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ARTICLE

AMERICA'S PUBLIC LANDS: WHAT WILL DONALD TRUMP'S LEGACY BE?

JOHN LESHY*

I. INTRODUCTION

This essay is drawn from the lecture I delivered at the College of Law in February 2025. Its title asked what President Trump's public land legacy will "likely" be. In retrospect, it was foolish of me to use that word because it had long been clear that President Trump frequently alters course.[1]

I delivered that lecture only about a month into his second term. As I write this less than a year later, the challenge of predicting his legacy has grown exponentially, because his second term is unfolding very differently from his first, being much better organized, focused and staffed with Trump loyalists, with the president himself more impatient and bent on revenge and grabbing as much power as he can.[2] This has produced an across-the-board assault on much in the modern American political tradition, in the most aggressive assertion of presidential power since the Civil War.

Many cultural and political changes are helping make this possible. One is the vast increase in the amount of money in politics, thanks in large measure to the U.S. Supreme Court's 2010 *Citizens United*

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1. As a distinguished historian recently put it, Trump is "the epitome of self-centered, emotional impulses." Robert Kaplan, *Waste Land: A World in Permanent Crisis*, 49 (2025).

2. Long-time Trump observer Maggie Haberman put it this way in the New York Times on June 16, 2025: "[A]rmed with the backing of a Supreme Court decision last year that granted him broad immunity for official acts, he is doing some of the things he wanted to during his first term, like maximizing official power—and testing what courts will let him get away with—to dismiss inspectors general and swaths of the bureaucracy, and to use the Justice Department only as something of a personal law firm." Jess Bidgood & Maggie Haberman, *How the Trump Era Changed Trump*, N.Y. TIMES (Oct. 1, 2025), https://www.nytimes.com/2025/06/16/us/politics/trump-decade-washington.html [https://perma.cc/U2QJ-GBF7]. *See also* Naftali Bendavid, *Trump Undermines Watergate Ethics Laws in Massive Shift of Ethics System*, THE WASHINGTON POST (June 21, 2025), https://www.washingtonpost.com/politics/2025/06/21/trump-watergate-presidency-congress/ [https://perma.cc/9B5C-952V].

decision,[3] where the Court reversed a century of precedent to hold that corporations and others have a right under the Constitution's free speech clause to spend unlimited amounts of money to influence elections. The effect was entirely predictable—a huge increase in dollars flooding the political system, mostly from the wealthiest corporations and individuals.[4]

A huge rise in income inequality in recent years has fed this torrent of contributions. America's richest 1% now control one-third or more of nation's wealth, while the richest one-tenth of 1% control about 15%—shares that have increased dramatically in last few decades.[5]

This is the most inequality in the nation's history,[6] even wider than during the famous Gilded Age of post-Civil War era.[7] That period was characterized not only by a vast divide between the very rich and everyone else, but also by political corruption.[8] Its excesses, which included plundering federal public lands to benefit wealthy special interests, gave rise to what the eminent historian Richard Hofstadter called the "age of reform" that took hold beginning around 1890.[9] That flowering of what came to be known as the Progressive Era fed the movement to hold onto and protect large amounts of land in national ownership.[10]

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3. Citizens United v. FEC, 558 U.S. 310 (2010); see also SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir., 2010) (en banc); and McCutcheon v. FEC, 512 U.S. 185 (2014). See generally https://www.washingtonpost.com/politics/2025/12/01/speechnow-fec-citizens-united-super-pacs/.

4. See, e.g., *15 Years of Citizens United: How Big Money Dominated the 2024 Election*, Campaign Legal (Jan, 16, 2025), https://campaignlegal.org/events/15-years-citizens-united-how-big-money-dominated-2024-election [https://perma.cc/3AUL-2AJW].

5. BD. OF GOVERNORS OF THE FED. RSRV. SYS., *Share of Net Worth Held by the Top 0.1%*, FRED (October 1, 2025), https://fred.stlouisfed.org/series/WFRBSTP1300 [https://perma.cc/X7PB-ZNSD]. Federal tax policy has fueled that inequality in various ways. In his first term, President Trump signed legislation doubling the amount of assets exempt from paying any tax upon transfer to others, and the One Big Beautiful Bill Act he signed into law in July enlarged the exemption further. *One Big Beautiful Bill Act*, Pub. L. No. 119-21, 139 Stat. 72 (2025).

6. See, e.g., Paul Krugman, *Understanding Inequality Part II,* Substack (June 22, 2025), https://paulkrugman.substack.com/p/understanding-inequality-part-ii [https://perma.cc/289K-AGHY ("beginning around 1980, inequality surged, leading to the incredibly high levels we see today,") which he nicely captured in a chart. *See Inequality, Part IV: Oligarchs*, SUBSTACK (June 22, 2025), https://paulkrugman.substack.com/p/inequality-part-iv-oligarchs?r=2ytx6b&utm_campaign=post&utm_medium=web&triedRedirect=true [https://perma.cc/73JD-LKQA].

7. That era was given its name in this 1873 book. Mark Twain & Charles Dudley Warner, *The Gilded Age: A Tale of Today* (American Pub. Co. 1873).

8. *The Gilded Age*, Stanford: Journalism in the Digital Age, https://cs.stanford.edu/people/eroberts/cs181/projects/2010-11/Journalism/index5534.html?page_id=6 [https://perma.cc/3Y3W-KSF4] (last visited Oct. 18, 2025).

9. Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* 5 (1955), which won the Pulitzer Prize. *1956 Pulitzer Prizes*, PULITZER, https://www.pulitzer.org/prize-winners-by-year/1956 [https://perma.cc/3WX5-N4Y5].

10. See, e.g., John D. Leshy, *Our Common Ground: A History of America's Public Lands* 281, 357 (2021).

In this new Gilded Age, marked by what has been described as the "politics of plunder" practiced by the current president,[11] "corruption has flooded America."[12] Leo XIV, the current Pope who spent his first 27 years in the U.S., explained to the College of Cardinals that he chose his name because Leo XIII had championed the rights of ordinary people during the original Gilded Age.[13]

The vast amount of money sloshing around in the system has greatly enhanced Trump's power. Congressional Republicans have been almost totally silenced and intimidated in part because Trump controls an estimated two billion dollars in campaign contributions that he is not hesitating to use to get his way—threatening to fund primary opponents of Republicans who disagree with him.[14] This has meant that the Republicans controlling both Houses of Congress have made little effort to shape his policies.

There is also the change in how most people in the nation get their information, from assorted siloed social media platforms like podcasts as well as other sources like Fox News.[15] Many of these pay little attention to finding the truth, a tendency famously captured in the

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11. Evan Osnos, *Donald Trump's Politics of Plunder*, *New Yorker* (May 26, 2025). https://www.newyorker.com/magazine/2025/06/02/donald-trumps-politics-of-plunder [https://perma.cc/Y2GF-6MJU].

12. Ben Rhodes, *Corruption Has Flooded America. The Dams Are Breaking.*, N.Y. TIMES (June 8, 2025), https://www.nytimes.com/2025/06/08/opinion/trump-corruption.html [https://perma.cc/25W4-6YPG].

13. Margherita Stancati, Drew Hinshaw, Keach Hagey & Emily Glazer, *Pope Leo Take on AI as a Potential Threat to Humanity*, WALL ST. J. (June 17, 2025, at 21:00 ET), https://www.wsj.com/tech/ai/pope-leo-ai-tech-771cca48?mod=hp_lead_pos7 [https://perma.cc/P2KU-RR24]; *Biography of Pope Leo XIV, Born Robert Francis Prevost*, VATICAN NEWS (May 8, 2025, at 20:28 ET), https://www.vaticannews.va/en/pope/news/2025-05/biography-of-robert-francis-prevost-pope-leo-xiv.html [https://perma.cc/9U9F-QD5D].

14. Marc Caputo, *Scoop: Trump's $2 billion Fundraising Binge*, AXIOS (Nov. 5, 2025) https://www.axios.com/2025/11/05/trump-2-billion-fundraising-binge?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top [https://perma.cc/RU8Z-GFS4]; Aaron Pellish, *Trump Threatens to Withhold Endorsements for GOP Senators Who Don't Back Rescissions Bill*, POLITICO (Jul. 10, 2025 at 20:20 ET) https://www.politico.com/live-updates/2025/07/10/congress/trump-rescissions-00448150 [https://perma.cc/DX2J-RCWX]; Justin Boggs, *Trump Calls for Primary Challenger Against Republican Who Opposes Funding Bill*, SCRIPPS NEWS (last updated Mar. 11, 2025 at 11:08 ET) https://www.scrippsnews.com/politics/president-trumps-first-100-days/republican-rep-defends-position-as-trump-pushes-for-primary-challenge [https://perma.cc/7F6Q-VKJL]. As one commentator recently noted, in 2017 "Trump still felt it necessary to reassure old-line Republicans that he would be their ally," but by 2025, he "no longer need[ed] to cater to [them]," because by then "most pre-Trump Republicans have either left the party, become Trump Republicans or resigned themselves to being at best junior partners in Trump's coalition." Ramesh Ponnuru, *Why Trump's Second Term Is So Different from His First*, WASH. POST (June 9, 2025), https://www.washingtonpost.com/opinions/2025/06/09/trump-second-term-policy-change/ [https://perma.cc/XF7J-TN5B].

15. *News Platform Fact Sheet*, Pew Rsch. Ctr. (Sep. 25, 2025), https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/ [https://perma.cc/L59Y-82AK].

phrase "alternative facts" first used by Kellyanne Conway, an official in the first Trump Administration.[16]

All this has helped fuel a serious erosion, if not an outright breakdown, of the norms that have traditionally governed relationships among the different parts of our governmental system, and notions of separation of powers and checks and balances. It is exacerbated by the president's zeal to exploit laws that allow him to take drastic action in emergencies of various kinds, and to expand all kinds of previously-little-used exceptions to bedrock laws like the "good cause" exception to the public notice and comment process in the Administrative Procedure Act, the fundamental law that governs actions by executive branch agencies.[17]

Then there is the ongoing erosion in the respect for science across our culture,[18] which was stoked in the first Trump Administration and has increased dramatically in the second.[19]

While so far in 2025 Trump himself has dominated American policymaking, the Congress has played to his desires by passing the One Big Beautiful Bill Act (OBBBA). The White House touted its

16. This came in a *Meet the Press* interview on January 22, 2017, in which she defended White House Press Secretary Sean Spicer's false statement about the attendance numbers at Trump's first inaugural. Video posted by Meet the Press (@MeetThePress), X, *"Alternative facts are not facts. They are falsehoods," Chuck Todd tells Pres. Trump's counselor Kellyanne Conway this morning. WATCH:* (Jan. 22, 2017, at 10:03 ET), https://x.com/MeetThePress/status/823184384559878144 [https://perma.cc/FSB8-M38W]. When pressed during the interview with Chuck Todd to explain why Spicer would "utter a provable falsehood," *Id.* at 00:20-00:22, Conway stated that Spicer was giving "alternative facts." *Id.* at 02:02-02:03. Conway's use of the phrase "alternative facts" for demonstrable falsehoods was widely mocked on social media and sharply criticized by journalists and media organizations and became the quote of the year in the Yale Book of Quotations. *E.g.*, *"Alternative Facts" Tops This Year's List of Notable Quotes*, CBS NEWS (Dec. 12, 2017, at 17:54 EST), https://www.cbsnews.com/news/alternative-facts-tops-the-yale-book-of-quotations/ [https://perma.cc/VE6Y-VSA9]; Justin Green, *Today's Top Quote: Kellyanne on "Alternative Facts"*, AXIOS (Jan. 22, 2017), https://www.axios.com/2017/12/15/todays-top-quote-kellyanne-on-alternative-facts-1513300040 [https://perma.cc/W6HA-J6TL]. It was extensively described as Orwellian. Kimiko de Freytas-Tamura, *George Orwell's '*1984*' Is Suddenly a Best-Seller*, N.Y. TIMES (Jan. 25, 2017), https://www.nytimes.com/2017/01/25/books/1984-george-orwell-donald-trump.html [https://perma.cc/R7YJ-J3JE]. Indeed, within four days of the interview, sales of George Orwell's novel *1984* had increased 96-fold, which *The New York Times* and others attributed to Conway's use of the phrase, and which catapulted Orwell's book to the top of Amazon's best-seller list. *Id.*

17. 5 U.S.C § 553(b)(B).

18. M. Anthony Mills, *Why So Many Americans Are Losing Trust in Science*, N.Y. TIMES (Oct. 3, 2023). https://www.nytimes.com/2023/10/03/opinion/science-americans-trust-covid.html [https://perma.cc/5E3M-XNZY].

19. *See, e.g.*, Brad Plumer & Coral Davenport*, Science Under Attack: How Trump Is Sidelining Researchers and Their Work*, N.Y. TIMES (Dec. 28, 2019), https://www.nytimes.com/2019/12/28/climate/trump-administration-war-on-science.html [https://perma.cc/LWS5-GVAT]; Darya Minovi, Science and Democracy Under Siege, Union of Concerned Scientists (Jul. 21, 2025) https://www.ucs.org/resources/science-and-democracy-under-siege [https://perma.cc/6VRP-UK52].

terms as making "good on his campaign promises."[20] It made major changes in federal law in a whole host of areas, including public lands.[21]

Many dozens of lawsuits are already wending their way through the federal courts testing various Trump actions.[22] But it is far from clear what the overall impact of this litigation will be. For one thing, the federal courts have grown considerably more conservative in recent years. This is in no small measure due to the appointments Trump himself made in his first term, when he named three new Justices of the Supreme Court, more than 50 to the federal courts of appeals, and more than 170 to the district courts.[23] For another, the legal process can be slow and can sidestep many issues, so that it may be years before definitive rulings emerge on many issues, if they ever do.

So far in his second term President Trump's aggressive actions have affected a wide range of foreign and domestic policy, from tariffs to withdrawing from various international arrangements to renaming the Gulf of Mexico to ramping up the deportation of undocumented immigrants and moving aggressively to challenge major universities, law firms, cultural and other American institutions[24].

Amid all this domestic and foreign policy turmoil, it is easy for public lands policies to be overlooked, as they rarely register in national political consciousness. Still, the changes in those policies launched in the second Trump Administration could well lead to a paradigm shift that fundamentally alters the long trajectory of public land policy.

I warned of this possibility during Trump's first term in office, in two essays published in 2020 before that fall's presidential election. I noted that the Trump Administration was "posing a stress test for the public lands," and that it could signal "a turning point in American

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20. *President Trump's One Big Beautiful Bill Is Now the Law*, THE WHITE HOUSE (Jul. 4, 2025) https://www.whitehouse.gov/articles/2025/07/president-trumps-one-big-beautiful-bill-is-now-the-law/ [https://perma.cc/5T7Q-ESGY].

21. One Big Beautiful Bill Act, Pub. L. No. 119-21, §§ 50301-50305, 139 Stat. 72, 146-52 (2025); *see infra* text accompanying notes 81-94 (discussing the public lands provisions of the One Big Beautiful Bill Act); THE WHITE HOUSE, *supra* note 20.

22. *Trump Administration Litigation Tracker*, Lawfare, https://www.lawfaremedia.org/projects-series/trials-of-the-trump-administration/tracking-trump-administration-litigation [https://perma.cc/7WPD-P9AN] (last visited Oct. 19, 2025).

23. *Federal Judicial Appointments by President*, Ballotpedia, https://ballotpedia.org/Federal_judicial_appointments_by_president [https://perma.cc/6MU6-RBLU] (last visited Oct. 19, 2025); *List of Federal Judges Appointed by Trump*, WIKIPEDIA, (last updated Nov. 24, 2025) https://en.wikipedia.org/wiki/List_of_federal_judges_appointed_by_Donald_Trump [https://perma.cc/F3V2-9RAS].

24. Michael S. Schmidt, When the Trump Guardrails Fail, N.Y. Times (Oct. 15, 2025) https://www.nytimes.com/2025/10/15/us/politics/trump-second-term-guardrails.html [https://perma.cc/PU4S-YKQP].

public land policy away from the long bipartisan tradition of adding more protections to more public lands," and whether that proved to be the case "very likely depends on whether Trump is reelected this fall."[25] If not, I suggested, "history will probably view his administration as just one more hiccup in the modern history of public lands," because "[m]ainstream public opinion still seems solidly in favor of strong protection," and many of the Trump initiatives can be readily reversed.[26]

After Trump was defeated in 2020, President Biden did reverse practically all of his predecessor's public lands initiatives. But now that Trump has been regained the presidency, and set in motion even more far-reaching initiatives in this space, the question I posed in 2020 remains valid, because President Trump could fundamentally change the course of public land policy.

Before exploring these matters in more depth, I will first set the stage by describing America's public lands and how they have evolved through history. I will do this in two tranches, the first up to Trump's election in 2017, and the second covering his first term in office and that of his successor, Joe Biden.[27]

II. THE PUBLIC LANDS UP TO 2017

These lands include more than 600 million acres of public forests, plains, mountains, wetlands, deserts, and shorelines, which are managed by the four federal agencies depicted here.[28] For comparison, the entire state of Florida occupies about 42 million acres of land (including waters).[29]

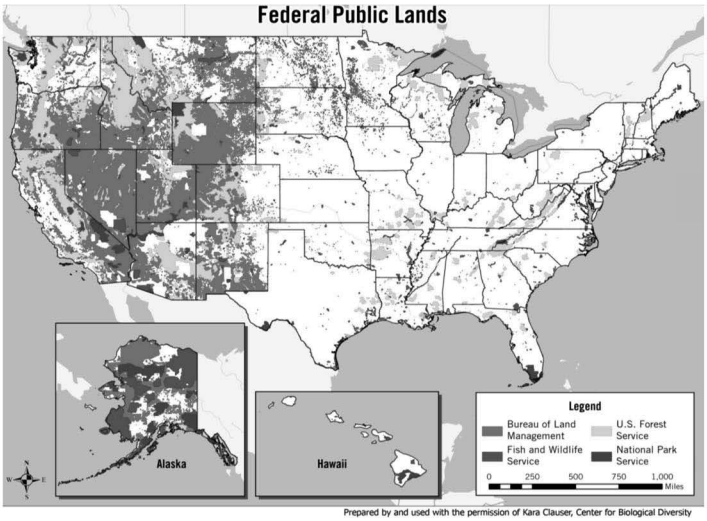
25. John D. Leshy, *Still Made for You and Me?*, 89 AM. SCHOLAR 34, 44 (2020);

26. *Id*; *see also* John D. Leshy, *Public Land Policy After the Trump Administration: Is This a Turning Point?*, 31 COLO. NAT. RES., ENERGY & ENV'T L. REV. 471 (2020).

27. *See generally*, JOHN D. LESHY, OUR COMMON GROUND: A HISTORY OF AMERICA'S PUBLIC LANDS (2022) [hereinafter LESHY, *Our Common Ground*] (providing a comprehensive history of America's public lands and their evolution over time); John Leshy, *America's Public Lands: What History Suggests About Their Future*, 34 COLO. ENV'T L.J. 1 (2023) (discussing the history and evolution of America's public lands).

28. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data (2020).

29. *See Florida*, WIKIPEDIA (last updated Nov. 28, 2025) https://en.wikipedia.org/wiki/Florida [https://perma.cc/8HDA-35QR]. Note that on this map Alaska, which contains a huge amount of public land, is not depicted on the same scale as the lower 48, as it is more than twice the area of Texas. I will address Alaska public lands further below; *see infra* text accompanying notes 78-79; 108-115.



These lands benefit America and humanity in many ways. Generally open to all, they are now managed primarily for conservation, recreation, inspiration and education.[30] Every year they offer many millions of visitors life-changing encounters with nature, activities that furnish an economic anchor for many communities.[31] While most are located in the West and Alaska, they are found in all states.[32]

The breadth and character of this national asset are remarkable, considering that respect for private property and distrust of government, particularly the national government, are baked into American culture and politics. Indeed, the typical response I have encountered from persons seeing such a map is "I had no idea—how did that happen?"

I sought to answer that question in my 2022 book *Our Common Ground*. Of course, it didn't "just happen." It came about because of a long series of decisions—political decisions—made by our representatives in government. What those decisions were, and how they came to be made, are the core of the book.

The following two charts provide a capsule summary of the timeline, in ten-year increments, by which public lands came to be held in national ownership and mostly protected from industrial activities.

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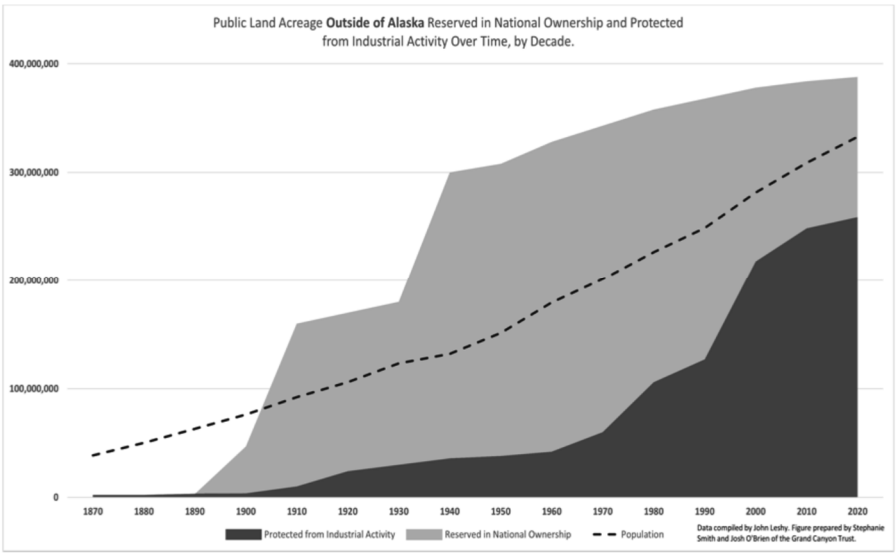
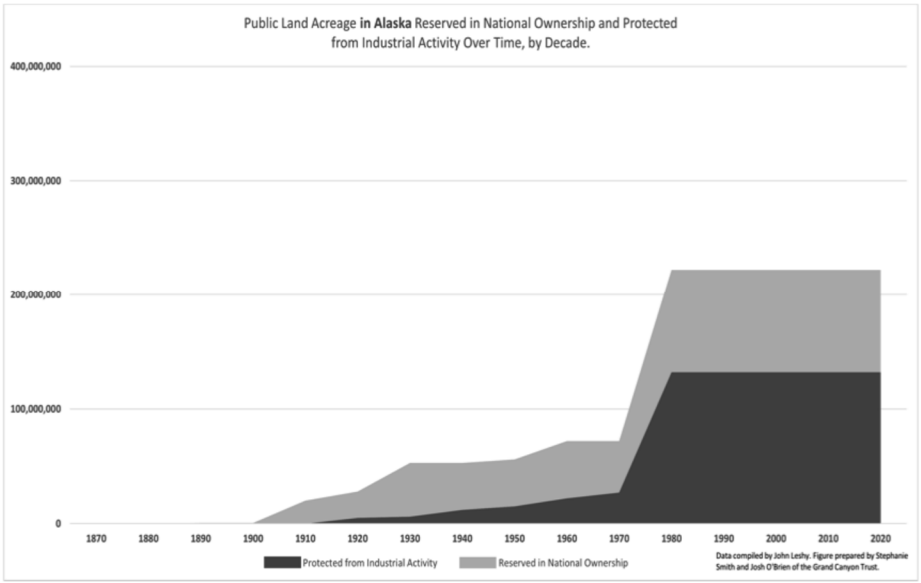
30. *See* LESHY, *Our Common Ground*, *supra* note 10, passim (2022).

31. *Id.* at 586-88; Joint Econ. Comm., Public Lands Boost Local, State, and National Economies (2023), https://www.jec.senate.gov/public/index.cfm/democrats/2023/10/public-lands-boost-local-state-and-national-economies#:~:text=These%20same%20counties%20with%20large%20shares%20of,population%20and%20personal%20income%20growth%20on%20average [https://perma.cc/8DHA-7D3T].

32. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data (2020).

Alaska is charted separately because it has far more public lands and a different history compared to every other state.[33]





From the nation's founding almost 250 years ago until 1890, U.S. policy was to give away most of the lands it acquired from Indigenous

33. The acreage figures here do not include submerged lands off the nation's coasts, nor do they include acreage where the U.S. owns only the mineral rights and not the land surface. A note of caution: considerable judgment had to be employed in determining these acreage figures, so the charts should be understood as providing a general lay of the land rather than precision.

peoples and foreign governments.[34] The recipients of these lands were primarily settlers, new states, miners, railroads and other industrial interests and a variety of speculators.[35]

Beginning around 1890, in a major political shift driven by reaction to the political corruption and huge wealth inequalities of the Gilded Age, the U.S. began retaining ownership of large tracts of land and protecting some of them from major developments. Ever since, the U.S. has decided to withhold from divestiture more and more lands it already owned, and to acquire additional lands. It has also generally put more and more of these lands off limits to intensive development like mining and roadbuilding.

As this has happened, some myths have grown up about the public lands, including: they have generally been a divisive force in American life; they have tended to divide Americans along partisan lines; and they mostly represent a land grab by the national government, carried out over local and state opposition.[36]

My book is replete with examples showing just the opposite. Consider, for example, Congress's adoption of the so-called Weeks Act of 1911. It launched a major program that led to the U.S. acquiring more than 20 million acres in the upper reaches of eastern, southern, and midwestern watersheds and establishing more than 50 national forests on these lands.[37] Many of these lands had been denuded by logging, and Congress was motivated in large part by a desire to restore forests, reduce erosion, and help prevent destructive floods.[38] Almost all these lands were acquired from willing sellers and, in accordance with the terms of the Weeks Act, with the approval of the state where such lands were found.[39] Republican governors from New England and Democratic governors from the Southern states jointly testified before Congress in strong support of the legislation, one of them noting how it was the first time in American history that governors from the two regions had appeared jointly before Congress "to ask for something for the common welfare of the United States."[40]

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34. The original U.S. public lands grew out of cessions made by seven of the original thirteen colonies of their inchoate claims, based on their colonial charters, to lands in the Appalachian Mountains and beyond. LESHY*, Our Common Ground*, *supra* note 10, at 3-13.

35. *Id.* at 49-122.

36. John Leshy, *America's Public Lands: A Sketch of Their Political History and Future Challenges*, 62 Nat. Res. J. 341, 342, 344 (2022).

37. LESHY, *Our Common Ground*, supra note 10, at 307-14.

38. *Id.*

39. *Id.*

40. *Id.* at 310. Another example is how Everglades National Park came to be established in south Florida. The state had sold off much of the land containing the Everglades after acquiring it from the United States in the nineteenth century. Efforts to protect the Everglades began at the grassroots in the 1920s, and starting in the 1930s the state acquired the land from the private owners, using state funds, and then donated the

Another common myth that my book seeks to correct is that this movement has been led by the president and others in the executive branch, while Congress remained mostly on the sidelines. Now it is true that around the turn of the twentieth century, Congress enacted two landmark laws that did delegate broad authority to the president to safeguard lands in national ownership. One was the Forest Reserve Act of 1891, by which a series of presidents (nearly all Republicans) established the national forests that today are found in the Western states and Alaska.[41]

The other was the Antiquities Act of 1906. It gave the president authority to protect public lands that contain features of "historic or scientific interest" as national "monuments." The "monument" label appears to have been chosen primarily to distinguish areas protected by presidents from national "parks," a label Congress has always made its prerogative to apply.[42] Eighteen of the twenty-one presidents who have served since the Antiquities Act has been on the books—nine Republicans and nine Democrats—have used it to establish some 150 protected areas covering nearly 100 million acres of public lands onshore, and, starting with Republican George W. Bush, huge areas of submerged lands offshore.[43]

While the executive did use the authority Congress had given it to establish forest reserves or national monuments, Congress nearly always put its stamp of approval on the executive actions. For example, about half of the 63 so-called "crown jewels," the areas Congress has labeled national "parks," were first protected by presidents using the Antiquities Act.[44]

Moreover, Congress increasingly took a leadership role in conserving more and more public lands beginning with enactment of the Wilderness Act in 1964.[45] In so doing, it illustrated how deferential the congressional process is to local control when making policy for particular areas. The Wilderness Act created a new, very protective category. Public lands given "wilderness" designation generally remain free from roads, motorized vehicles, and extractive activities

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lands to the U.S. so that Everglades National Park could be established in the 1940s—hardly a "land grab"! MICHAEL GRUNWALD, THE SWAMP: THE EVERGLADES, FLORIDA, AND THE POLITICS OF PARADISE 206-15 (Simon & Schuster, 2006). The establishment of Big Bend National Park in Texas followed a similar path. LESHY, *Our Common Ground*, supra note 10, at 411.

41. *Id.* at 170-84.

42. *Id*. at 257.

43. *Id.* at 253-62, 523, 538; List of National Monuments of the United States, Wikipedia (last edited Oct. 11, 2025)https://en.wikipedia.org/wiki/List_of_national_monuments_of_the_United_States [https://perma.cc/6CZM-U2WA].

44. Will De Man, *Almost Half of Your National Parks Were Created by the Antiquities Act*, Nat'l Park Explorer (Dec. 18, 2024), https://natlpark.com/2024/12/almost-half-of-your-national-parks-were-created-by-the-antiquities-act/ [https://perma.cc/9RHL-482W].

45. Pub.L. No.88-577, 78 Stat. 890 (codified as 16 U.S.C. §§ 1331-1336).

like logging and mining.[46] A key player in its enactment, a curmudgeonly Congressman from western Colorado named Wayne Aspinall, was not enthusiastic about limiting intensive industrial uses of public lands, so he insisted that Congress be the gatekeeper of this new National Wilderness Preservation System.[47]

What Aspinall wanted from this, and got, was to give people in close proximity to these lands more political power over them.[48] This was because a powerful, long-standing congressional custom holds that, regardless of party or ideology, members are very uncomfortable dictating how public lands are to be managed (or other matters, such as the appointment of federal judges[49]) in other members' districts, for fear the tables could be turned on them.[50] Aspinall knew, in other words, that making Congress the gatekeeper would make it nearly impossible to put particular areas of public lands into the Wilderness system without the approval or at least acquiescence of the most directly affected members of Congress.

Aspinall seriously underestimated the support that would develop at the grassroots for limiting such intensive uses of public lands. In fact, since 1964 Congress has enacted many dozens of individual pieces of legislation that altogether have put more than 800 separate areas of public land, more than 111 million acres in forty-four states, into the Wilderness system.[51] It has been a decidedly bipartisan enterprise.

The Wilderness Act helped usher in a new era of congressional "zoning"—where Congress spells out in specific laws what uses can and cannot take place on particular areas of public lands. Over the decades since, Congress has enacted many dozens of such laws, giving areas labels like national recreation area, national conservation area, national scenic area, national preserve, wild and scenic river, and so forth.[52] Each one makes conservation and recreation the primary objectives of management. Each one limits agency discretion by ruling out or strongly discouraging roadbuilding, mining, timber harvesting and the like.[53] Each label highlights the area's natural and cultural qualities, attracting more recreational uses and stimulating recreation-related economic activity.[54] And almost without exception,

46. 16 U.S.C. §§ 1131, 1133.

47. LESHY, *Our Common Ground*, *supra* note 10, at 468-69.

48. *Id.*

49. *See*, e.g., Barry J. McMillion, The Appointment Process for U.S. Circuit and District Court Nominations: An Overview, CRS Report No. R43762 (2016).

50. LESHY, *Our Common Ground*, *supra* note 10, at 468-69.

51. LESHY, *Our Common Ground*, *supra* note 10, at 471-72.

52. *Id.* at 477-80.

53. *Id.*

54. *Id.*

each was enacted with the full support of members of Congress representing that area.[55]

Congress has generally not discriminated among the four principal land management agencies in emphasizing conservation and recreation on public lands. Thus today, the Bureau of Land Management, the Fish & Wildlife Service, the Forest Service, and the National Park Service each looks after many millions of acres in the wilderness system, numerous wild and scenic river segments, and other places with labels that emphasize protection and conservation. All this has substantially blurred distinctions among the four agencies. The net effect is that, regardless of which agency is in charge, America's public lands are generally managed more for open space conservation and recreation than anything else.[56]

This is neatly captured in the change in the logo of the Bureau of Land Management, the most obscure of the federal land agencies, but one that manages more land than any of the others.[57] Long derided as the "Bureau of Livestock and Mining," it has, with a strong, bipartisan prod from the U.S. Congress, made conservation, protection of cultural resources and recreation a major focus of its management.[58] Indeed, some have suggested that the BLM should now be referred to as the Bureau of Landscapes and Monuments![59]

Logo of Bureau of Land Management
Original (L) and Modern (R)

55. *Id.*

56. See, e.g., LESHY, *Our Common Ground*, *supra* note 10 at 586-88, 597-98.

57. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data (2020).

58. Leshy, Our Common Ground, supra note 10 at 490-502.

59. Bruce Babbitt, *The Heart of the West: BLM's National Landscape Conservation System*, *in* From Conquest to Conservation: Our Public Lands Legacy 100, 101 (Michael P. Dombeck et al. eds., 2003).

Congressional zoning also enhances the durability of these protections. Indeed, generally speaking, once protections for public lands have been put in place, weakening or rescinding them has been almost unknown—until recently, as discussed further below. It is not hard to see why. While assembling measures to protect particular areas of public lands can require a good deal of negotiation to resolve differing points of view, overall, the public lands represent a great, largely bipartisan success story—showing the political process working as it is supposed to work, where Congress responds to and accurately reflects public opinion.

Indeed, practically every opinion poll taken for decades show that an overwhelming majority of people all across the nation, of all political persuasions, regard the public lands with great pride, and are very happy that we have kept them in public ownership and protected them.[60] The vast majority of people who live in areas with abundant public lands feel this way,[61] as they appreciate their value not only to local quality of life, but also because they provide many opportunities for private enterprise. Tourism and recreation-dependent businesses have become a major economic driver in many smaller communities in the West as well as elsewhere,[62] making the economic contributions of traditional activities like mining, logging, and livestock grazing pale by comparison.[63] The number of visits to public lands is breaking records.[64]

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60. For example, a poll commissioned by The Nature Conservancy in 2012 showed broad support for public lands everywhere. *National Poll Shows Great Support For Conservation Of Public Lands*, NATIONAL PARKS TRAVELER (July 9, 2012), https://www.nationalparkstraveler.org/2012/07/national-poll-shows-great-support-conservation-public-lands10181 [https://perma.cc/HQA4-UGJN]. *See also* Christopher Keyes, The Feculent Bucket of the Culture War, Re:Public (Oct. 17, 2025) https://www.republic.land/politicizing-our-public-lands/?ref=the-good-the-bad-and-the-ugly-newsletter [https://perma.cc/76S9-WJQH].

61. Colorado College's State of the Rockies Project has since 2011 polled a cross-section of the public in numerous western states each year asking a variety of questions about public land policy. The results can be found here. Isabel Devito, *2025 Conservation in the West Poll*, COLORADO COLLEGE (2025), https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2025.html?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=d431af2579-EMAIL_CAMPAIGN_2025_06_23_03_50&utm_medium=email&utm_term=0_-d431af2579-77300637 [https://perma.cc/6PMA-62Y5] (last visited Oct. 1, 2025).

62. Joint Econ. Comm., Public Lands Boost Local, State, and National Economies (2023), https://www.jec.senate.gov/public/index.cfm/democrats/2023/10/public-lands-boost-local-state-and-national-economies#:~:text=These%20same%20counties%20with%20large%20shares%20of,population%20and%20personal%20income%20growth%20on%20average [https://perma.cc/8DHA-7D3T].

63. *See e.g.*, The Wildlife Society, *Outdoor Rec A Major Economic Driver in the West, Study Finds*, THE WILDLIFE SOCIETY (Oct. 1, 2018) https://wildlife.org/outdoor-rec-a-major-economic-driver-in-the-west-study-finds/ [https://perma.cc/6JK8-W6QF].

64. *See, e.g.*, LESHY, *Our Common Ground*, *supra* note 10, at 597-98; Alec Sills-trausch, *National Parks Set Record For Visitation In 2024; Operational Challenges Looming*, KSL.COM (May 17, 2025, at 21:02 ET), https://www.ksl.com/article/51312175/national-parks-

Bringing more attention to political success stories is particularly important in our polarized era, where many are skeptical that anything good can come out of the Nation's capital. It was a major reason why I wrote *Our Common Ground*.

III. PUBLIC LANDS 2017-2025 (UNDER TRUMP I AND BIDEN)

Early on, the first Trump Administration appeared determined to break the historic pattern of holding and protecting more and more public lands. In December 2017, it made a huge splash in the public lands world by shrinking by approximately two-thirds the Grand Staircase-Escalante and the Bears Ears National Monuments that Presidents Clinton and Obama, respectively, had established on more than 3 million acres of public land in southern Utah.[65] A few days later, Trump signed into law a bill Congress had enacted on a strict party-line vote that lifted the ban Congress had enacted in 1980 on oil and gas leasing in the iconic 1.5 million-acre coastal plain of the Arctic National Wildlife Refuge in northeast Alaska[66]. His Administration took numerous other steps to bend public land policy away from conservation and toward industrial exploitation, especially by the fossil fuel industry.[67]

The on-the-ground effects of these actions were actually quite limited, however. Trump only shrank the Utah national monuments, rather than abolishing them outright. Moreover, contrary to the recommendations of subordinates, he left almost completely undisturbed the dozens of other large monuments his predecessors had established over the previous couple of decades.[68] Also, when the Interior Department put petroleum leases for several hundred thousand acres of land in the Arctic Refuge's coastal plain up for auction shortly before Trump left office in January 2021, the results

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set-record-for-visitation-in-2024-operational-challenges-looming [https://perma.cc/FFS5-BBXJ].

65. *See e.g.*, *Presidential Proclamation Modifying the Bears Ears National Monument*, THE WHITE HOUSE (Dec. 4, 2017) https://trumpwhitehouse.archives.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/ [https://perma.cc/XT2T-KUY3]; *Presidential Proclamation Modifying the Grand Staircase-Escalante National Monument*, THE WHITE HOUSE (Dec. 4, 2017) https://trumpwhitehouse.archives.gov/presidential-actions/presidential-proclamation-modifying-grand-staircase-escalante-national-monument/ [https://perma.cc/9GQF-NT3D].

66. Laura B. Comay et al., Cong. Rsch. Serv. RL33872, Artic National Wildlife Refuge (ANWR): An Overview (20250.

67. LESHY*, Our Common Ground*, *supra* note 10, at 581-84.

68. Hannah Grover, *Here's What Happened to National Monuments Under Trump's Last Administration*, N. M. POLITICAL REPORT (Apr. 28, 2025) https://nmpoliticalreport.com/2025/04/28/heres-what-happened-to-national-monuments-under-trumps-last-administration/ [https://perma.cc/Y8LZ-URPJ].

were remarkable.[69] Not a single bid was made by a major petroleum company. Instead of the billions of dollars proponents of the action said it would raise to reduce the federal budget deficit, the total amount of all bids (nearly all of which were submitted by a unit of the Alaska state government), was only about $14 million.[70]

Moreover, while in office Trump signed two major pieces of bipartisan public land protection legislation into law. One, enacted in 2019, added more than a million acres in several states to the National Wilderness System, expanded several National Park System units, and added protections to nearly a million acres of public land in the so-called San Rafael Swell area of southern Utah.[71] This last piece had been crafted primarily by the Republicans in the Utah congressional delegation not long after Trump had shrunk the nearby Bears Ears!

In 2020 Trump signed into law the Great American Outdoors Act.[72] Culminating a half-century-long campaign by protection advocates, it made the Land and Water Conservation Fund (LWCF) that Congress had established in 1964 into a true revolving fund. The Fund's objective is to provide a stream of money (derived primarily from oil and gas leases offshore and onshore) for federal, state, and local government agencies to buy more land for conservation and recreation.[73] Before the Great American Outdoors Act, however, it was not a true revolving fund. Instead, Congress had to decide each year how much to spend of the money that was accruing to it, and in fact between 1965 and 2019, less than half of the more than $40 billion that had accrued to it had been spent.[74] The Great American Outdoors Act permitted its revenues to be spent as they are accrued—a major victory for public lands everywhere, with some calling it the most important land conservation measure in a generation.[75]

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69. Ellen Mongomery, Why No One Bid to Drill in the Arctic Refuge Lease Sale, Env't America Rech & Pol'y Ctr. (Jan. 21, 2024) https://environmentamerica.org/center/articles/why-no-one-bid-to-drill-in-the-arctic-refuge-lease-sale/ [https://perma.cc/A2QH-R6YQ].

70. *Id.*

71. John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, 133 Stat. 580 (2019).

72. Great American Outdoors Act, Pub. L. No. 116-152, 134 Stat. 682-87 (2020); LESHY, OUR COMMON GROUND, *supra* note 10, at 477, 584.

73. Carol Hardy Vincent, Cong. Rsch. Serv., RL3351, Land and Water Conservation Fund: Overview, Funding History, and Issues (2019).

74. LAND AND WATER CONSERVATION FUND: OVERVIEW, FUNDING HISTORY, AND ISSUES 2 (2019).

75. Before the Administration left office in early 2021, Interior Secretary Bernhardt issued a secretarial order that imposed a host of restrictions on one category of federal acquisitions using LWCF funds, including giving state and local governments veto power over any federal acquisition of inholdings, even where private inholders wanted to sell to the federal government. SEC'Y OF INTERIOR, ORDER. NO. 3388, LAND AND WATER CONSERVATION FUND IMPLEMENTATION BY THE U.S. DEPARTMENT OF THE INTERIOR (2020). The Biden Administration rescinded the Order in its first month in office. In September 2025, Secretary

President Biden promptly restored the two Utah national monuments Trump had downsized.[76] He also established several large new national monuments, including in so-called purple states like Nevada and Arizona.[77] He also imposed strict conditions to protect the environment in holding the second congressionally-mandated sale in the Arctic Refuge's coastal plain.[78] It attracted no bids.[79] He also restored and expanded other public land protections Trump I sought to undo or weaken, and worked with Congress to craft legislation, the Inflation Reduction Act, that among other things employed a variety of incentives to promote renewable energy, especially wind and solar.[80]

IV. PUBLIC LANDS AND TRUMP II

In contemplating the future of public land policy, the planet's destabilizing climate is an elephant in the room—an obvious issue mostly ignored because of the discomfort it can cause. There is no fundamental disagreement about science at the heart of it. The more greenhouse gases humans put into the atmosphere—with fossil fuels being a primary culprit—the more the climate destabilizes.[81] There is some debate about how fast this is happening, but no denying that all of the hottest years in recorded history have occurred in the last decade.[82] There is also uncertainty about how much a particular event like a drought or hurricane or fire or flood is "caused" by it, but there

Burgum drew criticism for taking steps to limit the use of the Fund for conservation. *See, e.g.*, NPT Staff, *UPDATE: Changes to Land And Water Conservation Fund Draw Criticisms* NATIONAL PARKS TRAVELER (Sep. 2, 2025) https://www.nationalparkstraveler.org/2025/09/update-changes-land-and-water-conservation-fund-draw-criticisms [https://perma.cc/JNL6-VT5K].

76. The White House, *FACT SHEET: President Biden Restores Protections for Three National Monuments and renews American Leadership to Steward Lands, Waters, and Cultural Resources* (Oct, 7, 2021) www.bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/10/07/fact-sheet-president-biden-restores-protections-for-three-national-monuments-and-renews-american-leadership-to-steward-lands-waters-and-cultural-resources/ [https://perma.cc/9LLF-WPW7].

77. *Id.*

78. Andrew Kitchenman, *Biden Administration Includes Restrictions in Artic Refuge Oil Lease Sale*, ALA. BEACON (Dec. 9, 2024) https://alaskabeacon.com/briefs/biden-administration-includes-restrictions-in-arctic-refuge-oil-lease-sale/ [https://perma.cc/BF4A-HAFC].

79. *Arctic Refuge Leae Sale Yields No Interest*, U.S. DEP'T OF THE INTERIOR (last updated Jan. 8, 2025) https://www.doi.gov/pressreleases/arctic-refuge-lease-sale-yields-no-interest [https://perma.cc/39Y4-Y2AD].

80. *See, e.g.*, Sam Zeno & Jenny Rowland-Shea, *The Biden Administration Took Record-Breaking Conservation Action*, CENTER FOR AMERICAN PROGRESS (Jan. 17, 2025), https://www.americanprogress.org/article/the-biden-administration-took-record-breaking-conservation-action/ [https://perma.cc/7WHZ-RHD3].

81. *Causes and Effects of Climate Change,* UNITED NATIONS https://www.un.org/en/climatechange/science/causes-effects-climate-change [https://perma.cc/EYX4-89JM].

82. Delger Erdensanaa, *Earth's Hottest Years on Record Are the Last 10*, N.Y. TIMES (last updated Mar. 22, 2025) https://www.nytimes.com/2025/03/18/climate/global-temperatures-wmo-report.html [https://perma.cc/YEU6-U9Y2].

is no doubt that climate change contributes to the severity of such events.[83] The changing climate's impact is hardly trivial. It was recently estimated that nearly one trillion dollars are being spent in the United States each year to repair or otherwise cope with climate damage,[84] a sum just about equal to the total discretionary spending in the fiscal year 2024 federal budget.[85]

While a global problem, climate change has many implications for public land policy. Some relate to the causes of climate change; for example, about a quarter of our oil production currently comes from public lands, including submerged lands off our shores,[86] and public lands also furnish sites for solar and wind energy projects that lessen greenhouse gas emissions.[87] Other implications relate to the effects of climate change, which contribute to an escalating loss of biodiversity, the protection of which has long been a major goal of public land policy.[88]

"Facts," as Aldous Huxley wrote, "do not cease to exist because they are ignored."[89] Most of the world is waking up to this new reality, and what has been called an "energy transition"—a move away from fossil fuels and increasing use of renewable energy like solar and wind power—has been underway for some time. By some estimates, worldwide twice as much new investment is now going into renewables than fossil fuels.[90]

Nevertheless, on the first day of his second term, President Trump signed an executive order declaring that the nation is in a "national energy emergency" and therefore needed to bend every effort to develop fossil fuel resources wherever and however possible, including on the public lands.[91]

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83. UNITED NATIONS, *supra* note 82.

84. Eric Roston, *US Spending on Climate Damage Nears $1 Trillion Per Year*, BLOOMBERG (Jun. 17, 2025), https://www.bloomberg.com/news/articles/2025-06-17/us-spending-on-climate-damage-nears-1-trillion-per-year?leadSource=uverify%20wall [https://perma.cc/XJL5-DTK3].

85. CONG. BUDGET OFF., DISCRETIONARY SPENDING IN FISCAL YEAR 2024: AN INFOGRAPHIC (2025), https://www.cbo.gov/publication/61184 [https://perma.cc/7EHT-AVBD].

86. USAFacts Team, *How Much Oil and Gas Comes From Federal Territory?*, USAFACTS (last updated Apr. 6, 2023) https://usafacts.org/articles/how-much-oil-and-gas-comes-from-federal-territory/ [https://perma.cc/MET5-YNJB].

87. *Wind Projects on Public Lands,* U.S. DEP'T OF ENERGY, https://windexchange.energy.gov/projects/public-lands [https://perma.cc/FCB9-UJEX].

88. LESHY, *Our Common Ground*, *supra* note 10, at 597.

89. ALDOUS HUXLEY, PROPER STUDIES 205 (1927).

90. *Global Energy Investment Set to Rise to $3.3 Trillion in 2025 Amid Economic Uncertainty and Energy Security Concerns*, INTERNATIONAL ENERGY AGENCY (Jun. 5, 2025), https://www.iea.org/news/global-energy-investment-set-to-rise-to-33-trillion-in-2025-amid-economic-uncertainty-and-energy-security-concerns [https://perma.cc/8M78-NW9J].

91. The Order even sought to revive the production of coal, which has been in decline for well over a decade. LEXIE RYAN, CONG. RSCH. SERV., R48587, U.S. COAL INDUSTRY TRENDS (2025).

Considered against the seriousness of the climate challenge, it is remarkable—astonishing, really—that this "energy emergency" order and related directives say not a word about the increasingly unstable climate.[92] Equally disturbing is the Administration's withdrawal from international agreements and other efforts to address climate change, and its aggressive moves to dismantle government support for climate-related science.[93]

Alongside its zealous promotion of fossil fuels, the Trump Administration has—reflecting the President's many-year-old grudge when he was unable to stop an offshore wind energy development from being built in the viewshed of a resort he was building in Scotland[94]—shown outright hostility to wind energy and has remained largely indifferent to solar energy. While this direction seems bound to end badly for the planet, here I will focus primarily on its implications for public land policy.

The Trump II Administration has also taken very aggressive steps to promote logging on those public lands managed by the Forest Service and the BLM. Early on the President issued an Executive Order requiring these agencies to expedite timber harvesting.[95] The Administration has also moved to rescind the so-called "roadless rule" adopted in the Clinton Administration that protects tens of millions of acres of national forest lands from most logging and other industrial development.[96]

While flashy pronouncements in executive orders and similar actions might be discounted as having no more binding effect than New Year's resolutions, which is to say very little, it is a different matter if Congress has taken steps to implement them. The massive OBBBA that Trump signed into law on July 4 contained numerous provisions that require concrete actions to implement these policies,

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92. Some observers have characterized Trump's approach to the climate issue in his second term as "lean[ing] less on climate denial and more on what might be called climate dismissal: diminishing, ridiculing or rejecting the idea that climate change is worth any effort to study or try to slow." Eric Roston & Brian Kahn, *Climate Change Denial Gets a Trump Twist*, BLOOMBERG LAW (Jun. 17, 2025) https://news.bloomberglaw.com/health-law-and-business/climate-change-denial-gets-a-trump-twist [https://perma.cc/6U99-C8QQ].

93. *See, e.g.*, Exec. Order No. 14,162, 90 Fed. Reg. 8455 (Jan. 20, 2025).

94. Ron Bousso, *Trump Demands End to North Sea 'Windmills' in Swipe at UK Energy Policy,* REUTERS (Jan. 4, 2025, at 8:33 ET), https://www.reuters.com/businesses/energy/trump-calls-open-up-north-sea-get-rid-windmills-2025-01-03/ [https://perma.cc/KCE9-DJUP].

95. Exec. Order No. 14,223, 90 Fed. Reg. 11359 (Mar. 1, 2025). The Administration suggested that timber imports from Canada pose a risk to the nation's security. Exec. Order No. 14,225, 90 Fed. Reg. 11365 (Mar. 1, 2025).

96. *See Secretary Rollins Rescinds Roadless Rule, Eliminating Impediment to Responsible Forest Management*, U.S. DEPARTMENT OF AGRICULTURE (June 23, 2025), https://www.usda.gov/about-usda/news/press-releases/2025/06/23/secretary-rollins-rescinds-roadless-rule-eliminating-impediment-responsible-forest-management [https://perma.cc/TME5-LQYA].

after the President exerted enormous pressure on the Republican members of Congress to unite and enact it.[97]

Regarding timber production from public lands, for example, the OBBBA requires the Forest Service to more than double the amount of timber that can be harvested from the national forests and the BLM to nearly double the amount that can be harvested from its lands, and also requires both agencies to enter into dozens of long-term timber contracts to lock the increased logging in for at least two decades.[98] These provisions, coupled with the repeal of the roadless rule now in process, open the door to widespread logging on vast amounts of public lands.

Regarding onshore oil and gas, the OBBBA requires the government to offer to lease—on generous terms it specifies—tens of millions of acres of public land for fossil fuel development.[99] Not to consider, or even plan for it, but in fact to conduct lease sales of specified scope and terms on a schedule specified in the law.[100] Under it, oil and gas lease sales must be held a minimum of four times a year.[101] Reversing a prohibition in existing law, the OBBBA allows public lands to be leased without open competition for just $1.50 an acre.[102] It also encourages speculators to nominate public lands for lease by abolishing the $5 per acre nomination fee that was previously required.[103] And, it requires BLM to offer up at least 50% of such nominated acreage.[104] It reduces the royalty rate producers of petroleum from federal lands pay down to the statutory minimum Congress adopted way back in 1920.[105] These leases convey a legal right in public lands for a minimum of ten years, with a maximum tenure that could extend for many decades.[106]

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97. One Big Beautiful Bill Act, §§ 50301-05.

98. *Id.* at §§ 50301-02.

99. *Id.* at §§ 51301-05.

100. *Id.*

101. *Id.* at § 50301(b)(1).

102. *Id.* at § 51301.

103. One Big Beautiful Bill Act, § 51301.

104. *Id.*

105. One Big Beautiful Bill Act, §§ 50101, 50103-05; *see* 30 U.S.C. § 226; *General Oil and Gas Leasing Instructions*, U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT: GENERAL LEASING, https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing [https://perma.cc/6T2Q-KRD3] (last visited Sep. 29, 2025). The OBBBA also includes aggressive provisions to boost the sale of oil and gas leases on federal lands off the nation's coasts, including off Alaska. § 50102. It does, however, preserve "existing oil and gas leasing moratoria," thus allowing many places like Mar-A-Lago and other areas off Republican strongholds to be exempted from the leasing promotion.

106. 30 U.S.C. § 226 (e) provides that a lease "shall continue so long after its [ten-year] primary term as oil or gas is produced in paying quantities." The Interior Department proposed in 2023 to update its oil and gas regulations in response, among other things, to recently enacted legislation and to criticism that they are too lax in interpreting this

The OBBBA's provisions regarding Alaska—which holds a special place in the pantheon of public lands because of its scale and largely intact natural splendor—are even more jaw-dropping. Following up the 2017 legislation that first opened the iconic coastal plain of the Arctic National Wildlife refuge to oil and gas leasing, it requires the Interior Department to conduct four more lease sales there over the next seven years, of a minimum of 400,000 acres each.

The OBBBA's provisions regarding the 23-million-acre National Petroleum Reserve (NPR) in northwest Alaska are even more far-reaching.[107] In 1923, as the Navy was shifting from coal to oil as a primary fuel, President Harding established the NPR by executive order.[108] In 1976 Congress renamed it the NPR-Alaska, transferred it from the Navy to the Interior Department, and directed the president to prepare a study to "determine the best overall procedures" for exploring, developing, and transporting its petroleum resources.[109] Congress explicitly sought to strike a balance between petroleum development and "protection of environmental, fish and wildlife, and historical or scenic values" by authorizing the Secretary to promulgate such rules and regulations that as "he deems necessary and appropriate for the protection of such values within the reserve."[110] The legislation went on to direct that

Any exploration within . . . areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.[111]

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provision, allowing leases to be extended indefinitely where there are no active wells. See generally Fluid Mineral Leases and Leasing Process, 88 Fed. Reg. 47562 (to be codified at 43 C.F.R. pt. 3000, 3100, 3110, 3120, 3130, 3140).

107. One Big Beautiful Bill Act, § 50104; Maxine Joselow, *Trump Opens Pristine Alaska Wilderness to Drilling in Long-Running Feud*, N.Y. TIMES (Oct. 23, 2025) https://www.nytimes.com/2025/10/23/climate/trump-arctic-national-wildlife-refuge-oil-drilling.html?nl=Climate+Forward [https://perma.cc/3YCK-E4NX]; Emily Gardner, *1.5 Million Acres of Alaskan Wildlife Refuge to Open for Drilling*, EOS (Oct. 23, 2025) https://eos.org/research-and-developments/1-5-million-acres-of-alaskan-wildlife-refuge-to-open-for-drilling [https://perma.cc/6JHP-L7FB].

108. Mark K. DeSantis & Lexie Ryan, Cong. Rsch. Serv., IF13119, National Petroleum Reserve in Alaska (NPR-A): A Summary (2025).

109. Pub. L. 94-258, §105(b)(c), 90 Stat. 305 (1976), codified at 42 U.S.C. § 6505(b).

110. 42 U.S.C. § 6503(b). The Conference Report on this legislation called on the Secretary to "take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve." H.R. REP. NO. 94-942, at 21 (1976) (Conf. Rep.).

111. 42 U.S.C. § 6504(a). Based on this authority, the Interior Secretary has designated several areas in the NPRA as having significant subsistence and other values requiring such special protection. These included the Teshekpuk Lake Special Area, created to protect migratory waterfowl and shorebirds, the Colville River Special Area, created to protect the

In 1980 Congress authorized "an expeditious program of competitive leasing of oil and gas" in the NPRA that would include "such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on" the NPRA's surface resources.[112]

A small fraction of the NPR is currently under lease. Whereas the Biden Administration would have permitted leasing on only about half the NPR, the second Trump Administration is proposing to lease nearly 19 million acres.[113] The OBBBA overrides the Biden NPRA rules and instead directs the Secretary to "restore and resume" oil and gas leasing under policies President Trump had adopted in June 2020, and to "conduct not fewer than 5 lease sales" of at least 4 million acres each within 10 years after the Act's enactment.[114]

The OBBBA contains similar mandates regarding leasing submerged lands off the nation's coasts. Moreover, it reduces royalties that oil and gas lessees must pay the federal Treasury down to a minimum that Congress established when it enacted the Mineral Leasing Act in 1920.[115] Estimates are this will reduce federal revenues by tens of billions of dollars over the next couple of decades, with half of that loss being borne by states under the Act's revenue-sharing provision.

Regarding federal coal, the OBBBA requires the Interior Department to offer leases, at a significantly reduced royalty rate, on at least four million acres of known coal reserves on public lands.[116] In response, the Administration recently announced that it is putting more than 13 million acres of federally-owned coal up for leasing.[117]

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arctic peregrine falcon, and the Utukok River Uplands Special Area, created to protect critical habitat for caribou of the Western Arctic Herd. *Biden-Harris Administration Takes Critical Action to Protect Alaska Native Substance, Lands and Wildlife*, U.S. DEP'T. OF INTERIOR (last updated Apr. 19, 2024) https://www.doi.gov/pressreleases/biden-harris-administration-takes-critical-action-protect-alaska-native-subsistence [https://perma.cc/S26H-26D6].

112. Act of Dec. 12, 1980, Pub. L. No. 96-514, 94 Stat. 2957, 2964 (1980).

113. Interior Department Press Release on implementing the Trump "Unleashing" Executive Order, §3(b)(ix),(x),(xii-xv).§§ 3(b)(i)-(vii), (xx); Yereth Rosen, *Trump Administration Moves Toward an Arctic Alaska Oil Lease Sale Despite the Government Shutdown*, ALASKA BEACON (Oct. 22, 2025) https://alaskabeacon.com/2025/10/22/trump-administration-moves-toward-an-arctic-alaska-oil-lease-sale-despite-the-government-shutdown/ [https://perma.cc/X3ZB-XE39].

114. One Big Beautiful Bill Act, Pub. § 50105.

115. *Id.* at § 50101(a).

116. *Id.* at §§ 50202-03; *see* 30 USC § 201.

117. Interior Unleashes American Coal Power In Bold Move To Advance Trump Administration Priorities, BURAEU OF LAND MANAGEMENT, https://www.blm.gov/press-release/interior-unleashes-american-coal-power-bold-move-advance-trump-administration [https://perma.cc/JA28-M4BM]; Timothy Gardner, *Trump Administration to Expand Coal Leasing, Fund Coal Plant Upgrades*, REUTERS (Sep. 29,2025, at 12:56 ET), https://www.reuters.com/sustainability/climate-energy/trump-officials-announce-plan-boost-coal-output-2025-09-29/ [https://perma.cc/49KA-7P2J].

Whether these provisions actually result in more extraction of fossil fuels and timber from public lands is not so clear. Market forces are an important driver of industry interest, and how much public land is available is but one component of that calculation.[118]

Nevertheless, the OBBBA and related Administration actions will make vast amounts of public lands available to petroleum, mining, timber and other industrial enterprises and speculative investors on generous terms. Under current law the tenure of such arrangements can be lengthy, even open-ended. While not transferring complete ownership, the effect of creating many thousands of potentially long-lasting partial property rights to mine and log public lands should not be underestimated.

So long as they remain outstanding, these property rights will affect the management of many millions of acres of public lands. They will greatly complicate, and in some cases simply thwart, efforts to conserve wildlife and other natural values, and interfere with recreation dependent on such values, not simply on the lands that are leased, but on other public lands in the vicinity.[119] Their overall effect may not, in other words, be radically different from an outright permanent transfer of complete title.

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All that said, two things are worth noting about the Trump II public lands actions to date. First, the Administration has not openly endorsed transferring full ownership of public lands to states or private interests. It did not take a public position on a proposal advanced by Utah Senator Mike Lee to include in the OBBBA an authorization to sell millions of acres of public land managed by the

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118. *See*, e.g., Travis D. Stice, Letter to Stockholders Issued by Diamondback Energy, Inc., Diamondback Energy (May 5, 2025), https://www.diamondbackenergy.com/news-releases/news-release-details/letter-stockholders-issued-diamondback-energy-inc-7 [https://perma.cc/T9MS-VA3D]. Diamondback Energy letter to stockholders May 5, 2025, projecting that future activity in, and production from, the Permian Basin in New Mexico and Texas---much of it centered on public lands---will decline). *But see* Mary Cunningham, *Trump Administration Fast-Tracks Oil and Mining Projects, Angering Environmentalists*, CBS NEWS (Apr. 5, 2025, 13:20 ET), https://www.cbsnews.com/news/trump-drilling-mining-permitting-process-shortened/ [https://perma.cc/GNZ9-HPP2].

119. *See, e.g.*, Alysha Lundgren, *Interior Opens Lands Adjacent to Zion, Other National Parks to Coal Leasing*, ST. GEORGA NEWS (Nov. 2, 2025) https://www.stgeorgeutah.com/news/interior-opens-lands-adjacent-to-zion-other-national-parks-to-coal-leasing/article_1ef2fb92-cbf3-47b0-a994-0c79f31a9ddb.html?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=1a409eabdb-EMAIL_CAMPAIGN_2025_11_02_11_39&utm_medium=email&utm_term=0_-1a409eabdb-77300637 [https://perma.cc/QWJ5-MM3Q]; Mike Koshmrl, *Proposed Wyoming Oil and Gas Leases Overlap Wildlife Corridors*, HIGHCOUNTRYNEWS (Oct. 29, 2025) https://www.hcn.org/articles/proposed-wyoming-oil-and-gas-leases-overlap-wildlife-corridors/?utm_source=wcn1&utm_medium=email&utm_campaign=2025-10-31-Newsletter [https://perma.cc/GG6D-SQP4].

U.S. Forest Service and the Bureau of Land Management.[120] Lee's proposal failed in large part because of opposition from several Republican members of the House and the Senate from the West.[121]

Second, the Trump II Administration has largely refrained reversing or limiting the many actions its predecessors took to establishing national monuments, using their authority under the Antiquities Act, as the Trump I Administration did by shrinking two large national monuments in Utah.[122] In May the Department of Justice's Office of Legal Counsel issued a lengthy formal legal opinion overruling a 1938 Attorney General opinion and concluding that the president had the authority to abolish national monuments established by earlier presidents.[123] But as of this writing no action has been taken to implement the new opinion.

It is worth asking why, as seems to be the case, the Administration is wary of endorsing outright transfers of full title to public lands, or weakening or abolishing national monument protections for such lands, even though right-wing opponents of federal public lands have long advocated for such things[124].

The most obvious explanation, at least to this observer, is that the Administration has been made cautious by the opinion polls I referred to earlier[125] which consistently show how most Americans support

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120. Drew McConville, Mariel Lutz & Jenny Rowland-Shea, *The Trump Administration's Expansive Push to Sell Out Public Lands to the Highest Bidder*, CTR. FOR AM. PROGRESS (Sep. 22, 2025) https://www.americanprogress.org/article/the-trump-administrations-expansive-push-to-sell-out-public-lands-to-the-highest-bidder/ [https://perma.cc/ZJ5W-7EGC].

121. *See e.g.*, Maxine Joselow, *A Conservative's Plan to Sell Public Lands Faces MAGA Pushback*, N.Y. TIMES (June 29, 2025), https://www.nytimes.com/2025/06/27/climate/public-lands-sell-off-maga.html [https://perma.cc/TWQ7-ZXKG].

122. The Trump II Adninistration has removed the prohibition on commercial fishing that Presidents G.W. Bush and Obama included in vast national monuments they established on submerged public lands offshore. But it has not weakened, shrunk or abolished onshore national monuments, though it has danced around the idea. Internal documents leaked in the first few months suggested the Administration had such direct actions under serious consideration, but when pressed on it the Administration retreated. *See* Jennifer Yachnin, Heather Richards & Scott Streater, *Here Are National Monuments Trump Could Dismantle*, POLITICO: E&E NEWS (June 17, 2025, at 01:52 ET), https://www.eenews.net/articles/here-are-national-monuments-trump-could-dismantle/?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=95edd2e5a7-EMAIL_CAMPAIGN_2025_06_18_01_00&utm_medium=email&utm_term=0_-95edd2e5a7-77300637 [https://perma.cc/3UJ5-A2GX].

123. Revocation of Prior Monument Designations, 49 Op. O.L.C. (May 27, 2025) (slip op. at 50).

124. *See e.g.*, Alexander Annett, *The Federal Government's Poor Management of America's Land Resources*, The Heritage Found. (May 17, 1999) https://www.heritage.org/environment/report/the-federal-governments-poor-management-americas-land-resources [https://perma.cc/QZE3-EFSQ]; Stuart M. Butler, *Privatizing Federal Services: A Primer*, THE HERITAGE FOUND. (Feb. 20, 1986) https://www.heritage.org/budget-and-spending/report/privatizing-federal-services-primer [https://perma.cc/9BAC-Y2DR]; *see also* sources *infra* note 109.

125. *See* sources cited *supra* notes 26-27.

protecting public lands, even in deeply red states like Utah and Montana.[126]

Perhaps they are also mindful of the experience of the Reagan Administration in the early 1980s. When he was campaigning for president in 1980 against Jimmy Carter, Ronald Reagan characterized himself as a "sagebrush rebel," endorsing a rightwing movement that was then advocating for transferring many public lands in the West to the states.[127] Once in office, he proposed selling off some 35 million acres of public land he called "surplus" supposedly to help balance the federal budget.[128]

Reagan's proposed selloff of public lands triggered a huge amount of opposition, nationally and locally.[129] It failed to to gain much support even among congressional Republicans (who at the time controlled the Senate), and fell flat.[130] Reagan got the message, and abruptly started working with Congress to protect more public lands.[131] Recall that I mentioned earlier Congress's creation of the National Wilderness System in 1964; in fact, before he left office in early 1989, Reagan signed 28 separate bills that altogether put more acreage in the lower 48 states in the wilderness system, the most protective category, than any president before or since.[132]

Reagan also appointed a flamboyant right-winger from Wyoming, James Watt, as Interior Secretary.[133] Watt immediately launched an effort to lease every acre of public land legally open to oil and gas development.[134] It too triggered a good deal of opposition and he eventually resigned, but not before issuing oil and gas leases in some areas, like the Rocky Mountain Front in northern Montana, that many wanted to see protected. Illustrating my earlier point about how the property rights contained in such leases can make it hard to retire, it took forty years and tens of millions of dollars of federal and private

126. Jason Chaffetz, a Republican member of the House from Utah, provided a vivid illustration of this in 2017 when in the early days of the first Trump Administration, he introduced legislation proposing to sell off 3.3 million acres of public land, only to encounter such immediate, withering criticism that he voluntary withdrew the measure within a few days. *See* Juliet Eilperin, *Facing Backlash, Utah Rep. Jason Chaffetz Withdraws Bill to Transfer Federal Land to the States*, WASH. POST, (February 2, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/02/02/facing-backlash-utah-rep-jason-chaffetz-withdraws-bill-to-transfer-federal-land-to-the-states/ [https://perma.cc/H3JT-8SRB].

127. LESHY, *Our Common Ground*, *supra* note 10 at 576-78.

128. *Id.*

129. https://www.nytimes.com/1982/04/17/us/west-upset-by-reagan-plan-to-sell-some-federal-lands.html; https://time.com/archive/6859568/land-sale-of-the-century/.

130. *Id.*

131. LESHY, *Our Common Ground*, *supra* note 10, at 577.

132. *Id.* at 351-52, 499, 576-77.

133. *Id.* at 576-77.

134. *Id.* at 577.

philanthropic money to finally retire the leases and protect this area from industrial activity.[135]

The Trump Administration is also likely mindful of the Supreme Court's rejection earlier this year of Utah's attempt to have it establish constitutional limits on Congress's power to hold public lands for the benefit of all.[136]

Another piece of evidence supporting this interpretation is the changing position of the Heritage Foundation, a very conservative think-tank. Practically since its founding in 1973, it has consistently advocated for transferring many public lands out of national ownership.[137] But its recommendations for the incoming Trump Administration in its so-called Project 2025 were curiously silent on the subject.[138]

To this long-time observer of public lands politics, the decisions of the Foundation and the Trump II Administration to take a pass on this issue did not represent a change of objective, but rather a change of tactics. Those who think holding large amounts of lands in public ownership and protecting most of them from industrialization is a bad (and even possibly unconstitutional[139]) policy have not gone away. But for President Trump now to support divesting significant amounts of public land seems plainly out of step with mainstream public opinion everywhere, including in the intermountain West.

This has, I believe, led the Heritage Foundation and its allies to change strategy. Rather than calling for divestiture of public lands, they now seek to hobble its management and make it ineffective.

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135. See Badger Bulletin, Victory for the Badger- Two Medicine, Glacier-Two Med. All. (Sept. 10, 2023) https://www.glaciertwomedicine.org/victory-for-the-badger-two-medicine/. [https://perma.cc/H6TW-ZYL2].

136. Utah v. United States 604 U.S. ____; 145 S. Ct. 1134 (2025); Nate Raymond, *US Supreme Court Rejects Utah Challenge to Federal Land Control*, REUTERS (January 14, 2025, at 09:16 ET), https://www.reuters.com/legal/government/us-supreme-court-rejects-utah-challenge-federal-land-control-2025-01-13/ [https://perma.cc/2BH4-JKBZ]; *see also* John D. Leshy, *Utah Wants the Supreme Court to Give It Land Owned by All Americans*, N.Y. TIMES (Jan. 8, 2025) https://www.nytimes.com/2025/01/08/opinion/utah-parks-supreme-court.html [https://perma.cc/8JR5-3UJM].

137. The 2016 Republican Party platform made a similar recommendation, calling it "absurd" to think that all public lands should "remain under the absentee ownership or management of official Washington," and instead calling on Congress to "immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states," and calling on "all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole." *See* U. Cal. Santa Barbara, *2016 Republican Party Platform*, THE AMERICAN PRESIDENCY PROJECT, (July 18, 2016),

https://www.presidency.ucsb.edu/documents/2016-republican-party-platform [https://perma.cc/JLJ6-MQ2M].

138. *See generally*, MANDATE FOR LEADERSHIP: PROJECT 2025, THE HERITAGE FOUND. (2023) https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [https://perma.cc/43VE-4DR8].

139. *See,* Leshy, *supra* note 136 and accompanying text.

Trump's Director of the Office of Management and Budget, Russell Vought, a long-time Heritage Foundation official who was the principal architect of Project 2025, has aggressively implemented this strategy inside the Trump Administration.[140]

This hobbling of management comes primarily through slashing the budgets and workforces of the managing agencies,[141] including their capacity for developing and applying the science that is a key component of managing natural areas.[142] This will degrade both the lands and the experiences of the recreating public who use them. The barely disguised objective is to so discredit federal land management in the public's mind that many will conclude the best thing to do is to let someone else—states, local governments, private interests—take up that responsibility. It is clear that if the lands were given to the states, especially if unaccompanied by federal dollars, they would very likely have little choice but to privatize them.[143]

Even if this strategy does not significantly reduce the amount of land in national ownership before the Trump Administration leaves office, the hollowing out will be nearly impossible to reverse quickly, even if Trump were to be succeeded by an ardent defender of public lands. Thus the strategy could still work in the longer run.

And if large quantities of public lands are put up for sale, who would be likely buyers? As I noted earlier, we are in a second Gilded Age. Like the one that dominated American political culture in the last few decades of the nineteenth century, it is characterized by huge wealth

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140. *See, e.g.*, Sophia Cai & Megan Messerly, *Like Elon Musk, Russ Vought Wants to Break Washington. Unlike the Billionaire, the Budget Guru Might Just Succeed.*, POLITICO (June 7, 2025 at 14:00 ET) https://www.politico.com/news/2025/06/07/russ-vought-elon-musk-00392931 [https://perma.cc/NGJ5-QGKR]. Former House Speaker Newt Gingrich recently noted that Trump and Vought are mounting a "very methodical, aggressive cultural and political and economic offensive" to shrink the government. Erica L. Green*, Deepfakes, Insults and Job Cuts: Government Shutdown Like No Other*, N. Y. TIMES, Oct. 2, 2025. https://www.nytimes.com/2025/10/02/us/politics/shutdown-trump-clinton-gingrich.html [https://perma.cc/WC7J-SKQ3].

141. I have described public land management as a "great bargain—by practically every measure one of the most cost-effective things the U.S. government does." JOHN D. LESHY, DEBUNKING CREATION MYTHS ABOUT AMERICA'S PUBLIC LANDS 26 (2018). The total budget of the four principal federal land management agencies is less than one third of one per cent of the total federal budget, and only about 2% of the non-defense, discretionary (non-entitlement) portion of the federal budget. The four agencies collectively employ only about 3% of the total U.S. government civilian workforce, not counting the U.S. Postal Service. *See id.*

142. *See, e.g.*, *Here's What Trump's Budget Proposal Cuts by Agency*, THE WASHINGTON POST (May 2, 2025) https://www.washingtonpost.com/politics/interactive/2025/trump-budget-proposal-cuts/ [https://perma.cc/ZY6N-CU34].

143. As New Mexico Senator Martin Heinrich posted on Facebook on February 26, 2025, "Republicans' Plan: Step One: Fire thousands of workers who manage our public lands. Step Two: Say these lands aren't being managed and need to be transferred to states. Step Three: Sell the lands off to the highest bidder." Senator Martin Heinrich, FACEBOOK (Feb. 26, 2025) https://www.facebook.com/SenatorHeinrich/posts/republicans-planstep-one-fire-thousands-of-workers-who-manage-our-public-landsst/11796221101890 67/ [https://perma.cc/M87W-WVPZ].

disparities and manipulation of the political system by the very wealthy.[144]

The first Gilded Age facilitated the plundering of public land assets to benefit wealthy special interests.[145] The Trump policies, aimed at turning over vast amounts of public lands to petroleum and other industrial enterprises and speculative investors for little or no return, certainly raise the specter of closing or restricting access to public lands currently open to all.

Other examples can be found in contemporary conflicts between wealthy private landowners and recreational users of public land. Not long ago, a wealthy North Carolinian bought 22,000 acres of land in Wyoming that was interspersed in a checkerboard pattern with about the same amount of public land—the legacy of a giant federal land grant Congress made to the first transcontinental railroad in 1864.[146] When three sport hunters stepped momentarily into the airspace over a corner of his land in order to access the public lands where they planned to engage in lawful hunting, he sued them for trespass, demanding $8 million in damages even though they had not set foot on his land or otherwise cause him any tangible harm.[147] Other plutocrats have done similar things in other parts of the West.[148]

Another illustration of the growth of plutocratic influence on public lands is the changing profile of the typical holder of a permit to graze livestock on those lands. Studies suggest that these days perhaps several thousand grazing permittees might be characterized as hobbyists or amenity-seekers, who get most of their income elsewhere.[149] And increasingly they have fabulous wealth; for example, in 2021, a large ranch that includes permits to graze many thousands of acres of public land in Montana's beautiful Centennial Valley changed

144. *See supra* text accompanying notes 5-13.

145. *See supra* text accompanying notes 5-13.

146. Will Walkey, *Corner Crossing Lawsuit is the Latest Fight Over Mountain West Land Access*, WYO. PUBLIC MEDIA (Sep. 23, 2022) https://www.wyomingpublicmedia.org/open-spaces/2022-09-23/corner-crossing-lawsuit-is-the-latest-fight-over-mountain-west-land-access [https://perma.cc/J8SZ-GMWR].

147. The lower courts rejected his lawsuit and the Supreme Court recently denied review. Iron Bar Holdings, LLC v. Cape, 674 F. Supp. 3d 1059, 1064 (D. Wyo. 2023), *aff'd*, 131 F.4th 1153 (10th Cir. 2025), *cert. denied* (__ S Ct. __, Oct. 20, 2025).

148. Nicole Blanchard, *Texas Billionaire Brothers Block Another Idaho Road, Prompting Criticism Over Public Access*, IDAHO STATESMAN (June 12, 2019, 2:24 PM) https://www.idahostatesman.com/outdoors/article231467743.html [https://perma.cc/8TT2-TLZH].

149. See, e.g., John Leshy & Molly McUsic, *Where's the Beef, Facilitating Voluntary Retirement of Federal Lands from Livestock Grazing*, 17 N.Y.U. ENVT'L L.J. 368, 371 n. 11 (2008); Bradley J. Gentner & John A. Tanaka, *C1assifying Federal Public Land Grazing Permittees*, 55 J. RANGE MGMT. 2, 8 (2002); *see also* E. Tom Bartlett et al., *Valuing Grazing Use on Public Land*, 55 J. RANGE MGMT. 426, 426 (2002).

hands.[150] The seller: a Koch Brothers enterprise. The buyer: Rupert Murdoch and his spouse.[151]

Another manifestation is in key Trump Administration appointments. For example, Interior Secretary Doug Burgum, a tech billionaire before he entered politics, has close ties to the petroleum industry and repeatedly has spoken of the public lands as a gigantic fiscal asset on the national "balance sheet."[152] Michael Boren, the founder of a multi-billion-dollar tech company, was recently confirmed by the Senate as Undersecretary of the Agriculture Department for Natural Resources and the Environment. There he supervises the Forest Service, even though he has had numerous disputes with that agency over his use of lands he owns in Idaho that are within the Sawtooth National Recreation Area it manages.[153]

Considered all together, these modern-day Gilded Age initiatives pose a major threat to the public lands, and especially to its important function as a great equalizer. To the extent they take hold, these lands will no longer provide readily accessible, affordable opportunities for millions of ordinary citizens to recreate in and be inspired by encounters with wild nature. While the recent controversy over Senator Lee's proposal to include a public land sales provision in the OBBB Act resulted in many voices being raised in opposition from a wide variety of interests, it remains to be seen whether the Trump Administration's less overt but much more widespread efforts toward the same end will be opposed with the same fervor.

Before closing, let me suggest that the stakes regarding the future of the public lands are particularly high in the state of Alaska.[154] Its stupendous scale and breathtakingly gorgeous, largely intact natural landscapes, many of which are found on the more than 200 million acres of public lands found there, have long fired the American

150. Forbes Global Properties Staff, *Rupert Murdoch Buys Koch Family Ranch in Montana For $200 Million*, FORBES GLOBAL PROPERTIES https://www.forbesglobalproperties.com/insights/rupert-murdoch-buys-koch-family-ranch-in-montana-for-200-million [https://perma.cc/AS5X-PBNG]; E.B. Solomont & Candace Taylor, *Rupert Murdoch Buys $200 Million Montana Ranch From the Koch Family*, WALL STREET JOURNAL (Dec. 9, 2021 at 11:02 AM ET) https://www.wsj.com/real-estate/luxury-homes/rupert-murdoch-buys-200-million-montana-ranch-from-the-koch-family-11639065752?mod=hp_trending_now_article_pos1. [https://perma.cc/SM3B-CTDM].

151. Forbes Global Properties Staff, *supra* note 150.

152. Heather Richards, *4 things to know about Doug Burgum's 'balance sheet' pitch*, E&E NEWS BY POLITICO, (April, 25, 2025 at 1:43 PM EDT), https://reason.com/volokh/2024/07/04/what-the-declaration-of-independence-said-and-meant-6/ [https://perma.cc/3XP2-BNV8].

153. Hiroko Tabuchi, *Trump's Pick to Run the Forest Service Has a History With the Agency*, The New York Times (June 3, 2025) https://www.nytimes.com/2025/06/03/climate/michael-boren-forest-service-nomination.html [https://perma.cc/465F-MGS2]; PN13-1 - Nomination of Michael Boren for Department of Agriculture, 119th Congress (2025-2026), PN13-1, 119th Cong. (2025).

154. *See*, John D. Leshy, *The Cloudy Future of Alaska's Magnificent Public Lands*, 40 NAT. RES. & ENV'T (Winter, 2026).

imagination. A good many of these lands have been accorded considerable protection, primarily as a result of the landmark Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980 after a national, bipartisan grassroots campaign.[155] But gaps and other shortcomings in these protections have emerged and become more prominent in recent years.[156] The problems are being exacerbated by climate change, including rapidly thawing permafrost, as the Arctic has warmed 3-4 times faster than the rest of the earth in the past few decades.[157] Growing threats to these lands are exemplified by President Trump's January 20, 2025 executive order calling for developing Alaska's resources "to the fullest extent possible.[158]" A national grassroots movement like the one that persuaded Congress to enact ANILCA in 1980 is now in the process of being revitalized, led by organizations like Americans for Alaska.[159]

V. CLOSING SPECULATIONS ABOUT THE FUTURE

At this point, less than a quarter of the way through his second term, it remains entirely possible that Donald Trump will preside over a paradigm shift in America's public land policy.

On the scale of public concern, public lands rank far below issues like war and peace and economic and human health. On those and many other issues, Americans seem to be divided into two more or less equal camps. Moreover, our political system is more dysfunctional than it has been in a very long time. All this suggests that it may not be realistic to expect that the longstanding trend of protecting more and more lands in public ownership will continue, especially given the President's belief that climate change is not a serious problem, his support for using all available public lands to produce fossil fuels, and his efforts to roll back many policies and programs aimed at protecting the environment.

I have mentioned the Reagan experience with public lands, where his initial efforts to make fundamental changes failed, and he ended up continuing rather than altering the long trend favoring protecting

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155. LESHY, *Our Common Ground*, *supra* note 10, at 520-27.

156. For example, the Trump Administration recently announced its approval of a long-contested proposal to proceed with a land exchange that would result in a road being built through the Izembek National Wildlife Refuge in the Aleutian Islands, adopting an interpretation of ANILCA that could be used to shred protections for most of the lands that statute protected. *See, e.g.*, Katie Umphlett, *What Public Lands Will Alaska Have Left Once Trump is Through with Them?*, ALASKAN WILDERNESS LEAGUE (Oct. 30, 2025) https://alaskawild.org/blog/what-public-lands-will-alaska-have-left-once-trump-is-through-with-them/ [https://perma.cc/S2XH-4EEP].

157. Mika Rantanen, et al., *The Arctic Has Warmed Nearly Four Times Faster than the Globe Since 1979*, 30 COMMC'NS. EARTH & ENV'T 1, 1 (2022).

158. Exec. Order No. 14153, 90 Fed. Reg. 144 (Jan. 20, 2025).

159. *See, e.g.*, AMERICANS FOR ALASKA, https://americansforalaska.org/ [https://perma.cc/2H4S-WRUH] (last visited Oct. 21, 2025).

more and more public lands.[160] There are, however, many differences between then and now. Social media did not then exist, Americans were less siloed, the courts were far less conservative, Democrats controlled the House, and the Republicans who controlled the Senate were not wholly supine to the President like they are today. Perhaps most important, money did not control politics the way it does today, a situation exacerbated by the ever-growing gulf between the very rich and everyone else.[161]

It seems clear that many people who voted for President Trump in 2024 did not do so with expectation that he would make major changes in public land policy. Nevertheless, it is currently an open question whether defenders of protected public lands can mount an effective national campaign to galvanize the large but ordinarily mostly silent majority that supports strong protections for those lands, before many become persuaded by the "hollowing out" strategy that the U.S. government cannot manage them effectively. That is, the Trump Administration's strategy of slashing the budgets and capacity of the agencies managing those lands could succeed in undermining public support for continuing U.S. ownership.[162]

Ultimately, of course, public land policy is set through the political process. Nothing in the U.S. Constitution says we must have public lands. All it takes is an ordinary act of Congress to transfer every last acre out of U.S. ownership, even iconic treasures like the Everglades or Yellowstone.[163]

What it boils down to is this: Each new generation of Americans must effectively decide what it wants to do with these lands. Without political support, they and the values they bring to our way of life can be lost. Their future will be determined largely by how Americans react to the changes now underway.

There's another way to think about the challenges we face, including the destabilizing climate. Dealing effectively with these challenges requires mustering the political will to decide that society's collective, long-term interest in ensuring that future generations have a world worth living in must prevail over shorter-term, narrower interests.

As *Our Common Ground* shows, the basic theme that emerges from the history of America's public lands is that, time and time again, our political system *has done exactly that*, by preserving iconic places for future as well as present generations to enjoy, by restoring denuded

160. *See supra* text accompanying notes 127-134.

161. *See supra* text accompanying notes 3-13.

162. *See supra* text accompanying notes 139-42.

163. *See*, e.g., Kleppe v. New Mexico, 426 U.S. 529, 539 (1976) ("we have repeatedly observed that 't]he power over the public land thus entrusted to Congress is without limitations.'" (citations omitted) (unanimous)).

forest lands and acquiring wildlife habitat to rebuild migratory bird populations, while at the same time producing jobs and stimulating an outdoor-recreation based economy. Public land policy has also begun, admittedly tardily, to better reflect societal diversity and to acknowledge past injustices to indigenous peoples.

But will the long-standing, bipartisan consensus on the general direction of public land policy endure, or will it unravel as land management agencies are hollowed out, as climate change takes its toll, and as biodiversity suffers? Will rejecting rather than respecting the teachings of science becomes the dominant attitude? Will partisan rhetoric intensify and voices become more shrill and minds become more closed? Will the American political system become even more dysfunctional?

Good policy doesn't just happen; it comes about because people advocate for it, speaking up and engaging in the political process. And for those who may be skeptical that politics---and particularly politics at the national level---can really make a difference to our daily lives, I would simply say this: Cynicism and apathy will not alter what is unfolding on a daily basis in our nation's capital these days. It is more important than ever for rising generations to engage with the political system that will determine their future, and that includes the future of the public lands.

In his 1961 inaugural address, John Kennedy famously said the "torch has been passed to a new generation of Americans"[164]—but as Denis Hayes, key promoter of the first Earth Day in 1970, once said, "Don't expect anyone to pass you a torch. Power is an aphrodisiac and no one in power wants to give it up. It is up to you to find it, seize it and carry it to your destiny."[165]

Engaging with the public lands is a concrete way for people to express what kind of world they want to leave for future generations. Our lives are, as has been noted, "not meant to be optimized through a screen, but to be lived,"[166] and one way to do that is by engaging with the natural world—both directly and through involvement in public land policymaking.

The more people do that—and the more the nation continues to adhere to Theodore Roosevelt's advice, offered as he was leaving office

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164. John F. Kennedy, Inaugural Address (Jan. 20, 1961), in John F. Kennedy Presidential Library & Museum, https://www.jfklibrary.org/Asset-Viewer/BqXIEM9F4024ntFl7SVAjA.aspx [https://perma.cc/URJ8-2UNC].

165. Communications staff, *Washington State University, Earth Day Founder Says Youth Must Seize Torch*, WSU INSIDER, (MAY 13, 2008), HTTPS://NEWS.WSU.EDU/NEWS/2008/05/13/EARTH-DAY-FOUNDER-SAYS-YOUTH-MUST-SEIZE-TORCH/ [HTTPS://PERMA.CC/U8E3-ZJ9D].

166. Adrienne LaFrance, *The Rise of Techno-Authoritarianism*, ATLANTIC, (Jan. 30, 2024), https://www.theatlantic.com/magazine/archive/2024/03/facebook-meta-silicon-valley-politics/677168/ [https://perma.cc/4YLX-NEQY].

in 1909, to use the public lands "for permanent public good, instead of merely for temporary private gain"[167]—the more likely it is that these lands will continue to supply what President Richard Nixon once called the nation's "breathing space."[168]

Even the champion of free-market capitalism, the Scottish philosopher Adam Smith, carved out an important exception when he made his strong case for private ownership of land in his seminal work *The Wealth of Nations*. A "great and civilized" nation, he wrote, ought to hold lands "for the purposes of pleasure and magnificence" for everyone's benefit.[169]

Finally, as Daniel L. Reardon has noted, while "[i]n the long run, the pessimist may be proved right, the optimist has a better time on the trip!"[170]

167. Theodore Roosevelt, *Special Message*, THE AMERICAN PRESIDENCY PROJECT (Jan. 22, 1909), https://www.presidency.ucsb.edu/documents/special-message-368 [https://perma.cc/JWX6-46ZM].

168. Richard Nixon, *Special Message to the Congress Proposing the 1971 Environmental Program*, THE AMERICAN PRESIDENCY PROJECT (Feb. 8, 1971), https://www.presidency.ucsb.edu/documents/special-message-the-congress-proposing-the-1971-environmental-program [https://perma.cc/E44D-AXKD].

169. 2 ADAM SMITH, THE WEALTH OF NATIONS 471 (Oxford Univ. Press 1904) (1776).

170. Daniel L. Reardon Quotes, GOODREADS, https://www.goodreads.com/quotes/468521-in-the-long-run-the-pessimist-may-be-proved-right [https://perma.cc/CU7R-TBJW].

AMENDING FLORIDA'S GREENBELT LAW THROUGH A SUSTAINABLE APPROACH OF HARVESTING THE SUN*

MICHAEL T. OLEXA AND CHRISTOPHER HILL**

I. INTRODUCTION

In 2022, Florida dropped to twenty-third place for gross receipts of farms, its lowest rank since 1953.[1] The Sunshine State boasts a long history of supporting its farmers with legislation to slash costs and promote incentives. Included in this legislation is Florida's Greenbelt Law, codified in section 193.461, Florida Statutes, which helps farmers by lowering the tax burden on their land.

Farmers are turning apprehensively towards their John Deere 9RX 640's after the price of diesel spiked to $4.214 per gallon in 2023—up

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1. *Farm Income and Wealth Statistics–Farm Sector Financial Indicators, State Rankings,* ECON. RSCH. SERV., U.S. DEP'T OF AGRIC. (Sept. 3, 2025), https://data.ers.usda.gov/reports.aspx?ID=4048 [https://perma.cc/KAT3-7USZ] (when research for this paper started in 2021, Florida was ranked 21st).

from $3.178 just five years before.[2] In November 2023, the Florida Electric Utility Retail Price sat at 0.1347 USD/kWh, an increase of approximately 7% from November 2022.[3] As the agricultural industry is caught in the throes of these price hikes, its essential lifelines are limited in effect and availability. This article examines whether housing solar facilities on marginal crop production lands comports with the requirements of agricultural classification under Greenbelt. When carefully regulated, property used to generate solar electricity can align with Greenbelt's legislative purpose. Solar installations are consistent with this purpose where they are housed on the less productive lands of an agricultural operation, when possible, scaled to that operation's needs, provide power exclusively for that operation, and kept entirely separate from any outside electrical grid. Less productive lands are ideal for solar siting as they will minimally disrupt productive agricultural activities. However, co-location of agricultural and solar production can serve as an alternative where all land on the property is sufficiently productive, or where siting on less productive land is not feasible. Restricting the size of solar facilities to match the demonstrated energy needs of the farm would ensure that agriculture remains the primary focus of the property. Preventing landowners from selling or otherwise distributing any electricity generated by these facilities would have the same effect. Ultimately, any electricity generated by solar facilities sited on agricultural land must be used exclusively for the farming operations conducted on that land. Empowering farmers to harvest the sun will give Florida's agricultural industry the edge it needs to survive and ultimately prosper well into the future.

A. Background

In 1959, the Florida Legislature passed House Bill No. 831, an act that would later become known as Florida's Greenbelt Law.[4] Drafters prefaced the bill's substantive text with context for the legislation, highlighting especially that increased tax assessments on agricultural lands had forced "many persons to give up their livelihood" as farmers.[5] In response, legislators crafted a law that enabled farmers to lower the taxable value of their land. The original purpose of this law was to protect Florida's citizens and economy by serving "to perpetuate, and

2. *9RX 640 Tractor*, JOHN DEERE, https://www.deere.com/en/tractors/4wd-track-tractors/9rx-640/ [https://perma.cc/6QC2-S5XR] (last visited Jan. 24, 2024). *Petroleum & Other Liquids, Weekly Retail Gasoline and Diesel Prices*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_a.htm [https://perma.cc/CY8R-PZ26] (last visited Jan. 24, 2024).

3. *Florida Electric Utility Retail Price*, YCHARTS, https://ycharts.com/indicators/florida_electric_utility_retail_price [https://perma.cc/VN2T-LMXJ] (last visited Jan. 24, 2024).

4. Fla. HB 831 (1959).

5. *Id.*

continue, and encourage agricultural pursuits."[6] Over sixty years later, Greenbelt is doing just that.

Greenbelt's tax benefit is only awarded to lands that are classified by a county property appraiser as "agricultural."[7] To receive this classification, the land must be used primarily for a bona fide agricultural purpose—meaning a "good faith commercial agricultural use of the land."[8] Property appraisers may use various criteria in evaluating the use of land, including "[t]he length of time the land has been so used," "[w]hether the use has been continuous," and "[t]he income produced by the property."[9] The latter is known as the "income methodology approach."[10] Additionally, appraisers may also look to "other factors as may become applicable."[11] These factors are available for appraisers to turn to in their evaluation, but they are not requisite. The Florida Supreme Court has maintained that *actual* agricultural use is "the guidepost in classifying land."[12] As Florida's Fourth District Court of Appeal summarized in *Gianolio v. Markham*, agricultural classification requires "that the actual physical use of the land is agricultural . . . [and] that such use is both 'primary' and 'bona fide.'"[13]

B. The Proposed Amendment

Section 193.461, Florida Statutes, should be amended to provide that the placement of solar facilities on property used for agricultural purposes will not, in itself, preclude an agricultural classification.

The initial reaction to this proposal will likely beg the question, "where's the limit?" After all, stamping solar panels with the same seal of approval awarded to traditional farming applications seems facially incongruous with the purpose of the law. Moreover, the perceived economic policy implications of this modification may stoke greater skepticism. Landowners are incentivized to pursue agricultural classification by the promise of a lower tax burden. At the same time, government reliance on tax revenue encourages legislators to scrutinize proposals to broaden the statute. Exploring the text of statutes, federal administrative terminology, and related judicial opinions highlights realities that justify amending Greenbelt with solar-inclusive language, and provides guidance for developing the limitations that would govern this modification.

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6. *Id.*
7. FLA. STAT. § 193.461(1) (2025).
8. § 193.461(3)(b) (2025).
9. FLA. STAT. § 193.461(3)(b)(1), (6)(a)(4) (2025).
10. FLA. STAT. § 193.461(6)(b) (2025).
11. FLA. STAT. § 193.461(3)(b)(1)(g) (2025).
12. Straughn v. Tuck, 354 So. 2d 368, 370 (Fla. 1977).
13. Gianolio v. Markham, 564 So. 2d 1131, 1133 (Fla. 4th DCA 1990).

II. GUIDING THE AMENDMENT

A. Legislative Guidance

While Greenbelt was created to foster agricultural ventures such as cattle farms and citrus groves, the statute recognizes that every inch of land cannot feasibly be covered with cows or crops. From barns and greenhouses to sprinklers and livestock fans, nearly all farms rely on man-made structures for their operation.

Subsection (6)(c)(1) provides that "irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value,", under the income methodology approach.[14] The codification of subparagraph (1) in 1999 by House Bill No. 1639 was the first instance of this distinction in the statute.[15] Other structures—specifically those used for litter containment, frost protection, and pest control—have since received the same protection through the addition of subparagraphs (2)-(4).[16] The use of "shall" in these subparagraphs delineates that appraisers cannot attribute a separate contributory value to these structures when assessing a property under the income methodology approach.[17]

In contrast, residences sited on agricultural land do not fall under Greenbelt, and are instead assessed separately under subsection (3)(d).[18] This exclusion applies only to "the portion of the property consisting of the residence and curtilage."[19] While residences are precluded from agricultural classification, this has no effect on classification of the property's remainder.[20] In the alternative, permanent residences assessed as homesteads can qualify for an exemption of up to $25,000, which can increase to a total of $50,000 if the assessed valuation is over $50,000.[21]

Unlike residences, solar facilities used to power agricultural operations are deeply similar to the structures listed in (6)(c)(1)-(4), in that they provide a strictly utility-based benefit. Solar power and diesel motors alike can power irrigation systems, for example, yet solar facilities are oddly considered tangible personal property beyond the scope of Greenbelt's protection. Instead, section 196.182(1) offers an 80% exemption from ad valorem taxation for solar devices "installed

14. FLA. STAT. § 193.461(6)(c)(1) (2025).
15. Fla. H.B. 1639 (1999).
16. FLA. STAT. § 193.461(6)(c)(2)-(4) (2025).
17. FLA. STAT. § 193.461(6)(c)(1) (2025).
18. FLA. STAT. § 193.461(3)(d) (2025).
19. *Id.*
20. FLA. STAT. § 193.461(3)(c) (2025).
21. FLA. STAT. §§ 196.031, 193.155 (2025).

on real property on or after January 1, 2018,"[22] while section 193.624(2)(b) provides the same exemption when "determining the assessed value of real property used . . . [f]or nonresidential purposes."[23]

The inconsistency in valuation is only part of the problem—the greater issue is the lack of explicit support in Greenbelt for solar facilities. In fact, section 193.461 supports an inference *against* the use of solar facilities on farms. Unlike subsection (3)(b)(1), which grants property appraisers the discretion to determine whether the land in question is being used for bona fide agricultural purposes based on apparent factors, subsection (4) *requires* appraisers to reclassify lands as nonagricultural where the land has been "diverted from an agricultural to a nonagricultural use," or where the land is "no longer being utilized for agricultural purposes."[24] Without the specific, inclusive language enjoyed by irrigation systems and litter containment structures, appraisers are likely to view solar facilities as an abandonment of a property's agricultural use.

This interpretation, under the right circumstances, would present a striking contradiction. A solar facility scaled to accommodate the energy needs of an agricultural operation would be no more disruptive to the land's use than would the "pumps and motors" powering the irrigation systems accepted under (6)(c)(1).[25] In fact, some companies sell solar-powered pump irrigation systems, which could be used to help farmers break away from the expensive, inefficient diesel engines many Florida farms use to power their irrigation systems.[26] If appraisers find that these systems preclude the accommodating land from agricultural use, that finding would clearly contradict with the provisions of subsection (6)(c)(1), which implicitly accepts the utilization of these systems without contemplating any disruption of the land's agricultural use. On the other hand, if appraisers accept the use of solar-powered pumps, there is little argument against extending this permissibility to other agricultural applications.

Arguing that energy generation is not as essential to farming as irrigation systems would overlook how the latter is only necessary to the extent that it enables agricultural operations to overcome the limitations of human labor. The same goes for the other structures

22. FLA. STAT. § 196.182(1) (2025).

23. FLA. STAT. § 193.624(2)(b) (2025).

24. FLA. STAT. § 193.461(4) (2025).

25. FLA. STAT. § 193.461(6)(c)(1) (2025).

26. *Solar Irrigation for Your Farm* ADVANCED POWER INC., https://solarpumps.com/articles/2017/solar-irrigation-for-your-farm (last visited Jan 24, 2024); *Solar Power Water Pumping Off-Grid Systems*, AMERESCO SOLAR, https://www.amerescosolar.com/solar-power-water-pumping [https://perma.cc/Q82A-ANW5] (last visited Jan. 24, 2024); Adam H. Putnam, WATER QUALITY/QUANTITY BEST MANAGEMENT PRACTICES FOR FLORIDA VEGETABLE AND AGRONOMIC CROPS 41 (2015 ed. 2015).

listed under subsection (6)(c). The Florida Legislature recognizes that these structures allow the agricultural industry to remain prosperous. Solar energy systems function in kind by reducing expenses and directly supporting agricultural operations, and should therefore be accepted within this class of structures.

However, limitations on these facilities will be necessary to prevent resourceful parties from passing off a commercial solar farm as a bona fide agricultural use. The Greenbelt statute provides guidance as to what restrictions could be used in the amendment. Turning firstly to section 193.461(6)(c)(3), frost and freeze protection structures are required to be "consistent with the interim measures or best management practices adopted by the [Florida] Department of Agriculture and Consumer Services" (FDACS).[27] This qualifier is unique to subparagraph (3), and could be used to ensure that solar facilities powering farm operations comport with Greenbelt. The Legislature could turn to the Solar Farm BMP Manual for Wildlife, published by the Florida Fish and Wildlife Conservation Commission (FWCC) in 2022. While directed towards solar farm developers, many of the manual's advocated practices could be used to guide the placement of solar facilities on agricultural land to exclusively power agricultural operations on that land. Oddly, the FWCC has removed the manual from their webpage as of 2024. The Solar Farm BMP has not been re-published or updated since 2022. Thankfully, the manual is still accessible through the Internet Archive's Wayback Machine.[28]

For example, the BMP notes that solar arrays "can be designed to increase pollinators and other beneficial insects," and when sited near crop fields, can actually "increase the productivity of . . . [those] fields by increasing pollination and producing more predatory insects that prey on crop pests."[29] Farmers could either raise the panels "high enough to allow tractors beneath them" or "plant specialty crops between the panels that can handle periods of shading" to maximize land use.[30] Co-location can also help "create a microclimate for the crops grown below them," by retaining moisture and blocking excess sunlight through shading.[31] Florida cannot afford to overlook this

27. FLA. STAT. § 193.461(6)(c)(3) (2025).

28. *Solar Farm Best Management Practices for Wildlife*, OFF. OF CONSERVATION PLAN. SERVS., FLA. FISH AND WILDLIFE COMM'N (Nov. 21, 2022), WAYBACK MACHINE, INTERNET ARCHIVE, https://web.archive.org/web/20221101000000*/https://www.fishwildlife.org/download_file/view/3391/3094 [https://perma.cc/Q2CN-286F] (last visited Jan. 24, 2024) (hover over the green circle on November 21, 2022, and left click either of the two captures 17:31:10 or 17:31:39–both are identical).

29. *Id.* at 4.

30. *Id.* at 6.

31. Kirk Maltais, *New Technology Lets Farmers Use Land for Both Solar Panels and Crops*, THE WALL STREET J. (Nov. 10, 2022, 11:00 AM), https://www.wsj.com/articles/solar-panels-farmers-crops-11668018216 [https://perma.cc/MGV3-QAVM].

benefit, especially with frequently-broken summer heat records[32] and rising global temperatures.[33]

It is problematic that FWCC no longer sponsors best management practices for solar farms, as agency guidelines provide meaningful insight for the Legislature, which could have referred to the BMPs while crafting the structure of the proposed Greenbelt amendment. Before the Legislature moves forward with an amendment, a Florida agency should be tasked to research, create, and publish updated best management practices for solar farms on agricultural land. While the 2022 manual was published by FWCC, it would be more appropriate to task FDACS with this project as the amendment is directed towards agricultural interests. Once the new manual is published, the Greenbelt amendment could mimic subparagraph (6)(c)(3) by requiring compliance "consistent with the interim measures or best management practices adopted by" FDACS.[34]

Solar facilities can agree with the restrictions and intent of Greenbelt when co-located with agricultural land without disrupting the operations on that land. The two-fold effect of minimizing any detriment to productive land, while maximizing financial assistance to farmers in the form of renewable energy, advances the legislative goals of the statute. Requiring facilities to remain separate from the electrical grid, while ensuring the generated power is only used for bona fide agricultural operations on the property, would safeguard this amendment from violating Greenbelt in practice.

B. Federal Guidance

Co-location is not always feasible, so landowners must have an alternative option available under the Greenbelt amendment. The amendment should allow solar facilities on lands which are part of the operation, but minimally productive for its needs. While these lands may be thought of as "marginal," the use of this term in the amendment invites challenge. Defining what constitutes "marginal" land is difficult, as definitions "differ across regions, countries, and organizations."[35] In past applications, assertions "that marginal areas

32. Michaela Mulligan, *July Was the Hottest Month in Tampa's History. Again.*, TAMPA BAY TIMES (Aug. 1, 2023), https://www.tampabay.com/weather/2023/08/01/july-was-hottest-month-tampas-history-again/ [https://perma.cc/CLF6-QN93]; *See also* Cathy Carter, *July 2022 Was the Hottest Month Ever Recorded in Tampa*, WUSF PUB. MEDIA (Aug. 1, 2022, 12:48 PM), https://wusfnews.wusf.usf.edu/weather/2022-08-01/july-2022-hottest-month-tampa [https://perma.cc/86KA-NDG8].

33. Rebecca Lindsey & Luann Dahlman, *Climate Change: Global Temperature*, WWW.CLIMATE.GOV (Jan. 18, 2024), https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature [https://perma.cc/A2P5-A63V].

34. FLA. STAT. § 193.461(6)(c)(3) (2025).

35. Nándor Csikós & Gergely Tóth, *Concepts of Agricultural Marginal Lands and Their Utilization: A Review*, 204 AGRIC. SYS. at 2 (Jan. 2023),

are characterized by limited agricultural potential" were accepted, however others have countered "that marginality is not a static and permanent condition," and is instead "subject to change[s] in land use, agricultural technologies, and the socio-economic environment.[36] While Florida's administrative agencies have used the term "marginal" in some applications relating to agriculture,[37] Florida's statutes lack a clear reference to marginal lands or any definition of the term.

Still, the amendment needs a line of demarcation to allow solar facilities while preserving the state's best agricultural lands for future use. The boundary could be drawn by using terminology established by the federal government. The Farmland Protection Policy Act (FPPA) was passed by Congress "to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses."[38] The FPPA aims to protect "prime farmland, unique farmland, and land of statewide or local importance."[39] 7 C.F.R. § 657.5(a)(1) defines prime farmlands, in part, as "land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses."[40] Further definition and criteria specification is provided by the statute. Section 657.5(b)(1) provides that "[u]nique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops," with further definition and examples following thereafter.[41] Subsection (c) defines "farmland of statewide importance" as land that is important to a state "for the production of food, feed, fiber, forage, and oil seed crops," with the determination of evaluating criteria delegated to the states.[42] "Farmland of local importance" is defined under subsection (d) as lands identified by local agencies as areas of concern for the same production protected under subsection (c).[43]

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https://www.sciencedirect.com/science/article/pii/S0308521X22001962/pdfft?md5=596c64959cbc356aa3abf720b2333bc9&pid=1-s2.0-S0308521X22001962-main.pdf [https://doi.org/10.1016/j.agsy.2022.103560].

36. Hayatullah Ahmadzai, Seta Tutundijan, & Ismahane Elouafi, *Policies for Sustainable Agriculture and Livelihood in Marginal Lands: A Review*, 13 SUSTAINABILITY, no. 16 at 2 (Aug. 4, 2021).su13168692.

37. FLA. DEP'T. OF AGRIC. AND CONSUMER SERVS., FLORIDA STATEWIDE AGRICULTURAL IRRIGATION DEMAND (2015-2035).

38. U.S. DEP'T OF AGRIC., *Prime and Unique Farmlands* (2012), https://efotg.sc.egov.usda.gov/references/public/va/PrimeandUniqueFarmlands.pdf [https://perma.cc/E33Q-E3FH].

39. *Id.*

40. 7 C.F.R. § 657.5(a)(1) (2025).

41. 7 C.F.R. § 657.5(b)(1) (2025).

42. 7 C.F.R. § 657.5(c) (2025).

43. 7 C.F.R. § 657.5(d) (2025).

The Greenbelt amendment should limit the placement of solar facilities from overtaking prime and unique farmlands, as well as farmlands of statewide or local importance. Florida could follow examples set by other states in drawing the boundary. In Connecticut, for solar facilities with a capacity of two megawatts or greater that are "located on prime farmland," the Department of Agriculture must represent that the facility "will not materially affect the status of such land as prime farmland."[44] In Vermont, "[m]unicipal and regional entities provide input on preferred siting locations" for solar facilities.[45] The Florida Legislature could restrict facilities above a generating capacity or area threshold from being placed on prime farmlands entirely, or facilities could be placed with conditions enforced by FDACS. Florida should limit solar facility siting in some way to protect prime farmlands from being used, a compromise that will allow farmers to take advantage of renewable energy while balancing agricultural interests.

C. Judicial Guidance

Though Florida's courts have yet to weigh in on whether agricultural solar facilities would disrupt a property's classification, litigation related to Greenbelt has developed our modern interpretation of the statute's requirements and restrictions. Greenbelt comes equipped with safeguards to prevent the abuse of its benefits, namely the factors listed under subsection (3)(b). The assessors who determine a property's classification are constitutional officers, and their evaluations are "clothed with the presumption of correctness."[46] These assessors serve as the gatekeepers for classification, but when an evaluation is disputed by the property owner, the courts step in to resolve the issue.

In the past, landowners have placed a few cows on their land and claimed that these animals qualify their property as an agricultural operation.[47] Florida's courts have pointed to this as an example of a non-bona fide use.[48] In another instance, a landowner tried to receive classification for a property that kept about fifty chickens—some of which roamed loosely around the land—and presented no evidence of

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44. CONN. GEN. STAT. § 16-50k(a) (2024).

45. *Farmland Solar Policy Design Toolkit*, FARM AND ENERGY INITIATIVE (May 2020), https://farmandenergyinitiative.org/wp-content/uploads/2020/08/Final-FSPP-Toolkit-Report.pdf [https://perma.cc/3765-FJFF]; *See* 30 V.S.A. § 248 (2024).

46. Straughn v. Tuck, 354 So. 2d 368, 371 (Fla. 1977).

47. Kim Gilmore, *Greenbelt Revisions Target Tax Evaders*, TAMPA BAY TIMES (Dec. 15, 1997), https://www.tampabay.com/archive/1997/12/15/greenbelt-revisions-target-tax-evaders/ [https://perma.cc/KYX6-YX97].

48. Stiles v. Brown, 177 So. 2d 672, 676 (Fla. 1st DCA 1965); Walden v. Fletcher Ave. Dev. Corp., 313 So. 2d 65, 67 n.1 (Fla. 2d DCA 1975).

any commercial sales.[49] The assessor denied classification because the landowner's alleged agricultural endeavors appeared facially illegitimate.[50] Although the landowner won at the trial level, the appellate court reversed, finding there was "ample evidence" the assessor could have relied on to deny agricultural classification.[51]

In another case, the First District Court of Appeal reviewed a property assessment challenge where the owner failed to disclose the property's use and was subsequently denied agricultural classification.[52] The court pointed to the necessity of ascertaining "the intent of the property owner . . . as to the utilization of his land," but acknowledged that the burden of this obligation would be too impractical to place on assessors.[53] The court provided an example:

For instance, one of two abutting property owners, each having three thousand acres of timberland, may conduct a bona fide timber program while the other primarily utilizes his land as a game preserve with timber producing being incidental. A visual examination of the property by the tax assessor would disclose a similar utilization of the lands, but the bona fides of the utilization of each tract for agricultural purposes would depend to some extent upon the subjective thinking of the landowner.[54]

Rather than relying on a property's appearance, the court concluded, "it is the bona fides of the utilization by the landowner that makes the land eligible for the benefits of the statute.[55]

Lastly, section 193.461(3)(e) provides "land that has received an agricultural classification . . . is entitled to receive such classification . . . until such agricultural use of the land" is discontinued.[56] The Fifth District Court of Appeal has construed this section to "limit the inquiry" of appraisers "to what may have . . . . materially changed" when determining a property's classification.[57] In *Tilton v. Gardner*, the court found a material change where a property owner "had done nothing but harvest timber" for two years, while allowing the "conditions on the property relating to natural regeneration" of the timber to fall apart.[58]

These examples provide a framework for the proposed amendment. Each case illustrates how the bona fide requirement protects against

49. Daniel v. Stone, 481 So. 2d 1251, 1252 (Fla. 2d DCA 1986).

50. *Id.*

51. *Id.* (quoting *Straughn*, 354 So. 2d at 371).

52. *Stiles*, 177 So. 2d at 673.

53. *Id.* at 676.

54. *Id.*

55. *Id.* Note: These cases reference section 193.11, *Florida Statutes*, which was the Greenbelt statute at the time.

56. FLA. STAT. § 193.461(3)(e) (2025).

57. Tilton v. Gardner, 52 So. 3d 771, 778 (Fla. 5th DCA 2010).

58. *Id.*

clear abuse. It is the responsibility of the land owner to "demonstrate to the taxing authorities that his agricultural operation is bona fide, in good faith."[59] Property owners running legitimate agricultural operations that utilize solar facilities could easily make a showing of the necessary bona fides.

For example, owners could be required to demonstrate that the solar facility is built to scale with the needs of their operation. On average, grain elevators use four kWh per 1000 bushels of grain, while an incubator uses one kWh per twenty-five eggs.[60] In Florida, "the average 400W solar panel can produce more than sixty-one kWh" per month.[61] Of course, these figures are just estimates; actual energy generation and use vary based on the energy demands, available sunlight, and other factors. Still, farmers are capable of calculating the energy needs of their operation and approximating what size solar facility the property would need. These figures would be demonstrated to the appraiser during assessment. Therefore, the proposed amendment should require property owners to demonstrate that the energy output of the solar facility does not significantly exceed the needs of their operation. This would prevent solar facilities from superseding the actual agricultural use of the property by limiting their size in proportion to the operation's needs. Checking compliance with this requirement would be relatively simple, as appraisers would need only to compare a property's energy use to its energy production. In this scenario, property owners who fail this showing could be found in violation of the bona fide requirement and denied classification for the portion of land that houses the solar facility.

The amendment should also limit solar facilities by requiring that the electricity be used exclusively for agricultural operations. The purpose for this limitation echoes the reason for restricting the size of facilities: to prevent electricity generation from overtaking the bona fides of an agricultural property. While solar energy can be a bona fide use where it directly powers farming operations, selling electricity is a markedly commercial-industrial use, and would certainly run afoul of the intent of Greenbelt. Should any property owner attempt to sell excess electricity back to the grid, they would likely be found in violation of section 193.461(4)(a). Subsection (4)(a) provides that "property appraiser[s] shall reclassify . . . [l]and diverted from an agricultural to a nonagricultural use."[62] For existing farms, new profit

59. *Stiles*, 177 So. 2d at 677 (citing Matheson v. Elcook, 173 So. 2d 164, 166 (Fla. 3d DCA 1965).

60. *Farm Energy Estimator*, FREEBORN MOWER ELECTRIC COOPERATIVE, https://fmec.coop/farm-energy-estimator [https://perma.cc/Y3WH-GJMV] (last visited Jan. 24, 2024).

61. Isaac Ost, *How Much Energy Does a Solar Panel Produce?*, SOLAR.COM (Aug. 17, 2023), https://www.solar.com/learn/how-much-energy-does-a-solar-panel-produce/ [https://perma.cc/49GV-VSDG].

62. FLA. STAT. § 193.461(4)(a) (2025).

from energy sales would certainly be found to constitute a "[material] change," which appraisers could then use as justification to deny agricultural classification for that portion of land.[63] The same goes for providing power to dwellings on the land. Residences are assessed separately under Greenbelt, so facilities should not be permitted to provide any power to dwellings of any kind.

In the event of a Greenbelt violation, whether by selling electricity or powering dwellings, only the portion of land housing the solar facility should be denied classification. Just as "[t]he maintenance of a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification," neither should a solar facility that violates Greenbelt preclude non-violating agricultural land from retaining its classification.[64] Appraisers should only deny classification to the portion of land that loses its bona fides as this is consistent with the statute.

Keeping solar energy on the farm is imperative to remaining within the guidelines of Greenbelt. The Legislature must clarify that solar facilities cannot be connected to the electrical grid, nor their generated power sold in any way. To maintain the targeted focus of the amendment, solar power must be used exclusively for the agricultural operations on that land.

III. JUSTIFYING THE AMENDMENT

A. Consistency with Legislative Tradition

The Florida State Legislature has a long and reliable tradition of protecting its farmers. A recent example of this protection is seen in the Legislature's efforts to save the agricultural industry from the devastating effects of citrus greening.[65] House Bill 749 was passed in 2016, amending section 193.461(7)(a). The amendment adds that land taken out of production by the "Citrus Health Response Program" qualifies for continued agricultural classification to the same extent as land retracted for other "state or federal eradication or quarantine program[s]."[66] Included within this program is the Abandoned Grove Initiative, which provides "an incentive to owners who remove their abandoned groves by offering a reduced assessment on cleared property and allow[s] owners to maintain their agricultural

63. *Tilton*, 52 So. 3d at 778.

64. FLA. STAT. § 193.461(3)(C) (2025).

65. *Citrus Greening and Asian Citrus Psyllid,* ANIMAL AND PLANT HEALTH INSPECTION SERV., U.S. DEP'T OF AGRIC. (Sept. 15, 2025), https://www.aphis.usda.gov/plant-pests-diseases/citrus-diseases/citrus-greening-and-asian-citrus-psyllid [https://perma.cc/T85A-D7PX]; T.M. Spann et al,. *Dooryard Citrus Production: Greening Disease*, UNIV. OF FLA. INST. OF FOOD & AGRIC. SCI., EDIS HS1131 (rev. Mar. 2010), https://swfrec.ifas.ufl.edu/hlb/database/pdf/00002447.pdf [https://perma.cc/K7CE-BHJX].

66. Fla. H.B. 749 (2016).

classification on the cleared property for up to 10 years."[67] This incentive is reflected in section 193.461(7)(a), which sets the assessment value of these fallow lands at a maximum of "$50 per acre on a single-year assessment methodology."[68] Lands laid fallow due to citrus greening do not need to remain useless. Instead, they could serve as sites for solar facilities, allowing farmers to derive meaningful use from the land while they combat greening disease. The proposed Greenbelt amendment would continue Florida's tradition of helping farmers by enabling them to save on energy costs and by promoting self-sufficiency.

Amending Greenbelt would be consistent with the statute's legislative tradition, too, as Greenbelt has been amended several times since its inception, with the amendments generally trending towards inclusivity. For example, the statute originally restricted agricultural zoning[69] to land used "exclusively for agricultural purposes."[70] Greenbelt was amended in 1967 to only require land to be used "primarily for agricultural purposes."[71] This modification lowered the burden property owners must meet to achieve classification. An additional example is found in subparagraphs (6)(c)(1)-(4), which set aside protections for certain structures placed on agricultural land, such as litter containment and frost protection structures.[72] The litter containment provision was added in 2001,[73] while the frost provision wasn't added until 2010.[74] Amending Greenbelt to allow solar facilities would simply serve as another instance of legislative broadening meant to better accommodate the ever-changing needs of the agricultural industry.

B. Success in Other States

Other states have embraced the intersection of solar energy and agriculture with demonstrable success. Massachusetts and New Jersey have legislative provisions allowing for the use of solar facilities on agricultural land.[75] In Massachusetts, the SMART Program rewards farms for going solar by offering tariff incentives.[76] In New

67. *Abandoned Grove Initiative*, FLA. DEP'T OF AGRIC. AND CONSUMER SERVS., https://www.fdacs.gov/ Agriculture-Industry/Pests-and-Diseases/Plant-Pests-and-Diseases/Citrus-Health-Response-Program/Abandoned-Grove-Initiative [https://perma.cc/EU4V-3SHY] (last visited Jan. 25, 2024).

68. FLA. STAT. § 193.461(7)(a) (2025).

69. The condition was changed from zoning to classification in 1972.

70. FLA. STAT. § 193.201 (1959).

71. FLA. STAT. § 193.201(3) (1967).

72. FLA. STAT. § 193.461(6)(c)(1)-(4) (2025).

73. Fla. CS for SB 1922, § 4 (2001) (Second Engrossed).

74. Fla. H.B. 981, § 1 (2010).

75. *See* discussion *infra* Sections on Massachusetts and New Jersey.

76. *See* discussion *infra* Section on Massachusetts.

Jersey, the state's Right to Farm Act and administrative code empowers farmers to make use of solar facilities without allowing them to overtake the land's agricultural use, a feat managed by strict guidelines outlined in the same.[77] In Hawaii, solar facilities are a permitted agricultural use, but cannot be placed on highly productive soil.[78] The Florida Legislature can look to these states as models for guidance on expanding Greenbelt to accept solar facilities without trampling the sprawling agricultural industry for which the Sunshine State is known.

1. Massachusetts

In Massachusetts, the state's Department of Energy Resources (DOER) oversees the Solar Massachusetts Renewable Target (SMART) Program.[79] Established in 2018 and codified in section 20.00, title 225 of the Code of Massachusetts Regulations (CMR), the program's stated purpose is to "encourage the continued use and development of . . . solar photovoltaic technology . . . throughout the Commonwealth."[80] Massachusetts has effectuated this purpose by offering "incentive payments" to "Solar Tariff Generation Units" (STGUs) qualified under the program.[81] A "Generation Unit" is defined under 225 CMR 14.02 as "[a] facility that converts a fuel or an energy resource into electrical energy."[82] Significantly, the program's statutory language provides explicit support for the placement of solar facilities on agricultural land, as seen in the program's classification system for STGUs.[83] 225 CMR 20.05(5)(e) provides that STGUs "will be placed into one of three categories with respect to the land or property on which it is sited."[84] Land that is in agricultural or horticultural use under chapter 61A of the Massachusetts General Laws is recognized as agricultural land under the SMART program.[85] The chapter sets special tax rates and valuation for land "deemed to be in agricultural use," and is Massachusetts' equivalent of Florida's

77. *See* discussion *infra* Section on New Jersey.

78. *See* discussion *infra* Section on Hawaii.

79. MASS. DEP'T. OF ENERGY RES., *SMART 1.0 & 2.0 Program Details*, MASS.GOV, https://www.mass.gov/info-details/smart-10-20-program-details [https://perma.cc/8ZE3-UH8B] (last visited Sept. 23, 2025).

80. *Introduction to Solar PV on Farms under the SMART Program*, UNIV. OF MASS. AMHERST, https://www.umass.edu/agriculture-food-environment/clean-energy/research-initiatives/solar-agriculture/introduction-to-solar-pv-on-farms-under-smart-program [https://perma.cc/25PV-833D] (last visited Sept. 23, 2025); 225 MASS. CODE REGS. 20.01 (2020).

81. 225 MASS. CODE REGS. 20.05(2) (2025).

82. 225 MASS. CODE REGS. 14.02 (2025).

83. 225 MASS. CODE REGS. 20.05(5)(e) (2025).

84. *Id.*

85. 225 MASS. CODE REGS. 20.02 (2025); *Solar PV Options for Your Farm: An Overview*, UNIV. OF MASS. AMHERST (Jan. 2024), https://ag.umass.edu/clean-energy/fact-sheets/solar-pv-options-for-your-farm-overview [https://perma.cc/UB3A-YHJA].

Greenbelt statute.[86] Units placed on agricultural land are designated as Category 1 Agricultural units if they meet at least one of five listed criteria listed under subsection 20.05(5)(e)(2)(a).[87] Category 1 Agricultural units include Agricultural Solar Tariff Generation Units (ASTGUs), in addition to STGUs that are mounted on buildings, float in water, create a canopy, or are "sized to meet no greater than 200% of annual operation load of an agricultural facility."[88]

Units placed on agricultural land are strictly regulated under the statute. Floating units can be sited on bodies of water actively used for agricultural activities, provided that the units "allow[] for the continued use of the water body for its intended purpose."[89] Likewise, canopy units must "maintain the function of the area beneath the canopy."[90] By definition, ASTGUs must "allow[] the continued use of the land for agriculture," and are subject to additional, exclusive provisions.[91] For example, subsection 20.05(5)(f)(6) presents standards for the construction of ground-mounted STGUs "when installed on Land in Agricultural Use, Important Agricultural Farmland, or other pervious open space."[92] These units require an engineer's certification that the facility has satisfied nine criteria, such as confirming there was "no removal of all field soils," and that potholes and leveling were done "with minimal overall impact" to the soil.[93] Additionally, ASTGUs must be "designed to optimize a balance between the generation of electricity and the agricultural productive capacity of the soils beneath."[94] ASTGUs must also be raised to allow "for continuous growth of crops" below the panels, as well as "labor and/or machinery as it relates to tilling, cultivating, soil amendments, harvesting, . . . and grazing animals."[95] Program participants are further obligated to provide documentation listing the "total gross acres of open farmland to be integrated with the project," specifications of the design and structure of ASTGUs, and details as to the size and nature of agricultural activities on the land, such as the types of crops and grazing animals.[96]

In a separate guideline defining ASTGUs, DOER provides further specifications. Referring back to 20.06(1)(d)(3), the guideline notes

86. MASS. GEN. LAWS ch. 61A, § 1 (2023).

87. 225 MASS. CODE REGS. 20.05(5)(e)(2)(a) (2025).

88. *Id.*

89. 225 MASS. CODE REGS. 20.02 (2025).

90. 225 MASS. CODE REGS. 20.06(1)(j)(3) (2025).

91. 225 MASS. CODE REGS. 20.02 (2025).

92. 225 MASS. CODE REGS. 20.05(5)(f)(6) (2025) (definitions of the terms "Land in Agricultural Use" and "Important Agricultural Farmland" are provided under section 20.02).

93. *Id.*

94. 225 MASS. CODE REGS. 20.06(1)(d)(2) (2020).

95. 225 MASS. CODE REGS. 20.06(1)(d)(3) (2020).

96. 225 MASS. CODE REGS. 20.06(1)(d)(1)-(6) (2020).

that the lowest point of fixed tilt units must be at least eight feet above ground, while tracking units must be at least ten.[97] ASTGUs are additionally required to evaluate the impact of shading on the land under and surrounding the panels, limit the reduction of sunlight, and adhere to AC/DC capacity restrictions.[98] The guidelines permit applicants to request exception from these additional provisions.[99] However, achieving an exception is no cakewalk for landowners. The request must include an alternative plan that details the applicant's plans to "integrate the ASTGU into their farming operation," shows that the land's agricultural production capacity will not be diminished, and "demonstrates that the *primary use of the land* is for agricultural or horticultural production, as defined under M.G.L. [c.] 61A."[100]

The SMART program does not prohibit ASTGUs from connecting to the electrical grid—rather, it requires it.[101] Interestingly, farms are allowed to sell generated electricity back to the grid through net-metering or alternative on-bill credits (AOBCs); unlike net-metering, "[t]here is no limit to the number of credits" for AOBCs.[102] 225 CMR 20.07-08 provides DOER's formulae for calculating the value of energy sold back to the grid.[103] Section 20.07(4) establishes an added value of $0.06/kWh for ASTGUs.[104] Adders are simply increases to the base compensation rate of STGUs.[105] To aid program participants in determining the value of their energy, DOER maintains a Value of Energy Workbook which features a compensation calculator.[106] For example, a single capacity block for a net-metered Group 1 program participant whose ASTGU is connected to National Grid (an electric distributor) in the Nantucket Electric service area,

97. MASS. DEP'TS. OF ENERGY RES. AND AGRIC. RES., EXEC. OFF. OF ENERGY AND ENV'T. AFFAIRS, GUIDELINE REGARDING THE DEFINITION OF AGRICULTURAL SOLAR TARIFF GENERATION UNITS (Apr. 26, 2018), https://www.mass.gov/doc/agricultural-solar-tariff-generation-units-guideline-final/download [https://perma.cc/9NDP-KDEH].

98. *Id.*

99. *Id.*

100. *Id.* (emphasis added).

101. 225 MASS. CODE REGS. 20.05(5)(a) (2020) (stating that STGUs "must . . . be interconnected with the electric grid in the Commonwealth of Massachusetts").

102. 225 MASS. CODE REGS. 20.05(8) (2020); MASS. DEP'T. OF ENERGY RES., ALTERNATIVE ON-BILL CREDIT FAQ (Apr. 2019), https://www.mass.gov/doc/alternative-on-bill-credit-faq/download [https://perma.cc/5XAT-RERE].

103. 225 MASS. CODE REGS. 20.07-08 (2020).

104. 225 MASS. CODE REGS. 20.07(4) (2020).

105. 225 MASS. CODE REGS. 20.02 (2020).

106. MASS. DEP'T. OF ENERGY RES., *2024 BTM Value of Energy Workbook*, MASS.GOV, https://www.mass.gov/doc/2024-btm-value-of-energy-workbook/download [https://perma.cc/BV9E-NNMD] (last visited Jan. 25, 2024).

and which is sized at or below twenty five kW AC, can expect a total compensation rate of approximately $0.40/kWh.[107]

The ability of farms to sell excess energy contrasts one of the primary concerns about extending Greenbelt to accept solar facilities: that farmers' profit from selling energy back to the grid might persuade them to prioritize an enterprise in solar energy over agriculture. One aspect of this concern is that large energy corporations might gobble up small-scale local or family-run operations to convert the farmland to solar fields. However, Massachusetts has seen no such problem. To the contrary, small farms dominate the state's agricultural industry. The USDA defines a small farm as an operation "with gross cash farm income of $250,000, or less."[108] In 2017, small farms accounted for 94.2% of Massachusetts farms.[109] The USDA's Farms and Land in Farms 2022 Summary reflects consistency in this statistic.[110] Totaling the number of farms in the summary's three economic sales classes under $250,000—4,500 farms in the $1,000-$9,999 class; 1,950 farms in the $10,000-$99,999 class; and 340 farms in the $100,000-$249,999 class—reveals that 6,790 of Massachusetts' 7,200 farms are small, comprising 94.3% of the state's total—0.1% higher than in 2017.[111] Using the same calculation for Florida's statistics, the summary shows that 44,200 of the Sunshine State's 47,300 farms are small, equaling 93.4% of the state's total—0.9% under present-day Massachusetts.[112] Since the SMART program's debut in 2018, the percentage of small farms in Massachusetts has increased. The stable proportion of Massachusetts' farms shows no negative change in small operations as a result of the program.

However, the income generated by Massachusetts' agricultural industry is nowhere near Florida's. While Florida ranks twentieth in the nation for gross receipts of farms with $11,086,726,000 in total receipts, Massachusetts is forty seventh with a total of just

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107. *Id.* (select "National Grid" for Electric Distribution Company, "NantucketElectric" for Service Area, "G-1" for Rate Class, "Net Metered" for Compensation Type, "1" for Capacity Block, "≤ 25" for Project Size (kW AC), and "Agricultural" for Location Based Adder).

108. *Small and Family Farms*, NAT'L INST. OF FOOD AND AGRIC., U.S. DEP'T OF AGRIC., https://www.nifa.usda.gov/topics/small-family-farms [https://perma.cc/BU6F-WFLK] (last visited Jan. 26, 2024).

109. MASS. DEP'T AGRIC. RES., *Agricultural Resources Facts and Statistics*, MASS.GOV, https://www.mass.gov/info-details/agricultural-resources-facts-and-statistics [https://perma.cc/6PQ7-YVCB] (last visited Jan. 26, 2024) (click on "Complete USDA Ag Census Report: All Tables (1-77) for Mass." and view Table 3).)

110. NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., FARMS AND LAND IN FARMS 2022 SUMMARY (Feb. 17, 2023), https://downloads.usda.library.cornell.edu/usda-esmis/files/5712m6524/bk129p580/2z10z2698/fnlo0223.pdf [https://perma.cc/HZ3Z-SLYQ].

111. *Id.*

112. *Id.*

$720,848,000.[113] While agriculture is important to the Commonwealth, it is clear that Florida raises a far-greater amount of revenue from its agricultural industry. Florida's potential hesitancy in allowing farms to sell excess energy back to the grid—despite Massachusetts' success in doing so—may be better understood in light of this disparity.

2. New Jersey

In New Jersey, farmland that is "actively devoted to an agricultural or horticultural use" is assessed at the value of the land's productivity.[114] This exception was created by the state's Farmland Assessment Act of 1964, and its provisions are codified in section 54:4-23.1 et seq. of the New Jersey Statutes Annotated (N.J.S.A.).[115] Subsection (3) provides that "[l]and shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man," listing examples such as grains and cattle.[116] While largely similar to section 193.461(3), Florida Statutes, the New Jersey statute accepts the use of renewable energy generation—including solar—on agricultural land.[117] Section 54:4-23.3(3)(c)(1) affirms that "agricultural use shall also include biomass, solar, or wind energy generation" so long as the generation comports with section 4:1C-32.4 et al.[118] Section 4:1C-32.4(1)(a) allows landowners to "construct, install, and operate . . . solar . . . energy generation facilities, structures, and equipment on the farm."[119] Agricultural use of solar facilities is additionally protected under New Jersey's Right to Farm Act, codified under N.J.S.A. section 4:1C-1 et seq.[120] Specifically, section 4:1C-9(6)(i) states that owners and operators of commercial farms may "[e]ngage in the generation of power or heat from . . . solar . . . energy."[121] Though New Jersey allows farmers to make use of solar energy on their land, the state tightly restricts this practice.

First, landowners must first receive approval from the State Agricultural Development Committee (SADC) before "constructing, installing, and operating" solar facilities on the farm.[122] Approval is

113. *Income and Wealth Statistics–Farm Sector Financial Indicators, State Rankings, supra* note 1 (for 2024).

114. N.J. DEP'T OF AGRIC., FARMLAND ASSESSMENT OVERVIEW at 1 (July 2015), https://www.state.nj.us/agriculture/divisions/anr/pdf/farmlandassessmentoverview.pdf [https://perma.cc/445Q-HTTS].

115. N.J. STAT. ANN. § 54:4-23 et seq. (2025).

116. N.J. STAT. ANN. § 54:4-23.3(3) (2025).

117. N.J. STAT. ANN. § 54:4-23.3(3)(c)(1) (2025).

118. *Id.*

119. N.J. STAT. ANN. § 4:1C-32.4(1)(a) (2025).

120. N.J. STAT. ANN. § 4:1C-9(i) (2025).

121. *Id.*

122. N.J. STAT. ANN. § 4:1C-32.4(1)(c) (2025).

achieved by applying through the SADC, which then evaluates whether applicants meet the eligibility requirements of N.J.A.C. section 2:76-24.4.[123] Subsection (a)(1) of the Code predicates eligibility on the condition that the solar "facilities will not interfere significantly . . . with the use of land for agricultural or horticultural production."[124] In determining whether facilities interfere significantly with use, the SADC looks to factors listed in section 2:76-24.6.[125] For example, the facilities cannot cause a "detrimental impact to drainage, flood control, water conservation, erosion control, or soil conservation on the premises."[126] If eligible, applicants must follow seven criteria in submitting their application as outlined in section 2:76-24.5.[127] These criteria include submitting "[a] site plan" and "[d]igital photographs showing the proposed installation site" with the application.[128]

Landowners then have to comply with placement regulations. Facilities cannot exceed "one acre of impervious cover on the premises."[129] An impervious cover is a surface that does "not allow runoff to seep into the ground."[130] Landowners must avoid placing solar facilities on "prime farmlands to the maximum extent physically and financially practicable."[131] Complimenting the preservation of prime farmlands, landowners are also encouraged to mount panels "[o]n buildings or facilities" so as to better protect the soil.[132] Placement on these structures is not always feasible, so when placed on the ground, panels should be installed using a "system that does not require a concrete footing or other permanent mounting."[133] However, if the facility occupies one acre or less, ground installation "using gravel within contained structures, concrete block or similar materials" are acceptable mounts.[134] If a landowner insists that none of these recommendations are practicable, they must then produce written justification from an engineer as to why.[135] Aside from mounting, facilities must adhere to standards for height, setback, and

123. N.J. STAT. ANN. § 4:1C-32.4(1)(c) (2025).

124. N.J. ADMIN. CODE § 2:76-24.4(a)(1) (2025).

125. N.J. ADMIN. CODE § 2:76-24.6 (2025).

126. N.J. ADMIN. CODE § 2:76-24.6(a)(1)(i)(1) (2025).

127. N.J. ADMIN. CODE § 2:76-24.5(a)(1)-(7) (2025).

128. *Id.*; S*ee also* N.J. ADMIN. CODE § 2:76-2A.12(a)(2) (2025) (defining "site plans").

129. N.J. ADMIN. CODE § 2:76-24.4(a)(8) (2025).

130. N.J. DEP'T OF ENV'T PROT., *Clean Water NJ Frequently Asked Questions*, CLEAN WATER N.J. (Dec. 27, 2021) https://nj.gov/dep/cleanwaternj/faqs.html [https://perma.cc/G7N6-8SAX].

131. N.J. ADMIN. CODE § 2:76-2A.12(e) (2025).

132. N.J. ADMIN. CODE § 2:76-2A.12(f)(1)(i) (2025).

133. N.J. ADMIN. CODE § 2:76-2A.12(f)(1)(ii) (2025).

134. N.J. ADMIN. CODE § 2:76-2A.12(f)(1)(iii) (2025).

135. N.J. ADMIN. CODE § 2:76-2A.12(f)(2) (2025).

screening.[136] Facilities cannot be higher than twenty feet, and must be hidden from view "to the maximum extent possible" from public roads and off-farm residences.[137]

To ensure solar energy remains incidental to agricultural production, New Jersey enforces an annual generation cap. N.J.A.C. section 2:76-24.4(a)(4) limits the total annual energy generation of facilities to "[t]he farm's previous calendar year's energy demand plus 10 percent."[138] However, landowners can instead opt to limit their facilities to occupy "no more than one percent of the area of the farm."[139] In contrast to Massachusetts' SMART program, New Jersey does not require agricultural solar facilities to be connected to the grid. Rather, landowners are given the option to directly connect their facilities to the grid, as long as "the facilities do not occupy more than one percent of the farm" and remain consistent with all provisions in N.J.S.A. section 4:1C-32.4 and N.J.A.C. section 2:76-24.[140] Energy generated by solar facilities may only be used for two purposes. The first, "to provide power or heat to the farm, either directly or indirectly," and the second, to reduce the farm's energy costs "through net metering or similar programs and systems."[141] The "similar programs" include agreements which comport with N.J.A.C. section 2:76-24.4(a)(2), as well as selling energy directly to the grid.[142] The latter option is only available to landowners when the facility's area does not exceed 1% of the farm's total area.[143] Beyond these limited avenues, landowners are prohibited from supplying energy to any off-farm source.[144] Not only are landowners restricted in their use of solar energy generated on-farm, they are restricted further from leasing out any portion of their farmland to outside parties for the purpose of solar energy generation.[145] New Jersey's multitudinous safeguards protect farmland from being overrun by the solar facilities they house,

136. N.J. ADMIN. CODE § 2:76-2A.12(g) (2025).

137. N.J. ADMIN. CODE §§ 2:76-2A.12(g)(2)-(3) (2025).

138. N.J. ADMIN. CODE § 2:76-24.4(a)(4)(i) (2025); Note: This is in addition to "energy generated from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010." *Id.* The date is significant as was when the New Jersey Governor signed P.L. 2009, c.213, which first approved the placement of solar structures on preserved farmland, and solar energy generation as a permitted use. *See* State Agric. Dev. Comm., N.J. Dep't. of Agric., *Solar Wind Biomass Pamphlet Law*, SADC, https://www.nj.gov/agriculture/sadc/documents/news/populartopics/solar%20wind%20biomass%20pamphet%20law.pdf [https://perma.cc/WY8N-DRWM] (last visited Jan. 26, 2024).

139. N.J. ADMIN. CODE § 2:76-24.4(a)(4)(ii) (2025).

140. N.J. ADMIN. CODE § 2:76-24.6(a)(1)(i)(7)(C) (2025).

141. N.J. STAT. ANN. § 4:1C-32.4(a)(3) (2025).

142. N.J. ADMIN. CODE § 2:76-24.4(a)(6) (2025).

143. *Id.*

144. N.J. ADMIN. CODE § 2:76-24.6(a)(1)(i)(7) (2025).

145. N.J. ADMIN. CODE § 2:76-24.6(a)(2)(ii) (2025).

ensuring that energy generation remains a tool that assists agriculture—not an invader that replaces it.

Lastly, the obligations imposed on agricultural solar facilities are ongoing. Landowners must maintain eligibility to have the facilities on their farmland, as SADC reserves the right to "suspend or revoke an approval . . . for a violation of . . . any term or condition of the approval."[146] New Jersey's willingness to allow solar facilities on agricultural land will doubtlessly support the state's goal to reach 100% clean energy by 2050.[147]

3. Hawaii

In Hawaii, all land is classified under one of four use districts: urban, rural, agricultural, and conservation.[148] The Hawaii Revised Statutes provides that solar energy facilities are a permissible use in agricultural districts under two conditions. First, the land's classified productivity rating must be B, C, D, or E—solar facilities are not a permissible use on productivity "A" land.[149] Second, when placed on "B" or "C" rated land, facilities cannot occupy more than 10% of the land, or 20 acres, whichever is lesser.[150] Productivity classification is governed by Hawaii's Land Study Bureau. The Bureau evaluates properties using factors such as soil texture, structure, root-depth, drainage, and more.[151] "A" rating signifies very good agricultural productivity potential, while "E" denotes the land is not suitable.[152] Additionally, section 205-2(d)(7) notes that photovoltaic systems "producing energy solely for use in the agricultural activities . . . of the property" are considered to be bona fide agricultural services.[153] By relegating facilities to less-productive soils, Hawaii has struck a balance between solar and agriculture.

Hawaii's acceptance of solar facilities on agricultural land compliments the state's goal to promote clean energy. Collaboration between Hawaii and the U.S. DOE saw the creation of the Hawaii Clean Energy Initiative (HCEI), which works to achieve the ultimate

146. N.J. ADMIN. CODE § 2:76-24.10 (2025).

147. *See* NEW JERSEY AGRIC. EXPERIMENTAL STATION, *Rutgers Agrivoltaics Program*, RUTGERS, https://agrivoltaics.rutgers.edu/about/ [https://perma.cc/85MP-4AYZ] (last visited Jan. 26, 2024).

148. HAW. REV. STAT. § 205-2(a) (2025).

149. HAW. REV. STAT. § 205-2(d)(6)(A) (2025).

150. HAW. REV. STAT. § 205-2(d)(6)(B) (2025).

151. STATEWIDE GIS PROGRAM, OFF. OF PLAN., *Land Study Bureau (LSB) Detailed Land Classification*, HAWAII.GOV, https://files.hawaii.gov/dbedt/op/gis/data/lsb.pdf (last visited Mar. 1, 2023).

152. *Id.*

153. HAW. REV. STAT. § 205-2(d)(7) (2025).

goal of "100 percent clean energy by 2045."[154] Hawaii has increasingly leaned on solar energy to reduce electricity costs,[155] with the state's household electricity price hitting 0.423/kWh in August 2024—$0.257 higher than the national average.[156] Hawaiian farms have taken advantage of the state's acceptance of agrivoltaics to help combat rising electricity prices. For example, the Waialua Egg Farm struggled to support its operation with power from Oahu's grid, so the farm went off the grid by roof-mounting "solar arrays which double as cage-free shelter" for the chickens.[157] Instances like this demonstrate how solar integration can benefit farms without injuring the property's agricultural bona fides.

Still, the interplay between Hawaii's solar and agricultural industries has not gone un-tested. In January 2019, the Hawaiian House of Representatives introduced House Bill 593, which sought to amend H.R.S. section 205-2(d)(6) to allow solar energy facilities as a permitted use on "A" rated land.[158] Facilities on "A" lands would be subject to the same 10%/20 acre restriction that governs "B" and "C" lands.[159] As this bill would have removed use protections for the most productive farmland, it was met with resistance from Hawaii's agricultural community, including the "Department of Agriculture [and] the Hawaii Farm Bureau."[160] Lands rated "A" compose 3% of Hawaii's agricultural land, which spans over 1.8 million acres in total.[161] However, about 31% of "A" rated land was not in production as of 2019,[162] spurring resistance to the reservation from solar developers who cited the fallow lands as an opportunity to "boost the

154. HAWAI'I STATE ENERGY OFF., *Hawai'i Clean Energy Initiative*, HAWAII.GOV, https://energy.hawaii.gov/hawaii-clean-energy-initiative/ [https://perma.cc/2MHR-NSUY] (last visited Jan. 27, 2024).

155. Ivan Penn, *Hit Hard by High Energy Costs, Hawaii Looks to the Sun*, N.Y. TIMES (May 31, 2022), https://www.nytimes.com/2022/05/30/business/hawaii-solar-energy.html [https://perma.cc/PB49-P39P].

156. U.S. ENERGY INFO. ADMIN., *Average Energy Price of Electricity to Ultimate Customers by End-Use Sector*, EIA.GOV, https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt56a (last visited Jan. 27, 2024).

157. Kaile Hunt, *Sustainable Egg Farm on Oahu to Provide Local Cage-Free Eggs*, KOHN2 (Nov. 11, 2021, at 6:20 HST), https://www.khon2.com/local-news/sustainable-egg-farm-on-oahu-to-provide-local-cage-free-eggs/ [https://perma.cc/5E5P-ULAL]; WAIALUA FRESH, https://www.waialuafresheggs.com/ [https://perma.cc/7AZN-P9FS] (last visited Jan. 27, 2024).

158. H.B. 593, 13th Leg., Reg. Sess. (Haw. 2019).

159. HAW. REV. STAT. § 205-2(d)(6)(B) (2025).

160. Lisa Kubota, *Plan to Allow Solar Farms on Top-Rated Agricultural Lands Dealt Setback*, HAWAII NEWS NOW (Apr. 3, 2019, at 11:25EDT), https://www.hawaiinewsnow.com/2019/04/04/plan-allow-solar-farms-top-rated-agricultural-lands-dealt-setback/ [https://perma.cc/L5JW-U3R6].

161. *Id.*

162. *Id.*

financial sustainability of agriculture."[163] In response, the Hawaii Farm Bureau's executive director acknowledged the "need for agricultural technology," but noted it was "opposed to it being done on the 'A' rated lands."[164] Though the bill passed several readings, it was ultimately deferred in April 2019.

Hawaii has also seen trouble with confusion over the restrictions of its "Important Agricultural Lands" (IAL) designation. H.R.S. section 205-42 defines IAL as lands meeting one of three criteria. In short, IAL are defined as lands which can produce "sustained high agricultural yields," which support Hawaii's "economic base and produce agriculture commodities," *or* which are necessary for promoting "the expansion of agricultural activities and income for the future."[165] To protect IAL, state and county rules are directed to adhere to a number of policies under section 205-43, such as "[d]irect[ing] nonagricultural uses and activities from important agricultural lands to other areas," and "[l]imit[ing] physical improvements . . . to maintain affordability of these lands for agricultural purposes."[166] IAL designation is not based on the actual use of the land, nor is does it change Hawaii's productivity rating system. Rather, the land's use and rating are criteria in determining the IAL designation.[167] Owners whose lands are designated IAL receive benefits such as loan guaranties and tax credits.[168] The cost of this designation is the owner's restriction from changing the land's use without petition.[169]

Trouble emerged when landowners and energy companies expressed confusion over whether IAL designation precludes agricultural land from housing solar facilities. Specifically, the confusion was seen in response to a proposal from the City and County of Honolulu designating "12% of Oahu's land" as IAL, following a recommendation from the O'ahu Important Agricultural Land Mapping Project in the same.[170] Hawaii Clean Power Alliance, a

163. Sophie Cocke, *Star-Advertiser: Bill to Put Solar Farms on Prime Ag Land Elicits Stiff Opposition*, CAPITOLWATCH, SIERRA CLUB OF HAWAI'I (Mar. 25, 2019), https://www.hawaiicapitolwatch.org/blog-19/2019/3/25/star-advertiser-bill-to-put-solar-farms-on-prime-ag-land-elicits-stiff-opposition [https://perma.cc/M8W2-J3X6].

164. Kubota, *supra* note 171.

165. HAW. REV. STAT. §§ 205-42(a)(1)-(3) (2025).

166. HAW. REV. STAT. §§ 205-43(3)-(4) (2025).

167. HAW. REV. STAT. §§ 205-44(c)(1), (3) (2025).

168. HAW. REV. STAT. § 205-46 (2025);); *See* COLL. OF TROPICAL AGRIC. & HUM. RES., UNIV. OF HAW., *Key Points to Understand Important Agricultural Lands (IAL)*, HAWAII.EDU, https://www.ctahr.hawaii.edu/AgLand/ial.html [https://perma.cc/LBA5-WC2F] (last visited Jan. 27, 2024).

169. HAW. REV. STAT. §§ 205-3.1, 205-4 (2025); *See* COLL. OF TROPICAL AGRIC. & HUM. RES., UNIV. OF HAW., *supra* note 169.

170. Stewart Yerton, *Attorney General OKs Honolulu's Process to Designate Important Ag Lands*, HONOLULU CIVIL BEAT (Oct. 21, 2021), https://www.civilbeat.org/2021/10/attorney-general-oks-honolulus-process-to-designate-

nonprofit energy organization, claimed the proposal would "jeopardize[] Hawaii's ability to meet its renewable energy target."[171] Concerns were centered on an apparent conflict in the language of the IAL law with H.R.S. Chapter 205 provisions. At present, solar is recognized as a permitted agricultural use on most agricultural land,[172] and land used for "energy production" is given "initial consideration" for IAL designation under section 205-44(c)(4).[173] However, the IAL law's direction to "[l]imit physical improvements"[174] seemed to "discourage" renewable energy installments on the land.[175] This concern was enhanced by the law's stated aim to "ensure that uses on [IAL] are actually agricultural uses."[176] Members of Hawaii's renewable energy industry said it was "unclear what the IAL designation means for . . . renewable energy developers," and that the "uncertain impacts" of the law called the future of agrivoltaics into question.[177] Though Hawaii's Attorney General cleared the proposal,[178] the Hawaii Land Use Commission issued an order on June 30, 2022 rejecting the proposal and returning it to the Honolulu's Department of Planning and Permitting for further action.[179] In its order, the Commission cited that "many landowners had not been informed of the IAL process and the potential impacts of IAL designation."[180] Whether Honolulu will revisit the proposal is unclear, but confusion as to the effects of IAL designation will need to be remedied if so.

The conflict over Honolulu's proposal provides a learning opportunity for Florida. The Legislature must use language that clearly sets out the effects of the Greenbelt amendment. Farmers rely on the tax benefits of Greenbelt and would be cautious to proceed with any action that could implicate their exemption. If the amendment

important-ag-lands/ [https://perma.cc/B4GC-5FDG]; DEP'T OF PLAN. AND PERMITTING, CITY AND CNTY. OF HONOLULU, O'AHU IMPORTANT AGRICULTURAL LAND MAPPING PROJECT (Aug. 2018).

171. HAW. CLEAN POWER ALL., RE: MEETING OF MAY 26, 2021, AGENDA ITEM V, CITY AND COUNTY. OF HONOLULU IMPORTANT AGRICULTURAL LANDS RECOMMENDATION (May 21, 2021).

172. Note: Except land with an "A" productivity rating; *See* HAW. REV. STAT. § 205-2(d)(6)(B) (2025).

173. HAW. REV. STAT. § 205-44(a), (c)(4) (2025).

174. HAW. REV. STAT. § 205-43(4) (2025).

175. HAW. CLEAN POWER ALL., *supra* note 184.

176. HAW. REV. STAT. § 205-43(3) (2025); HAW. CLEAN POWER ALL., *supra* note 184.

177. Stewart Yerton, *Do We Want More Local Food or Cheaper Power? Two Hawaii Priorities Conflict*, HONOLULU CIVIL BEAT (June 16, 2021), https://www.civilbeat.org/2021/06/do-we-want-more-local-food-or-cheaper-power-two-hawaii-priorities-conflict/ [https://perma.cc/7YRY-33CS].

178. Yerton, *supra* note 190.

179. City and Cnty. Of Honolulu Important Agricultural Lands (IAL) Maps and Recommendations (O'ahu), (Haw. Land Use Comm'n. June 30, 2022), https://luc.hawaii.gov/wp-content/uploads/2022/06/DR_CC_HNL_IAL-copy.pdf [https://perma.cc/Y49A-7FW3].

180. *Id.* at 18.

does not unequivocally delineate when agricultural land can accommodate solar facilities, and to what extent those facilities can be placed and utilized, landowners will be reluctant to take advantage of the new allowance.

4. North Carolina

In 2022, North Carolina was ranked thirteenth out of the states for its total value of agricultural exports, six spots above Florida.[181] As of December 2024, North Carolina had 58,305 solar installations, and ranked fifth in the nation for total installed solar capacity—up from sixteenth place in 2022.[182] Florida has ranked third for years, and currently houses 2,368,717 installations.[183] In their rising success, North Carolina proves that solar facilities can be co-located with agricultural sites without disrupting the latter. In 2022, the North Carolina Sustainable Energy Association published an update on the state's solar and agricultural land use. The update noted that "solar PV systems occupy 31,125 acres of a total 10,999,656 acres of agricultural land in North Carolina, or 0.28%."[184] Furthermore, despite the Tar Heel State's great leap in solar facilities, their use on farmland would represent only "4.25% of the total agricultural land lost" between 2001 and 2016, were all of the solar facilities included in that analysis installed during that time range.[185] Though solar facilities general occupy a small amount of land, co-location can further minimize the land lost to these facilities. Citing examples provided by the Colorado Agrivoltaic Learning Center, the NC Sustainable Energy Association recommends planting crops and pollinator habitats around raised solar facilities, as well as "allowing for animals to graze in and around" the panels.[186] North Carolina's demonstrable success in solar/agriculture co-location can be applied in Florida, a move that would help the Sunshine State maintain its namesake as a solar-friendly state and status as an agricultural giant.

The success of Massachusetts, New Jersey, Hawaii, and North Carolina with solar/agriculture co-location demonstrates that the

181. *Annual State Agricultural Exports Interactive Chart*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Nov. 16, 2023), https://www.ers.usda.gov/data-products/state-agricultural-trade-data/annual-state-agricultural-exports/ [https://perma.cc/X3AG-JYQE] (click North Carolina and Florida and choose year 2022 to see their respective statistics).

182. *State Overview: North Carolina,* SOLAR ENERGY INDUS. ASS'N, https://seia.org/state-solar-policy/north-carolina-solar/ [https://perma.cc/U5AD-L9ZT] (last visited Jan. 27, 2024).

183. *State Overview: Florida*, SOLAR ENERGY INDUS. ASS'N, https://seia.org/state-solar-policy/florida-solar/ [https://perma.cc/7XC5-RXMT].

184. Daniel Brookshire, Jerry Carey & Daniel Parker, *North Carolina Solar Land Use and Agriculture 2022 Update*, 12 (2022).

185. *Id*.

186. *Id*. at 4; *Agrivoltaics 101*, COLO. AGRIVOLTAIC LEARNING CENTER, https://www.coagrivoltaic.org/agrivoltaics-101 [https://perma.cc/RE9T-NAWX] (last visited Jan. 27, 2024).

same principles can be applied in Florida. Each of the example states has set about reconciling the differences between the industries without allowing solar interests to trample agricultural tradition. Florida has a buffet of options from which to pick and choose the best-fitting aspects for guiding the Greenbelt amendment. It is abundantly clear from the examples set by other states that the agricultural industry can not only accommodate solar generation facilities—it can benefit from it. Amending Greenbelt to follow the proven path of Massachusetts and others would help the Sunshine State maintain its namesake as a solar-friendly state and status as an agricultural giant.

C. Federal Encouragement

The federal government is encouraging transitions to renewable energy in rural areas. The 2018 Farm Bill supports a number of well-funded programs meant to achieve congressional policy goals, such as "energy security, [limiting] greenhouse gas emission [], and [satisfying] increased demand for U.S. farm products."[187] One example is the Rural Energy for America Program (REAP), codified in 7 U.S.C. § 8107.[188] REAP "provides guaranteed loan financing and grant funding to agricultural producers . . . for renewable energy systems."[189] The program is meant to benefit farmers, as eligibility is limited to those with "at least 50 percent of their gross income coming from agricultural operations."[190] For the cost of renewable energy projects, including solar facilities, producers can secure loans of up to 75%, or grants up to 50%.[191]

The federal government has offered guidance for states looking to compromise their solar and agricultural interests. One example is the Department of Energy's (DOE) InSpire project, which is devoted to "explor[ing] the compatibility and mutual benefits of solar development with agriculture and native landscapes."[192] This project led to the publication of the Low-Impact Solar Development Strategies Primer, which provides "insights and best practices" meant to guide parties—*including state agencies*—in "siting, designing, installing,

187. CONG. RSCH. SERV., OVERVIEW OF THE 2018 FARM BILL ENERGY TITLE PROGRAMS (2022).

188. 7 U.S.C. § 8107 (2025).

189. *Rural Energy for America Program Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants*, RURAL DEVELOPMENT, U.S. DEP'T OF AGRIC., https://www.rd.usda.gov/programs-services/energy-programs/rural-energy-america-program-renewable-energy-systems-energy-efficiency-improvement-guaranteed-loans [https://perma.cc/X66M-EYJM] (last visited Jan. 27, 2024).

190. *Id.*

191. *Id.*

192. U.S. DEP'T OF ENERGY, *Low-Impact Solar Development*, OPENEI (Oct. 17, 2025), https://openei.org/wiki/InSPIRE [https://perma.cc/DH5N-KTR4].

and operating low-impact solar development projects."[193] For example, the primer recommends "[m]inimizing vegetation removal and [] grading" to prevent erosion resulting from de-stabilized soils.[194] Using fixed PV systems instead of tracking systems can help this goal, as fixed systems "can accommodate significantly more variation in the topography," thus requiring less grading than tracking systems during installation.[195] DOE's investment into the benefits of agrivoltaics is ongoing. In December 2022, DOE "announced $8 million for six solar energy research projects" dedicated to learning how farms can better maximize the benefits of solar co-location.[196] With the White House on an ambitious path to reach "80% renewable energy generation by 2030," and then carbon-free electricity by 2035, DOE's push to develop solar applications is no surprise.[197]

Florida can benefit from assisting the federal push for renewables by amending Greenbelt to allow solar. As the second-largest producer of electricity in the country and third-largest consumer, Florida relies on solar for only 9% of its in-state generation.[198] Approximately 75% of Florida's in-state generation comes from natural gas-fired power plants.[199] Agricultural land composes about 30% of Florida's total land area.[200] If Florida does not take advantage of its sprawling geography and natural sunlight in the present, it will be left playing renewable energy catch-up in the future. The U.S. government has recognized the importance of renewable energy, agriculture, and supported pursuit of the mutual benefits that flow from their collaboration. It's time for Florida to do the same.

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193. U.S. DEP'T OF ENERGY, *Low-Impact Solar Development Strategies Primer*, OPENEI, https://openei.org/wiki/InSPIRE/Primer [https://perma.cc/E8BH-3T5S] (last visited Jan. 27, 2024).

194. *Id.*

195. *Id.*

196. U.S. DEP'T OF ENERGY, *DOE Announces $8 Million to Integrate Solar Energy Production with Farming*, ENERGY.GOV (Dec. 8, 2022), https://www.energy.gov/articles/doe-announces-8-million-integrate-solar-energy-production-farming [https://perma.cc/82XQ-9FRA].

197. H.J. Mai, *Energy Experts Share How the U.S. Can Reach Biden's Renewable Energy Goals*, NPR (Feb. 2, 2023, at 6:00 PM ET), https://www.npr.org/2023/02/02/1148370220/biden-renewable-energy-goals [https://perma.cc/9ERS-N2Q8].

198. *Profile Analysis*, U.S. ENERGY INFO. ADMIN. (Mar. 20, 2025), https://www.eia.gov/state/analysis.php?sid=FL [https://perma.cc/6D7N-UH4E].

199. *Id.*

/1. *Florida Agriculture Overview and Statistics*, FLA. DEP'T AGRIC. AND CONSUMER SERV., https://www.fdacs.gov/Agriculture-Industry/Florida-Agriculture-Overview-and-Statistics [https://perma.cc/U5C8-RUZ5] (last visited Jan. 28, 2024); FLA. DEP'T OF STATE, *Quick Facts*, MYFLORIDA.COM, https://dos.myflorida.com/florida-facts/quick-facts/ [https://perma.cc/Q3A6-L98Z] (last visited Jan. 28, 2024).

D. Legislative Door-Opening

Finally, and perhaps most importantly, the Florida Legislature itself already recognizes the benefits of integrating solar electricity generation with agriculture, having recently passed a statute effectuating that understanding. Effective as of July 2021, section 163.3205 acknowledges the Legislature's intent "to encourage renewable solar electrical generation," and emphasizes the importance of building and maintaining solar infrastructure throughout the state.[201] The most significant part of the statute comes from subsection (3): "[a] solar facility shall be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area and must comply with the setback and landscaped buffer area criteria for other similar uses in the agricultural district."[202] Local government comprehensive plans are defined in section 163.3177 as providing "the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area."[203] Comprehensive plans are utilized by counties and municipalities, which tailor these plans to the specific needs of their locality. As noted, Greenbelt requires the classification of "all lands within the county as either agricultural or nonagricultural," a task completed by the county property appraiser.[204] Because appraisers are county representatives, section 163.3205(3)'s obligation of local governments to permit solar facilities as an agricultural use opens the door to extend Greenbelt status to compliant solar installations.

While section 163.3205 opens the door, it does not appear to *require* this extension. At present, the statute affirms that solar facilities are a permitted use in two specific instances: (1) in all agricultural land use categories in a local government comprehensive plan; and (2) in all agricultural zoning districts within an unincorporated area.[205] The statute's use of "zoning" in its language creates some confusion over whether the use-permission granted to solar facilities could be extended to agriculturally *classified* lands. For example, section 404.09 of the Alachua County Code of Ordinances provides that "[a]gricultural uses are permitted by right in the A and A-RB districts."[206] Section 403.02 establishes zoning districts, and in Table 403.02.1 defines A districts as "Agriculture" and A-RB districts as

201. FLA. STAT. § 163.3205(1) (2025).

202. *Id.* at (3).

203. FLA. STAT. § 163.3177(1) (2025).

204. FLA. STAT. § 193.461(1) (2025).

205. FLA. STAT. § 163.3205(3) (2025).

206. ALACHUA COUNTY, FLA., ORDINANCES § 404.09 (2025).

"Agricultural Rural Business."[207] Section 404.50.5 allows solar facilities "as a limited use in the A district," as well as in A-RB districts with special exception.[208] The distinction between land zoned as agricultural and land classified as agricultural is that Greenbelt status is only conferred on the latter. If solar facilities are installed on an Alachua County property that is both within the A-RB district *and* classified as agricultural, one may draw an inference that the use-permission would not disrupt the property's classification, provided that the solar facility does not materially alter the bona fides of the property.

Though this inference cannot be verified, there is legislation that supports it. Section 163.3194(5) provides that "[t]he tax-exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461."[209] As local governments are required to permit solar facilities as an accepted use in all agricultural land use categories under section 163.3205, section 163.3194(5) would allow agriculturally-classified properties to accommodate these installations without losing their classification, provided that the land's agricultural bona fides are not materially altered by the facility so as to implicate section 193.461(4).

However, the absence of clear language in section 193.461, coupled with the seemingly industrial nature of solar electricity generation, leaves unanswered the question of whether solar facilities would materially alter a property's bona fides by default. Even if a solar facility was placed on a farm without disrupting its production, and the electricity was used exclusively for the agricultural operations on that property, *and* those operations remained the dominant use of that property, the landowner would still remain at the mercy of the appraiser's interpretation. Without clear language in section 193.461, the appraiser could decide—despite the aforementioned justifications—that the solar facility "diverted [the land] from an agricultural to a nonagricultural use," therefore requiring reclassification of the land as nonagricultural.[210] Such a decision would contravene the purpose of Greenbelt.

IV. CONCLUSION

Allowing agricultural land to house solar facilities without foregoing its Greenbelt tax status would perpetuate and encourage agricultural pursuits by allowing farmers to lower the energy cost of their operation without being penalized by property taxes.

207. *Id.* § 403.02.

208. *Id.* § 404.50.5.

209. FLA. STAT. § 163.3194(5) (2025).

210. FLA. STAT. § 193.461(4)(a) (2025).

Empowering farmers to zero out their electricity bill would help them continue their work by reducing costs. Similarly, prospective farmers would find financial reassurance in learning their initial investment obligation can be mitigated using renewable energy. Section 193.461 should be amended to provide that the placement of solar installations on property that otherwise meets the requirements for agricultural classification will not, in itself, preclude an agricultural classification.

To prevent abuse, the amendment should set forth conditions that property owners must follow in siting solar facilities. Siting should be preferred on the least productive portions of the land when possible. Siting should also be limited from occupying the most productive land, either entirely or in part. While Florida does not have a productivity rating system like Hawaii, it could create one using the federal definitions of prime farmlands, unique farmlands, and farmlands of statewide importance for guidance. In the absence of creating its own productivity rating system, Florida could still use these terms to guide placement in a way that preserves the most productive lands for traditional agricultural uses, namely crop growth. Like New Jersey, Florida could require Greenbelt participants to submit a site plan prior to installation for proof that the solar facility will not disrupt the most productive lands.

Owners should be required to demonstrate that the size of the facility is not significantly greater than is necessary to power the agricultural operations on that land. One way to limit size is by area, and facilities could be restricted to a given acreage of cover. Alternatively, size could be limited by generation capacity. This could be calculated on an individual basis by evaluating the property's electricity consumption in the prior year, to the exclusion of any usage by residences or dwellings. Usage measurements would help appraisers understand the power needs of the operation, which could then be reviewed against the facility's output. Florida could adopt a policy like New Jersey's, which enforces a generation restriction calculated by adding the farm's electricity demand in the previous calendar year plus 10%. This would ensure that solar facilities remain scaled to the operation's needs.

Owners should be restricted from using the generated electricity to power any dwelling on the land as residences are "assessed separately, pursuant to [section] 193.011."[211] Owners should additionally be restricted from selling the generated electricity to the grid or any other parties. Owners should only be permitted to use the generated electricity to directly power agricultural operations on the property.

Lastly, solar facilities must allow for the continued use of the remaining land for bona fide agricultural purposes. Solar facilities must not interfere with the bona fides of the land, and must serve an

211. *Id.* at (3)(d).

exclusively complementary role. Solar energy is to be a tool used for the betterment of the agricultural operation, not a substitute in lieu of meaningful farming.

Originally, the best avenue for promoting this amendment and its attendant conditions would have been through the Energy Equity Task Force that was to be created by SB 1678 (2022).[212] The bill intended for this task force to serve as an adjunct to FDACS, with the express purpose of providing "recommendations for fostering a fair and equitable transition of [Florida's] energy infrastructure to renewable energy technologies within . . . rural . . . communities."[213] The task force would have "recommend[ed] appropriate policies, including any necessary statutory changes, for the equitable siting of energy infrastructure."[214] The bill died in appropriations in March of 2022, its stated purpose proves that the Legislature is considering ways to ramp up Florida's transition towards renewables. Furthermore, with the Sunshine State eyeballing 2050 as a possible goal for reaching 100% renewable energy, the nation's second-largest producer of electricity is almost certain to reconsider the Energy Equity Task Force, or something similar, in the near future.[215]

The struggles of Florida's agricultural industry and the growing demand for renewable energy can be assuaged with an intersecting solution. The moment is prime to amend Greenbelt with protections for solar facilities on agricultural land. With this amendment, Florida's farmers can truly begin harvesting the sun.

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212. S.B. 1678 (Fla. 2022).

213. *Id.*

214. *Id.*

215. U.S. ENERGY INFO. ADMIN, *Rankings: Total Net Electricity Generation*, EIA.GOV (July 2025), https://www.eia.gov/state/rankings/#/series/51 [https://perma.cc/G3LM-7EF9]; Alex Harris, *Florida to Set Goals for 100% Renewable Energy by 2050. But Will it Actually Happen?*, WUSF PUBLIC MEDIA, (Feb. 12, 2022, 8:00 AM EST), https://wusfnews.wusf.usf.edu/environment/2022-02-12/florida-to-set-goals-for-100-renewable-energy-by-2050-but-will-it-actually-happen [https://perma.cc/E9YL-22WR].