ However, the means necessary to achieve the end goal need to be rethought, reevaluated, and improved. This Comment is the first to do just that.

To effectively combat population growth, land loss, climate change, and several other issues currently faced by the agricultural industry, Congress should reform the conservation programs under the farm bill to create a single program that more effectively addresses these issues. Adding this proposed program to the farm bill will solve not one but many problems affecting the entire population.¹⁸⁰ Not only does conservation of agricultural lands help maintain a healthy environment, but it also supports the world's food and fiber supply.¹⁸¹ Under the current programs, landowners' objectives do not align with the government's incentives, which is causing reduced landowner participation and less-than-optimal environmental outcomes.¹⁸² This new program will include innovative incentives that better pair the needs of landowners with the goals of the government.¹⁸³

The process [of drafting a new farm bill] usually begins in the year or two before current legislation expires, with stakeholders developing proposals and sharing their views . . . with members of the agriculture committees in both the House and Senate. . . . The agriculture committees in both chambers debate legislative proposals separately and [make any necessary adjustments]. [Then,] the House and Senate debate amendments and alternative proposals to their respective committee's bills until a compromise is reached. When each chamber has passed its own version of a Farm Bill, the leadership of the House and Senate appoint members to a joint conference committee to develop a single bill that can be . . . presented for the President's signature.

U.S. Farm Policy and Policy Process, USDA ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/us-farm-policy-and-policy-process/> (last visited Apr. 5, 2022).

176. See USDA FARM SERV. AGENCY, *supra* note 125.

177. See Agriculture Improvement Act §§ 2201–2209.

178. *Id.*

179. See Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021); see also HAALAND ET AL., *supra* note 49, at 6.

180. See HAALAND ET AL., *supra* note 49, at 8–10, 14.

181. See *id.*

182. See discussion *supra* Section II.B (discussing the farm bill conservation programs and their cost-sharing and adjusted gross income limitations).

183. See HAALAND ET AL., *supra* note 49, at 9.

President Biden set a goal of conserving 30% of America’s lands and waters by 2030.¹⁸⁴ In addressing this goal, the Secretaries of the United States Department of the Interior, United States Department of Agriculture, United States Department of Commerce, and the Chair of the Council on Environmental Quality submitted a report to the National Climate Task Force stating that “[f]ederal agencies can and should advance conservation by supporting programs that incentivize voluntary conservation efforts and provide new sources of income for American farmers, ranchers, and forest stewards.”¹⁸⁵ These agencies also recognized that the President’s national conservation goal provides an opportunity to better honor and support the people and communities who act as the stewards of our lands and waters—farmers, ranchers, and forest owners.¹⁸⁶ The President of the United States and the Secretaries of these major governmental agencies have clearly recognized the role agriculturists play in conservation and the benefit they can provide not only to the environment but also to rural economies.¹⁸⁷ Although the report recognizes the invaluable role landowners play in protecting the environment, the Secretaries did not set out a concrete method of reaching this goal.¹⁸⁸ The following proposal provides a way for President Biden’s goal to be reached through voluntary participation by the stewards of our nation’s lands.

A. A Restructured Conservation Method Could Increase Landowner Participation and Result in Greater Environmental Protection

An improved conservation approach needs to be implemented as soon as possible to address serious and pressing environmental issues like climate change and rapid land loss.¹⁸⁹ The current conservation methods in place have several setbacks that reduce landowner participation.¹⁹⁰ Restructuring incentives and combining the benefits of the several conservation programs will create a single, more efficient land conservation tool.

1. Conservation Easements

Conservation easements have several setbacks that make most landowners reluctant to adopt them—and for good reason.¹⁹¹ Once set in place, the restrictions placed on land under conservation easements are

184. *Id.* at 6.

185. *Id.* at 21.

186. *Id.* at 15.

187. *Id.*

188. *See id.*

189. *See* discussion *supra* Part I (discussing climate change and land loss throughout the nation).

190. *See* background discussion *supra* Part II (discussing current conservation methods).

191. *See* discussion *supra* Section II.B (providing background in conservation easements and farm bill conservation programs).

perpetual and often reduce the market value of the remaining ownership interest in the property.¹⁹² When restrictions are placed on land, a property owner's "bundle of sticks" becomes smaller, and the land becomes less appealing to prospective buyers, thus decreasing its value.¹⁹³ An ordinary buyer, regardless of their intentions with the property, prefers land without restrictions—especially restrictions they did not get an opportunity to negotiate.¹⁹⁴ Conservation easements, as they are implemented today, devalue land, take away property rights from landowners who did not establish them, and can require extensive government funding.¹⁹⁵

The biggest scare factor of adopting a conservation easement is that it will be "in perpetuity."¹⁹⁶ Conservation easements are "about as permanent as you can get in the world of real estate."¹⁹⁷ The restrictions added to the land by a single landowner will place a burden on the use of the land for every subsequent landowner to come.¹⁹⁸

From a practical perspective, if landowners want to restrict what is done on their property to ensure its conservation, they can do so without a conservation easement.¹⁹⁹ It is their property; if they prefer to maintain open space rather than build upon the land, they can do so. It is their land and their decision. However, when a conservation easement is adopted, it is no longer just their property; some belongs to the landowner, and some belongs to the government.²⁰⁰ So why give up ownership interest in the land to place restrictions that achieve the same goal that the landowner could have reached themselves voluntarily? A landowner interested in conservation can do exactly that without a conservation easement that places perpetual restrictions on land use and reduces land value.

Therefore, the solution to making conservation practices more widespread is not to convince landowners to adopt a conservation easement agreement that will control their land for eternity but rather to encourage landowners to voluntarily continue to conserve their land for generations to come. The foundation of the conservation of the United States' natural lands should not be based on *restrictions* that take away a landowner's property rights.²⁰¹ Instead, the foundation of the conservation of the United States'

192. Jane Rice & Ben Guillon, *Conservation Easements*, W. LANDOWNER ALL. (June 20, 2018), <https://westernlandowners.org/conservation-easements/>.

193. *See id.*

194. *See id.*

195. *Id.*

196. I.R.C. § 170(h).

197. Ed Roberson, *Conservation Easements – Six Common Misconceptions*, MOUNTAIN & PRAIRIE, <https://mountainandprairie.com/six-common-conservation-easement-misconceptions/> (last visited Apr. 5, 2022).

198. I.R.C. § 170(h).

199. *See id.*

200. *See id.*

201. *See id.*

natural lands should be *incentives* that encourage each generation owning a piece of property to make the voluntary decision to conserve their land.²⁰²

The current conservation programs in the farm bill prove that effective conservation does not have to place perpetual restrictions on land.²⁰³ With the proper incentives in place, the same long-term goals of conservation easements can be met through voluntary participation by each successive landowner.²⁰⁴ Long-term incentives will result in long-term conservation.²⁰⁵ The federal estate tax is the main roadblock standing in the way of landowners conserving natural lands into the next generation.²⁰⁶

2. Current Farm Bill Conservation Programs

As discussed above, the 2018 farm bill offers several different conservation programs.²⁰⁷ These programs recognize the importance of agriculture in effective conservation.²⁰⁸ However, the programs have some pitfalls that make landowners either reluctant to use them or unable to use them altogether.²⁰⁹ Because there are several conservation programs, landowners that are eligible to participate are likely to only enroll in one or two because the application and implementation processes are long, and the programs are implemented by different agencies.²¹⁰ As a result, only some of the natural resource concerns and needed sustainability efforts are being addressed when the land could be benefited by all the programs. Therefore, land is being protected at a rate that is far from optimal.²¹¹ The following components should be considered in creating a more influential voluntary conservation tool.

First, many of the current conservation programs under the farm bill place a cap on the annual revenue for eligible participants; thus, the largest agricultural operations with the most land to conserve cannot participate.²¹² Specifically, the programs are limited to small-scale farmers and ranchers.²¹³ Therefore, the largest agricultural operations with the most opportunity for

202. CONSERVATION WITHOUT CONFLICT: ACHIEVING AT-RISK AND LISTED SPECIES CONSERVATION ON WORKING LANDS ACROSS THE UNITED STATES, at 7, <https://conservationwithoutconflict.files.wordpress.com/2021/05/c-wo-c-fact-sheet.pdf>.

203. See *supra* Section II.B (discussing the current farm bill conservation programs).

204. CONSERVATION WITHOUT CONFLICT, *supra* note 202, at 1, 7.

205. See *id.*

206. See I.R.C. § 2001.

207. See *supra* Section II.B (providing background in farm bill conservation programs).

208. See *supra* Section II.B (providing background in farm bill conservation programs).

209. See Roberson, *supra* note 197.

210. See *supra* Section II.B (describing existing conservation programs under the farm bill).

211. See *supra* Section II.B (providing background on farm bill conservation programs).

212. See *Adjusted Gross Income*, USDA FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/payment-eligibility/adjusted-gross-income/index> (last visited Apr. 5, 2022). The cap pays landowners the same price regardless of environmental impact. See *id.*

213. See *supra* notes 143–44 and accompanying text (discussing adjusted gross income cap that limits large producers).

impact on the environment are excluded—that is, they do not receive the same benefits or opportunities for adopting conservation practices.²¹⁴ This seems counterproductive.

Further, the programs that do include large producers are structured in such a way that provides little benefit in relation to the amount of impact on the environment.²¹⁵ For example, the current farm bill CSP pays the same amount in incentives regardless of how significant the conservation impact.²¹⁶ When divided into a per-acre amount, this approach offers very low incentives for large producers.²¹⁷ Effective conservation requires the participation of as many landowners as possible.²¹⁸ Therefore, the new farm bill should target large operations, not exclude them.

Second, not enough landowners are involved in the current programs to make a significant impact on the environment.²¹⁹ An international objective of saving the environment is impractical if only a few small players have a seat at the table.²²⁰

Finally, the main incentives under the farm bill conservation programs are reimbursements and cost-sharing.²²¹ That is not to say reimbursements do not help—they certainly do.²²² However, they are not the type of incentives that align with the overarching goal of long-term conservation.²²³ A partial reimbursement for investing in a new irrigation system, for example, does not encourage a farmer to pass the land on to the next generation like an estate tax incentive would.²²⁴ Reimbursements under the current farm bill should not necessarily be taken away; they are an effective tool for encouraging farmers to implement modern equipment; however, they need to be supplemented with long-term conservation incentives, such as estate tax benefits.²²⁵

214. See USDA FARM SERV. AGENCY, *supra* note 212.

215. U.S. DEP'T OF AGRIC., ENVIRONMENTAL QUALITY INCENTIVE PROGRAM, CONSERVATION INCENTIVE CONTRACTS, at 1 (2022), https://www.nrcs.usda.gov/Internet/FSE_MEDIA/nrcseprd1801047.pdf.

216. *Conservation & Environment*, NAT. SUSTAINABLE AGRIC. COAL., <https://www.sustainableagriculture.net/publications/grassrootsguide/conservation-environment/> (last visited Apr. 5, 2022). There is a \$40,000 cap per year regardless of the amount of land being conserved. *Id.* Depending on the amount of land in the contract, many large operations could earn more doing something else. *See id.*

217. *See id.*

218. *See* HAALAND ET AL., *supra* note 49, at 17.

219. *See id.* at 19.

220. *See id.* at 4.

221. *See supra* Section II.B (discussing the available incentives for landowners participating in the current farm bill conservation programs).

222. *See* USDA NAT. RES. CONSERVATION SERV., *supra* note 143.

223. *See supra* notes 154–57 and accompanying text (discussing the lack of participation in current conservation programs due to current incentives).

224. *See supra* Section II.B (discussing reimbursements and cost-sharing under the farm bill).

225. *See supra* Section II.B (discussing reimbursements and cost-sharing under the farm bill).

B. Why Agriculture Is the Solution to Land Conservation

To “many . . . landowners, their property is more than a financial asset; it is part of the history [and legacy] of their family [and] community.”²²⁶ Agriculturists have a self-interest in protecting the environment and have long been known as stewards of the land.²²⁷ Farmers, ranchers, and agricultural landowners are naturally incentivized to act in the best interest of the environment.²²⁸ A healthy and sustainable environment yields the best results for a landowner whose entire income comes from the health of the land they own.²²⁹

Agriculture is arguably the only industry in which participants are encouraged to act in the best interest of the environment.²³⁰ Mother Nature has provided farmers, ranchers, and landowners with built-in incentives to act in the best interest of the sustainability of the land, water, and surrounding environment.²³¹ If a farmer allows their farmland to become eroded, their crop will perform poorly, and they will have no means of generating an income.²³² Likewise, if a farmer or rancher pollutes the water, their land, livestock, and pocketbook will suffer.²³³ Finally, if a rancher overgrazes their land, the pastures will become barren, and the livestock will not have the nutrient-providing vegetation that they need to grow.²³⁴

The same cannot be said for other industries.²³⁵ Other industries benefit from cutting corners and circumventing environmental protection.²³⁶ Adopting environmentally friendly practices typically costs much more than they provide in business-related returns.²³⁷

American agriculture has advanced substantially over the past few decades.²³⁸ Innovative farming methods and cutting-edge technology have changed the sustainability of agriculture.²³⁹ Today, landowners are simply more environmentally aware.²⁴⁰ Landowners have access to hundreds of

226. FRANCELLE ET AL., *supra* note 54, at 1.

227. *See* THE NATURE CONSERVANCY, *supra* note 156.

228. *See id.*

229. *See id.*

230. *See* Mollie Chapman et al., *When Value Conflicts Are Barriers: Can Relational Values Help Explain Farmer Participation in Conservation Incentive Programs?*, 82 LAND USE POL’Y 464, 467–68 (2019).

231. *See id.*

232. *See* THE NATURE CONSERVANCY, *supra* note 156.

233. *See id.*

234. *See id.*

235. *See* Gretchen Franzee, *4 Reasons It’s Hard to Become a Sustainable Business*, PBS (Sept. 23, 2019, 6:05 PM), <https://www.pbs.org/newshour/economy/making-sense/4-reasons-its-hard-to-become-a-sustainable-business>.

236. *See id.*

237. *Id.*

238. *See* UNION OF CONCERNED SCIENTISTS, *supra* note 162.

239. *Id.*

240. *See id.*

university extension personnel that keep them informed about the newest and best land management practices.²⁴¹ Today, innovative practices have been implemented to allow American farmers to produce more with fewer acres and less water.²⁴² Farming equipment continues to reduce emissions, save water, and increase overall efficiency.²⁴³ “[A]griculture accounts for less than 10% of total U.S. emissions, far less than transportation, electricity generation[,] and industry sectors.”²⁴⁴ Farmers continue to produce more with less environmental impact.²⁴⁵ “In fact, U.S. agriculture would have needed nearly 100 million more acres in 1990 to match 2018 production levels.”²⁴⁶ In conclusion, agricultural lands that maintain carbon-sequestering crops, grasses, and soil are far better for the environment than if the land were to be fragmented, paved, and industrialized.²⁴⁷

In 2021, the Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and the Chair of the Council of Environmental Quality together prepared a preliminary report to the National Climate Task Force recommending a ten-year campaign to conserve and restore the lands and waters that we all depend on.²⁴⁸ While recognizing the important role agriculturists play in conservation and the environment, the report states that “[p]roviding incentives for voluntary conservation practices reward[s] ranchers and farmers for being good stewards of working lands, waters, and wildlife habitat.”²⁴⁹ Highlighted in the report was a quote by the American Farmland Trust stating:

[O]ur nation’s farmers, ranchers, and foresters [are] essential allies in the effort to reach the 30x30 goals for biodiversity conservation and climate mitigation. The lands that they manage are critical for wildlife habitat, carbon sequestration, food security, clean water, and rural prosperity. . . . To be successful, these policies must embrace USDA’s legacy of voluntary, incentive-based, and locally led conservation and be strategically targeted.²⁵⁰

241. *Extension*, USDA NAT’L INST. FOOD & AGRIC., <https://nifa.usda.gov/extension> (last visited Apr. 5, 2022).

242. *See Managing Limited Water Resources for a Sustainable Food Supply*, BAYER, <https://www.bayer.com/en/agriculture/agriculture-and-water-conservation> (last visited Apr. 5, 2022).

243. *See id.*

244. AM. FARM BUREAU FED’N, *supra* note 158.

245. *See id.*

246. *Id.*

247. *See id.*

248. HAALAND ET AL., *supra* note 49, at 6. The report was inspired by President Biden’s ten-year conservation challenge. *Id.* at 9. “On January 27, 2021, President Biden signed Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, which launched an all-of-government effort to confront climate change and repower America’s economy with clean energy” *Id.* at 10.

249. *Id.* at 9.

250. *Id.* at 5 (quoting AM. FARMLAND TR., *AGRICULTURE’S ROLE IN 30X30*, at 1 (2021)).

Keeping farms and ranches in production while also protecting against development has been considered the most effective land conservation strategy.²⁵¹ Therefore, the government should look to agricultural operations to combat the major environmental issues facing our nation and the global climate.

C. Challenges, Changes, and Hardships Faced by Agriculture: A Single Solution for Multiple Problems

Small family farms are becoming an endangered species. Crippling tax rates, changes in landowner demographics, falling commodity prices, and misinformation are a few of many hardships faced by agriculturists today.²⁵² A conservation program that can also work to address these issues will yield the best results for conservation, food supply, and rural economies.²⁵³

1. Crippling Taxes

The government has a desire to offer tax benefits for those who prioritize conservation.²⁵⁴ So why not focus the tax benefits on the taxes that have been notorious for causing generational landowners to have no choice but to sell into industrialization?²⁵⁵ This is the main goal of this proposal.

Current tax benefits focus primarily on income taxes.²⁵⁶ Income tax is not the incentive landowners need. Many farmers and ranchers do not earn enough income to even utilize the full tax credit.²⁵⁷ Also, tax incentives are limited to sixteen years.²⁵⁸ Additionally, even though conservation easements offer a tax break to those landowners who establish them, buyers of land subject to a conservation easement are not privy to the tax break.²⁵⁹ It simply does not make sense to have long-term restrictions with short-term, limited incentives.²⁶⁰

Under this proposed program, the tax incentive will focus on estate taxes—the tax that many landowners wishing to pass on the operation to the next generation will be forced to encounter. This tax is notorious for crippling

251. See Roberson, *supra* note 197; HAALAND ET AL., *supra* note 49, at 8.

252. See *infra* Section III.C and accompanying text (analyzing the many hardships agriculturists are facing in the industry today).

253. See *infra* Section III.D (describing the mechanics and benefits of changes to current conservation management).

254. See, e.g., Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

255. See *supra* Section II.A.3 (describing estate taxes as the primary reason generational landowners are forced to sell land).

256. See I.R.C. § 170(h); *supra* Section II.A.2 (discussing the income tax benefits for landowners who adopt conservation easements).

257. See I.R.C. § 170(h).

258. *Id.*

259. *Id.*

260. See *id.*

family farming operations and forcing land to be sold into development instead of being conserved by the next generation.²⁶¹ If the government can provide tax incentives, they need to be the taxes that make a difference and promote long-term conservation.

According to a survey by the Family Business Institute, only about 30% of small businesses survive their transition to the next generation.²⁶² Farms and ranches experience the same challenges as small businesses, along with other obstacles that make the transition process no easy task.²⁶³ Farmers and ranchers are often referred to as land rich and cash poor.²⁶⁴ In other words, they may not earn large incomes from year to year; however, due to the capital-intensive nature of farming and ranching, they may nonetheless have millions of dollars in fixed assets like land, livestock, and equipment.²⁶⁵ This can result in astronomical estate taxes.²⁶⁶

With high property values, it is common for farmers to be over the estate tax exemption limit, which often fluctuates by millions of dollars, making it unpredictable what one will owe at the time of transfer.²⁶⁷ Many successors simply have no choice but to sell the land because they cannot afford to pay the estate tax.²⁶⁸ Other assets such as livestock and farming equipment cannot be sold to raise money to pay for the taxes either because they are essential for running the operation on which the family relies to earn a living.²⁶⁹ Some have no choice but to get a loan to pay off the tax, which could take decades.²⁷⁰ For an industry that is struggling to make it by as it is, estate taxes are a death sentence.

The estate tax exemption rate of \$11.58 million expires in 2025.²⁷¹ If Congress does not act or other protections are not in place, the exemption limit will revert to \$5.8 million, with a possibility of an even lower amount of \$3.5 million.²⁷² A reduction to \$3.5 million would apply an estate tax burden on nearly 75% of the farmable acres in the United States.²⁷³ The estate

261. Newton & Wolff, *supra* note 46.

262. FAM. BUS. INST., FAMILY BUSINESS IN TRANSITION: DATA AND ANALYSIS, at 3 (2016), <https://www.familybusinessinstitute.com/wp-content/uploads/2019/01/Family-Business-Succession-Planning-White-Paper.pdf>.

263. *See id.*

264. *See* John Christensen, *Land Rich, but Cash Poor, in the West*, N.Y. TIMES (Nov. 23, 1997) (internal quotation marks omitted), <https://www.nytimes.com/1997/11/23/business/land-rich-but-cash-poor-in-the-west.html>.

265. *Id.*

266. *See id.*

267. *See supra* Section II.A.3 (discussing frequent fluctuations in the federal estate tax exemption limit).

268. *See* Newton & Wolff, *supra* note 46.

269. *Id.*

270. North Carolina Farm Bureau, *supra* note 27.

271. *Estate and Gift Tax FAQs*, IRS, <https://www.irs.gov/newsroom/estate-and-gift-tax-faqs> (last visited Apr. 5, 2022).

272. *See id.*; For the 99.5 Percent Act, S. 994, 117th Cong. (2021–2022).

273. *See* OUTLAW ET AL., *supra* note 4, at 3.

tax exemption reduction will have serious negative effects on agricultural operations and result in even more forced sales.²⁷⁴ Conservation, food supply, and the future of agriculture will all be severely impacted.²⁷⁵

Overall, the federal estate tax is a moving target.²⁷⁶ Therefore, farmers, ranchers, and other landowners can try to plan for addressing the significant tax burden, but the estate and tax legislation fluctuates and changes dramatically within short periods of time.²⁷⁷ This issue is even more severe for landowners who own properties near large cities, causing their property values to skyrocket.²⁷⁸ Changes to the Tax Code that create additional financial burdens on those operating or hoping to inherit family farming operations could well be the final nail in the coffin for family farms.²⁷⁹

2. Changing Demographics and Increased Land Fragmentation

Aside from the estate tax burden, one of the biggest hardships agriculture is facing today is the rapid change in landowner demographics. The average farmer today is fifty-seven years old.²⁸⁰ Likewise, the average forest owner is sixty-five years old.²⁸¹ In the next twenty years, we will see the largest intergenerational transfer of rural land in history.²⁸² With more than 370 million acres expected to be passed down or change hands in the next twenty years, any changes to the estate tax code provisions could drastically affect the future of family farms—or the lack thereof.²⁸³

Correspondingly, as the farm becomes less profitable, fewer heirs are able and willing to continue the operation, and the land is sold.²⁸⁴ New owners have different goals and objectives for land-use that are centered in development and recreation, not food and fiber production.²⁸⁵ With an increased number of natural and agricultural lands for sale, the risk of fragmentation and conversion to nonagricultural use is substantial.²⁸⁶ Once this land converts to a nonagricultural use, it is likely permanent.²⁸⁷ When

274. *See id.*

275. *See supra* Section II.A (discussing the consequences of a lower estate tax exemption limit).

276. *See supra* Part II and accompanying text (discussing fluctuations in the federal estate tax exemption limit).

277. *See supra* notes 74–80 (describing the adverse impact of fluctuating estate taxes on agriculturists).

278. *See supra* notes 29–30 and accompanying text (describing how urban growth leads to increased tax burdens on landowners).

279. *Texas Agriculture Daily*, TEX. FARM BUREAU (Sept. 23, 2021), <https://texasfarmbureau.org/possible-tax-increases-continue-to-worry-farmers-ranchers/>.

280. *See SMITH ET AL.*, *supra* note 32, at 18.

281. *Id.*

282. *Id.*

283. TEX. FARM BUREAU, *supra* note 279.

284. *Id.*

285. *Id.*

286. *See id.*

287. *See SMITH ET AL.*, *supra* note 32, at 14.

natural land, usually consisting of many acres, is sold into a development project, it is almost always fragmented into smaller properties, each of which are resold at a higher per-acre amount.²⁸⁸ Therefore, the property that was once a large piece of natural land and open space will be gone forever.²⁸⁹

A program that encourages land to be conserved and passed on to the next generation will help reduce land fragmentation and encourage a younger demographic to pursue farming and ranching. The future availability of food and fiber for the growing world depends on young farmers.²⁹⁰ This proposal will put money back into the pockets of young farmers and ranchers by eliminating the estate taxes that are often imposed on them when they inherit land. Therefore, this program would help agriculture become a profitable business venture with a promising future.

3. Declining Economic Viability of Agriculture Operations

Agriculturists have implemented innovative practices not only to conserve natural resources but also to stay afloat economically.²⁹¹ The issue of sustainability in agriculture does not stop at land and natural resource conservation. Many farmers today are fighting a daily battle to earn a profit, no matter how small.²⁹² Agricultural operation input costs continue to rise while commodity prices continue to fall, resulting in minimal profits and an increase in forced land sales.²⁹³ Large ranches can require even more acreage than farming operations, and declining cattle markets are causing more and more of them to sell, fragment, and be developed as residential neighborhoods.²⁹⁴

Current conservation programs under the farm bill address some of these natural resource concerns and should be carried over to a larger, single program.²⁹⁵ A program that helps agriculturists save water and other natural resources not only protects the environment but also helps them save money and earn more in an industry where economic viability is rapidly declining.²⁹⁶ This way, a landowner can enroll in one large program that will

288. *Id.* at 6.

289. *See id.*

290. Marlene Kouba, *America Needs More Young Farmers*, ABERDEEN NEWS (May 14, 2020, 4:00 PM), <https://www.aberdeennews.com/story/news/local/farm-forum/2020/05/14/america-needs-more-young-farmers/43633531/>.

291. *See* AM. FARM BUREAU FED'N, *supra* note 158.

292. *See Farm Household Income Estimates*, USDA ECON. RSCH. SERV. (Dec. 1, 2021), <https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/farm-household-income-estimates/>.

293. *Id.*

294. Elmer Kelton, *Ranching in a Changing Culture*, TEX. ALMANAC, <https://www.texasalmanac.com/articles/ranching-in-a-changing-land> (last visited Apr. 5, 2022).

295. *See supra* Section II.B (providing background in natural resource concerns that are being addressed by current farm bill conservation programs).

296. *See* UNION OF CONCERNED SCIENTISTS, *supra* note 162.

assist them in adopting environmentally friendly practices that will conserve natural resources while saving money and the environment.

4. Information Gaps Between Producers and Consumers

Congress should enact a conservation program that publicly recognizes the contributions that farmers, ranchers, forest owners, rural communities, and tribal nations make in safeguarding natural resources for the benefit of the rest of the nation. These landowners should be appreciated and encouraged to continue applying this invaluable skill.²⁹⁷ For example, landowners who are dedicated to conservation under this program could be recognized on the USDA website, featured on national television broadcasts, or given public awards for their contributions to conservation.

Many consumers go to the grocery store to buy their meat, grains, dairy, and produce without putting much thought into where those products came from.²⁹⁸ What people see and learn about agriculture from television, advertisements, and the internet is often inaccurate and misleading.²⁹⁹ Many farmers and ranchers who work 365 days a year and dedicate their lives to feeding the world feel unsupported, attacked, and disparaged—leaving them with little encouragement to continue to conserve the land.³⁰⁰

Farmers and ranchers are stewards of the land, and for centuries, they have demonstrated that the most effective conservation strategies are the ones carried out by those who live on the land and have the knowledge and perspective necessary to care for it.³⁰¹ Stereotypes of American farmers often depict them as unsophisticated.³⁰² However, the average farmer is quite the opposite.³⁰³ Advancements in technology make farming a complex and complicated industry, requiring extensive knowledge and experience.³⁰⁴

297. See HAALAND ET AL., *supra* note 49, at 15. Recognition could be as simple as a name publication or physical awards for landowners choosing to make a difference in protecting the environment. See *id.* Studies show that symbolic rewards, costing nearly nothing, motivate people to contribute to society because they feel they are being recognized for their contributions. See Bruno S. Frey & Jana Gallus, *Volunteer Organizations: Motivating with Awards*, in *ECONOMIC PSYCHOLOGY* 275, 284–85 (Rob Raynard ed., 2017).

298. See Sheril Kirshenbaum & Douglas Buhler, *Americans Are Confused About Food and Unsure Where to Turn for Answers, Study Shows*, ALL. FOR SCIENTISTS (Mar. 9, 2018), <https://allianceforscience.cornell.edu/blog/2018/03/americans-confused-food-unsure-turn-answers>.

299. See John Gladigau, *Farmer's Open Letter to Skeptical Consumers: We Know Science, Glyphosate and GMOs Are Safe, and We Need Both to Fight Climate Change*, GENETIC LITERACY PROJECT (July 2, 2019), <https://geneticliteracyproject.org/2019/07/02/farmers-open-letter-to-skeptical-consumers-we-know-science-glyphosate-and-gmos-are-safe-and-we-need-both-to-fight-climate-change/>.

300. *Id.*

301. See HAALAND ET AL., *supra* note 49, at 6, 9, 15.

302. See *Top 6 Misconceptions About Agriculture*, EXHIBIT FARM (Dec. 1, 2017), <https://exhibitfarm.com/top-6-misconceptions-agriculture/>.

303. *Id.*

304. *Id.*

5. Rural Economies Depend on Agriculture

A program that promotes both conservation and continued agricultural production not only establishes a promising future for the environment but also establishes a promising future for rural economies. Many jobs in rural communities are based in agriculture.³⁰⁵ If land is not conserved for agricultural use and is rather sold into industrialization and development, thousands of rural jobs will be lost, and rural economies will suffer.³⁰⁶

Rural counties' employment levels are more sensitive to economic trends affecting their major industries.³⁰⁷ "For example, trends in agricultural prices have a disproportionate effect on farming-dependent counties"³⁰⁸ Working lands throughout rural America "give our nation food and fiber and keep rural and coastal communities healthy and prosperous."³⁰⁹ President Biden's conservation "commitment includes a clear recognition that maintaining ranching in the West . . . is essential to maintaining . . . the prosperity of local economies, and an important and proud way of life."³¹⁰

D. The Next Generation Conservation Program: A New Approach to Land Conservation

A new conservation program should be added to the 2023 farm bill that combines components of traditional conservation easements with current farm bill conservation programs to create a more effective land-conservation tool. The new program will have features similar to traditional conservation easements and farm bill conservation programs without the pitfalls that make landowners reluctant to join them and with estate tax incentives that will better meet the objectives of all parties involved. The Next Generation Conservation Program will provide landowners with the ability to continue their conservation efforts by passing their land on to the next generation while reaching the government's goal of protecting the global environment for generations to come.³¹¹ This program provides incentives with a focus on the future—the next generation. This twist on traditional conservation easements and currently enacted farm bill programs shifts the focus to long-term incentives, creating long-term, voluntary conservation by those who are most capable of sustaining our nation's land and food supply.³¹²

305. *Rural Economies Depend on Different Industries*, USDA ECON. RSCH. SERV. (Oct. 9, 2018), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58290>.

306. *See id.*

307. *Rural Economy*, USDA ECON. RSCH. SERV. (June 17, 2021), <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/rural-economy/>.

308. *Id.*

309. *See* HAALAND ET AL., *supra* note 49, at 15.

310. *Id.*

311. *See id.* at 21.

312. *See id.* at 15.

Unlike traditional conservation easements that have short-term income tax incentives, landowners enrolled in this program will be relieved from the federal estate tax.³¹³ A shift from income tax incentives to estate tax incentives promotes a long-term benefit that encourages continued conservation, unlike the income tax benefits currently in place that only last a maximum of sixteen years.³¹⁴ The estate tax burden is notorious for forcing voluntary conservationists to have no choice but to sell their land into development.³¹⁵ The government clearly has a desire to promote conservation and is willing to provide tax breaks to those who are contributing to the sustainability of the environment.³¹⁶ Agriculturists are working daily to combat the world's largest and most daunting environmental and food supply issues.³¹⁷ It is time the government recognizes their invaluable contributions and provide them with a tax benefit they so desperately need.³¹⁸

Therefore, in return for landowners enrolled in this program voluntarily limiting the development of their land, adopting sustainable systems, supporting rural economies, and maintaining resilience in a struggling industry to continue feeding the world, they will be exempt from the federal estate tax.³¹⁹ This will not only encourage but allow landowners in this new program to pass their natural land and productive farmland on to the next generation who can then continue to conserve the land for their lifetimes and generations thereafter.³²⁰ This is a simple fix to ineffective conservation methods that will likely derive everlasting environmental impacts.

This program will be voluntary with no perpetual restrictions. As a result, it will also maintain land values and allow landowners to keep their property rights rather than handing them over to the government.³²¹ Also, because this program is not made up of perpetual easement restrictions, it provides a way for farmers, ranchers, and landowners to be rewarded for their conservation efforts without giving away their property interests.³²²

313. I.R.C. § 170(h).

314. *Id.* § 170(b)(1)(E)(ii).

315. Newton & Wolff, *supra* note 46.

316. *See* HAALAND ET AL., *supra* note 49, at 10–11.

317. *Id.* at 15.

318. *Id.* at 21.

319. *See supra* notes 313–16 and accompanying text (discussing how the program will allow landowners to continue conservation efforts by an estate tax exemption).

320. *See* Newton & Wolff, *supra* note 46.

321. Rice & Guillon, *supra* note 192; *see generally* WECONSERVEPA, *supra* note 56.

322. *See supra* notes 198–204 and accompanying text (discussing how once a conservation easement is adopted, the landowner loses property rights and how the foundation of conservation should be incentives, not restrictions).

Unlike the current farm bill conservation programs, this program will apply to both large and small agricultural operations alike.³²³ Therefore, large operations with the most acres to conserve and the most opportunity for impact on the environment will be able to enroll and adopt environmentally friendly stewardship practices.³²⁴ The expanded reach this program provides will allow more acres to be preserved and the government's conservation goals to be met.³²⁵ Landowners will not have to struggle with deciding which program to join, but instead they will be able to enroll in a single program that addresses all of their natural resource concerns simultaneously. These changes will create a more effective and efficient land conservation tool.³²⁶ Like previous farm bill conservation programs, the Next Generation Conservation Program will work alongside leading researchers and experts in the field to adopt and implement the most effective conservation systems.³²⁷ Also, like past programs, this program will require annual audits to ensure landowners are in compliance with their conservation initiatives.³²⁸

This program not only solves the estate tax and land loss issues but also solves other major issues consuming the agricultural industry. Not only will natural resource concerns be addressed, the nation's food and fiber supply will be sustained, rural jobs and communities will have a promising future, and agriculturists will be recognized for their contributions to conservation of the lands and the global environment.³²⁹ Like other programs, the Next Generation Conservation Program will provide reimbursements for implementing innovative and sustainable systems, benefiting water and other natural resource conservation, while also benefiting the farmer's bottom line.³³⁰ With lower taxes and more profit, agricultural operations will have more resources to devote to innovation.³³¹ This is especially relevant to the large operations that would have access to the new program.³³² The largest

323. Many current farm bill programs only apply to small operations. *See* USDA NAT. RES. CONSERVATION SERV., *supra* note 134; U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *supra* note 129, at 2–3.

324. *See supra* notes 134–44, 212–20 and accompanying text (discussing the benefits of farm bill programs and how larger producers who can make the most environmental impact are excluded).

325. *See* Exec. Order No. 14008, 86 Fed. Reg. 7619, 7627 (Jan. 27, 2021).

326. *See supra* notes 209–20 and accompanying text (discussing how current programs have pitfalls, which lead to lower participation and less environmental impact).

327. *See supra* notes 143–50 and accompanying text (discussing innovation grants and partnering with experts to implement conservation activities).

328. *See supra* Section II.B (discussing other farm bill conservation programs and their specifics).

329. *See supra* Section III.C (discussing how rural economies depend on agriculture and the need for greater recognition of the contributions of agriculturists).

330. *See supra* notes 221–27 and accompanying text (discussing how the main incentive under farm bill programs is reimbursement and their effectiveness).

331. *See supra* notes 261–77, 284 and accompanying text (discussing how crippling estate taxes discourage generational farming).

332. *See supra* notes 212–28, 323–26 and accompanying text (discussing how the new farm bill should target large operations and not exclude them).

operations have the biggest impact on the land and the environment.³³³ They also have the best opportunity to apply innovative practices that will shape the future of crop and meat production and, more importantly, conservation.³³⁴ Under this program, large-scale agriculture operations and landowners will have a seat at the table for the future of the environment.

Finally, the program will include safeguards to ensure it is being used with integrity and for conserving and protecting the environment and not as a way to avoid taxes. These safeguards include (1) criteria for selecting the properties enrolled in the program, (2) specific protocols for monitoring and reporting conservation measures, (3) limitations to lands that have demonstrable conservation values, and (4) requirements specifically drafted to protect those values.³³⁵

Remember Tom and Jane?³³⁶ Let us consider how their story would have gone differently if the Next Generation Conservation Program had been available to them: Tom and Jane Thompson operate a farm that has been in their family for five generations. They would like to continue their family legacy and pass the farm on to their children after they pass away. Estate tax legislation is constantly fluctuating; however, estate planning was relatively easy for Tom and Jane because they are active conservationists under the Next Generation Conservation Program. Therefore, they are exempt from the federal estate tax because of their commitment to conserving their land and adopting sustainable farming practices. Unlike landowners who are choosing not to conserve their land and continue using outdated, wasteful systems, Tom and Jane are able to have peace knowing their children will not be faced with a crippling tax bill with no way to afford it. Tom and Jane's land is located near a rapidly expanding city, so their land value has skyrocketed. However, the rise in property values no longer can drain the modest incomes they have earned from producing food and fiber for the growing world.

Although Tom and Jane have passed away, their children have peace knowing they will be able to continue their family's heritage in being stewards of the land. Tom and Jane's children are now in their mid-thirties with children of their own and continue to farm and raise cattle as active participants of the Next Generation Conservation Program. They meet frequently with environmental researchers and members of the USDA to continue innovating their practices to be more efficient and environmentally friendly. The family farm that has now existed for six generations did not get sold, fragmented, or developed into a subdivision. Instead, it continues to

333. See *supra* notes 212–29, 323–26 and accompanying text (discussing how large operations have the opportunity to make the largest environmental impact).

334. See *supra* notes 212–20, 323–26 and accompanying text (discussing how large operations have the opportunity to make the largest environmental impact).

335. See *supra* Section III.A.2 (discussing flaws in current farm bill programs and components that can become more influential and effective conservation tools).

336. See *supra* Part I (introducing the common fate of the family farm).

conserve the nation's natural land and open space while actively sequestering carbon, contributing to the world's food supply, and providing jobs for rural Americans. The Thompson family has been publicly recognized by the USDA as a family making a positive change in the global environment. Generation number seven looks promising.

IV. CONCLUSION

The rapid expansion of urban cities, resulting in the loss of natural lands and productive farmland, is generally permanent and certainly not sustainable. However, it is not too late to shape the future of land conservation on a large scale. There are many conservation efforts currently established, but no one has ever put them together to create a superior and more effective means of conservation.

Together, the currently enacted farm bill programs and conservation easements have several benefits; however, landowners are being left to decide which programs and which benefits and burdens to be faced with. A new, single program would be more effective and efficient. The President's goal of conserving 30% of America's lands and waters by 2030 can be met through the enactment of a new farm bill with a twist on traditional conservation easements to create a new, voluntary conservation tool that maintains land values and property rights and combats major problems faced by agriculture today.

Under this proposed program, landowners will be offered an incentive to conserve that will save their heritage, traditions, and the values of family farming beyond food and fiber. Although landowners under this program will be giving up their right to develop, their contribution to land conservation and the overall well-being of the world's environment will be rewarded with an exemption from the federal estate tax. Without the estate tax burden, farm succession will be possible, thus promoting continued conservation from generation to generation. These tax benefits will do more than provide a monetary incentive to landowners who choose to operate sustainably; they will make long-term land conservation of family farms a feasible endeavor.