

Expert Report

By

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In the matter of:

Wineries of the Old Mission Peninsula Assoc. et al v. Peninsula Township and Protect the Peninsula, Case No. 1:20-cv-01008-PLM-RSK (W. Dist. Mich.)

Prepared for:

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Expert Credentials

I am the Crossways Professor in the Department of City and Regional Planning at the University of Pennsylvania. I hold a Ph.D. in Agricultural and Resource Economics. I have taught land use planning for more than 25 years. I am the co-author of *The Small Town Planning Handbook* (3rd ed. 2007, American Planning Association) and co-author of *The Law of Agricultural Land Preservation in the United States* (2018, American Bar Association) and have written several journal articles dealing with agricultural zoning and farmland preservation. I served as the Director of the Lancaster County, PA Agricultural Preserve Board from 1989-1997, which is recognized as one of the leading county farmland preservation programs in the United States. I have performed consulting work and provided expert testimony on several cases involving land use and farmland. A copy of my professional resume is attached as Exhibit 1.

Materials Reviewed

To arrive at my opinions in this report, I reviewed the Michigan Planning Enabling Act, the Michigan Zoning Enabling Act, the Peninsula Township 2011 Master Plan, the Peninsula Township Zoning Ordinance text and maps, the Peninsula Township Purchase of Development Rights Ordinance and maps of preserved lands, Purchase of Development Rights conservation easements, Special Use Permits for Winery-Chateaus, Peninsula Township responses to interrogatories, deposition transcripts, the district court's June 3, 2022 order in the *Wineries of the Old Mission Peninsula Assoc. et al v. Peninsula Township and Protect the Peninsula*, Case No. 1:20-cv-01008-PLM-RSK (W. Dist. Mich.), Jesse Williams—*Balancing Development, Agriculture, and Preservation: Evaluating the Success of Old Mission Peninsula's Purchase of Development Rights Program*, and Tom Daniels—*An Evaluation of the Peninsula Township Farmland Preservation Program*, and additional documents as cited throughout this report. In addition, I toured Peninsula Township on August 9 and 10, 2023. I am presenting my opinions to a reasonable degree of professional certainty.

TABLE OF CONTENTS

Introduction	4
I. Background	4
A. Peninsula Township.....	4
B. Land Use Planning and Zoning in General	5
C. Farmland Preservation.....	7
i. Purchase of Development Rights (PDR).....	7
ii. Agricultural Zoning	9
D. Agricultural Zoning in Major Wine Producing Regions	10
i. Winery definition.....	11
ii. Special Use Permit for Wineries	12
iii. Tasting Rooms, Food, and Retail Sales	12
iv. Limits on Production Capacity	13
v. Summary.....	14
E. A Brief History of Land Use Planning, Zoning, Agricultural Zoning, and Farmland Preservation in Peninsula Township.....	14
II. Analysis of Challenged Zoning Provisions	21
A. Peninsula Township Zoning Ordinance (PTZO).....	21
i. The A-1 Agricultural Zoning District.....	21
ii. Winery Uses in the A-1 District	22
B. How the Peninsula Township Zoning Ordinance Promotes Agricultural Preservation 24	24
i. Limits on food and beverage service:.....	26
ii. Exclusion of weddings, wedding receptions, and other private events for hire from the scope of permitted uses:	27
iii. Establishing standards and requiring advance notice and/or approval for some activities or events:	28
iv. Allowing retail sales of only wine and winery- and agriculture-related merchandise 29	29
v. Establishing maximum facility and retail space size.....	29
C. The Harm If the Provisions of the Peninsula Township Zoning Ordinance Are Invalidated	30
D. Conclusions	31

Introduction

In October 2020, the Wineries of Old Mission Peninsula filed suit against Peninsula Township over provisions in the Peninsula Township Zoning Ordinance. In 2022, Protect the Peninsula was allowed to intervene in the suit.

In short, Plaintiffs' claims isolate a handful of provisions that limit their ability to engage in unfettered commercial activity in an agricultural zone, such as those regulating accessory uses at wineries and limiting production capacity. Any challenged provision must be evaluated in the context of the zoning ordinance as a whole, which, in turn, should be considered according to the content of the Township master plan.

To place the challenged provisions in their proper context, I explain how land use planning and zoning work together to protect public health, safety, and general welfare. I further explain the importance of farmland land preservation, its relationship to public health, safety, and general welfare, and the use of zoning to promote farmland preservation and farming activities. I discuss how the Peninsula Township Zoning Ordinance advances both farmland preservation and farm production goals. I also explain how allowing the unrestricted land uses Plaintiffs seek would undermine agricultural land preservation and the continuation of active agriculture in Peninsula Township.

After a brief description of Peninsula Township and before I address the specifics of the challenged provisions, I feel it is helpful to present an overview of the land use planning process, the use of zoning regulations to control land use, the use of agricultural zoning, the application of agricultural zoning to wineries, and the connection between agricultural zoning and farmland preservation. In discussing these topics, I will draw on research, publications, and practice I have conducted over the last 39 years on land use planning, zoning, agricultural zoning, and farmland preservation.

I. Background

A. Peninsula Township

Peninsula Township was established in 1853 and covers 17,755 acres in Grand Traverse County, Michigan. The Township extends for 18 miles into Grand Traverse Bay of Lake Michigan and borders the City of Traverse City to the south. The Township varies in width between a half mile and three miles, offering spectacular views of Grand Traverse Bay. The Township's permanent population was 6,068 in 2020 and part-time residents add to the population, especially during the summer months.

Peninsula Township is known geographically as Old Mission Peninsula and boasts soils and a microclimate that have long supported agriculture, especially the production of stone fruit (cherries), and more recently, apple orchards and grape vineyards. The Old Mission Peninsula became an American Viticultural Area (AVA) or appellation, known for its distinctive wines in 1987.¹ An AVA is a federal designation, managed by the Alcohol and Tobacco Tax and Trade Bureau within the U.S. Treasury Department. Wine may be labeled "Old Mission Peninsula" if

¹ See 27 C.F.R. § 9.114 (describing boundaries of Old Mission Peninsula AVA).

not less than 85% of it is derived from grapes grown within the AVA boundaries.² The Old Mission Peninsula AVA is 1 of only 5 AVAs in Michigan and 268 nationwide.³

Peninsula Township is a popular tourist destination known for beautiful views of Grand Traverse Bay, gently rolling hills of orchards and vineyards, a historic lighthouse, and miles of pristine beaches and hiking trails. Peninsula Township is close to Traverse City, Michigan, a growing tourism area, and regional attractions, including Sleeping Bear Dunes National Lakeshore. As noted in the Peninsula Township 2011 Master Plan, “[t]he Township’s primary economic base is shared between its agricultural production, tourism, and home-based businesses.”⁴

B. Land Use Planning and Zoning in General

Zoning is the most common regulation to control land use in the United States. Zoning powers are delegated from state legislatures to local governments, including townships, and a township zoning ordinance is a local law. Township zoning serves to implement a township government comprehensive plan (also known as a Master Plan), which describes how the township should grow and change over the next ten to twenty years; this is common planning and zoning practice.

The comprehensive plan provides an important legal base for the zoning ordinance. The comprehensive plan spells out goals and objectives for the township, and zoning is one tool that the township employs to achieve these goals and objectives and further the public health, safety, and welfare.

The United States Supreme Court has long recognized the legality of zoning as a valid use of the police power of government under the Tenth Amendment.⁵ A fundamental purpose of zoning is to protect the public health, safety, and welfare. In doing so, zoning must strike a balance between a property owner’s right to use land and the public’s right to a healthy, safe, and orderly living environment.⁶ Zoning is generally legitimate if it allows a reasonable economic use of the property. Zoning need not allow the “highest and best” use of the property.

Four aspects of zoning promote public health, safety, and welfare. First, zoning separates conflicting land uses (e.g., industrial and residential) and locates compatible land uses near each other. Second, it sets standards for building size, lot coverage, setbacks, and the density of development. Third, it ensures consistent application of standards across zoning districts. Fourth, it creates dispute resolution and enforcement mechanisms.⁷

² 27 C.F.R. § 4.25(e)(3)(ii).

³ Michigan Wine Country. 2023. Michigan’s Five AVAs. <https://michiganwinecountry.com/wines-grapes/avas/>. Accessed May 17, 2023; Alcohol and Tobacco Tax and Trade Bureau. Established American Viticultural Areas. <https://www.ttb.gov/wine/established-avas>. Accessed August 23, 2023.

⁴ Peninsula Township 2011 Master Plan, p. 3.

http://www.peninsulatownship.com/uploads/1/0/4/3/10438394/master_plan_2011_-_signed.pdf. Accessed August 23, 2023.

⁵ *Village of Euclid Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

⁶ Daniels et al. 2007. *The Small Town Planning Handbook*, Chicago: American Planning Association, p. 178.

⁷ *Ibid*, p. 179.

Zoning enables a local government to designate land for a particular zoning district with or without landowner consent.⁸ Zoning allows certain uses on some land and not on others, and can bestow economic benefits to some property owners while imposing economic limits on others.⁹

A zoning ordinance consists of a text and a map. The zoning text divides a township into different land use zones, such as agricultural, residential, and commercial, and zoning districts, such as R-1 single-family residential and R-2 duplex and triplex residential. The zoning map shows the location of the different zones and zoning districts.

The text also describes permissible uses for each district and commonly provides for both by-right uses and special uses. By-right uses generally include uses necessary to accomplish the purposes for which the district was created, such as houses in a residential district and farm buildings in an agricultural district. A by-right use is presumptively allowed if the landowner meets the standards for building and lot size standards, setbacks, use restrictions, and administrative permitting requirements.

Special uses are generally uses that align with the purposes of a zoning district but are not necessary to accomplish them, raise special concerns about public health, safety, and welfare, or both. Examples include childcare facilities in residential districts and produce packing and processing facilities in agricultural districts. Special uses generally require more than just administrative approval, and often involve a public application process before a planning commission, board, or other public body.

In Michigan, a township may provide for special uses in a zoning district subject to review and approval in accordance with its zoning ordinance. Approval may be at the township's discretion, in which case notice and a public hearing are required. The township may approve, deny, or approve with conditions a request for a special use, and its decision "shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed."¹⁰ An applicant has no "right" to a special use permit; the applicant must meet standards and conditions set by the township.

Uses may also be principal (or primary), accessory, or support. A principal use is the preferred use of a property in that zoning district. An accessory use is customary, incidental, and subordinate to the principal use, such as with a shed built in the backyard of a house in a residential district. A support use is like an accessory use in that it is subordinate to the principal use but unlike an accessory use it is needed to support the principal use rather than incidental to it. For example, the principal use of a campground might be overnight camping; restroom facilities may be considered necessary to support that use; and a retail store selling matches and marshmallows may be considered accessory.

If an accessory use increases too much in intensity or size, it can constitute both a zoning permit violation and an unlawful de facto rezoning and spot zoning. For example, if a landowner receives a special use permit to build a 10'x30' farm stand in an agricultural zone but builds a 30'x50' farm

⁸ Daniels and Keene, 2018, *The Law of Agricultural Land Preservation in the United States*, p. 325.

⁹ Daniels et al. *The Small Town Planning Handbook*, p. 180.

¹⁰ MCL § 125.3502.

stand instead, the farm stand would violate the permit. The farm stand may also de facto rezone its location from agricultural to commercial without government approval by creating a primary commercial use in an agricultural zone. This would also create “spot zoning,” which may be deemed illegal for conferring a special benefit on one landowner.

C. Farmland Preservation

Farming is an industry that relies upon a critical mass of farms and farmland to sustain farm support businesses, such as machinery dealers, hardware stores, feed and seed suppliers, food processors, and trucking companies. Farmland preservation can help to retain land in agricultural use and maintain the volume of crop or livestock production and thus help to keep farm support businesses operating. When an agricultural area loses farms, the volume of agricultural production falls, putting financial pressure on both the farm support businesses and the remaining farm operations. Farmland preservation involves the aspiration and opportunity for a long-term future of farming in a community.

Farmland in Michigan is generally defined to include farms of five or more acres where more than half the land is “devoted to an agricultural use.”¹¹ “Agricultural use” means “the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities.”¹²

In the United States, farmland is converted to other uses at a rate of several hundreds of thousands of acres each year.¹³ Purchase of Development Rights (PDR) programs and agricultural zoning are important and complementary tools for keeping land in active agriculture and supporting the continued viability of farming and the farm support economy. PDR provides greater protection than zoning alone because it permanently restricts land use, while agricultural zoning may be changed in accordance with local democratic processes but applies to much more land and at a far lower cost. In Michigan, supportive agricultural zoning, combined with tools like the Michigan Department of Agriculture and Rural Development (MDARD) Farmland and Open Space Preservation Program (formerly PA 116) and local PDR programs help stabilize the state’s farmland base to limit non-farm development and enhance the opportunity for farmland owners to preserve their land through the sale of development rights.

i. Purchase of Development Rights (PDR)

Farmland preservation through PDR programs, which involve the voluntary sale or donation of development rights by a landowner to a government agency or nonprofit land trust has emerged as

¹¹ MCL § 324.36101(h) (also recognizing specialty farms designated by the state and establishing minimum income thresholds for some farms).

¹² MCL § 324.36101(h) (also recognizing specialty farms designated by the state and establishing minimum income thresholds for some farms).

¹³ Sallet, Lori. 2022. American Farmland Trust. June 29, 2022. <https://farmland.org/new-report-smarter-land-use-planning-is-urgently-needed-to-safeguard-the-land-that-grows-our-food/>. Accessed May 23, 2023.

an important and effective way to maintain land in agricultural use over the long term. The development rights are in effect retired through a deed of easement, also known as a conservation easement. Most conservation easements are perpetual and run with the land, binding future landowners.¹⁴ A conservation easement can be removed through an eminent domain action by a government or a court ruling.

The payment for development rights has enabled farmers to enhance farming operations. Also, PDR supports long-term intergenerational farming and farmland planning.

The first local PDR program was adopted in the Town of Southold in Suffolk County, New York, in 1984.¹⁵ Since then, PDR has become a common nationwide farmland and open space preservation practice, with programs in 29 states and more than 95 counties and townships.¹⁶ The federal government launched the Farm and Ranch Land Protection Program (FRPP) in 1996 to provide matching grants to state and local governments and private, non-profit land trusts to purchase development rights to farmland. In the 2014 Farm Bill, the FRPP was merged with the Wetlands Reserve Program and the Grassland Reserve Program into the Agricultural Conservation Easement Program (ACEP), which has received about \$450 million in federal funding each year in recent years.¹⁷

State farmland preservation programs have spent \$8 billion to preserve 3.4 million acres.¹⁸ Nationwide, local governments, including those in major winery areas, have preserved 540,000 acres as of 2020 at cost of \$2.1 billion.¹⁹ As of 2020, Sonoma County, California, has preserved 36,161 acres through PDR at a cost of \$96,371,250, and the Town of Southold has preserved 2,312 acres at a cost of more than \$67 million.²⁰

Michigan began a program to purchase development rights to farmland in 1994 and has since spent \$55 million to preserve more than 27,000 acres.²¹ Table 1, below, lists the local PDR programs in Michigan. Peninsula Township's is the oldest, indicating its longstanding commitment to maintaining land for agricultural production. Peninsula Township has also invested more local funds and preserved more land with local funding than the other Michigan local governments.

¹⁴ Daniels and Keene, 2018. *The Law of Agricultural Land Preservation in the United States*, Chicago: American Bar Association, p. 80.

¹⁵ *Ibid.*, p. 74.

¹⁶ See Daniels and Keene, 2018. *The Law of Agricultural Land Preservation in the United States*, Chicago: American Bar Association, pp. 215-220.

¹⁷ National Sustainable Agriculture Coalition. 2019. *Agricultural Conservation Easement Program (ACEP)*. <https://sustainableagriculture.net/publications/grassrootsguide/conservation-environment/agricultural-conservation-easement-program/>. Accessed August 27, 2023.

¹⁸ American Farmland Trust. 2022. *Status of State PACE Programs, 2022*, p. 7. https://farmlandinfo.org/wp-content/uploads/sites/2/2022/12/State_PACE_Program_Factsheet_2022.pdf. Accessed May 15, 2023.

¹⁹ American Farmland Trust. 2021. *Status of Local PACE Programs*, p. 6. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 15, 2023.

²⁰ American Farmland Trust. *Status of Local PACE Programs, 2020*, pp. 2, 4. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 18, 2023.

²¹ *Ibid.* p. 5.

Table 1. Michigan Local Governments with Farmland Preservation Programs.

<u>Locality</u>	<u>Year of Inception / Year of First Acquisition</u>	<u>Independent Acres Preserved</u>	<u>Independent Program Funds Spent to Date</u>
Acme Township	2004 / 2009	500	\$1,749,444
Ann Arbor Charter Township	2003 / 2006	1,128	\$3,735,544
Ingham County	2004 / 2006	3,147	\$5,500,000
Kent County	2002 / 2005	1,966	\$494,800
Ottawa County	2008 / NA	91	\$41,400
Peninsula Township	1994 / 1996	3,347	\$15,173,800
Scio Township	2004 / 2008	731	\$4,932,552
Washtenaw County	1998 / NA	2,275	\$3,617,812
Webster Township	2005 / 2009	897	\$1,466,485

Source: American Farmland Trust. 2021. Status of Local PACE Programs, 2020, pp. 2, 4.

PDR alone keeps land from being developed. Effective agricultural zoning supports PDR programs and creates an environment in which farming can thrive on preserved land by ensuring compatibility of land uses and allowing uses that support agriculture while disallowing those that undermine it.

ii. Agricultural Zoning

Many townships and counties across the United States use agricultural zoning to reduce conflicts between farmers and nonfarmers, protect productive farmland from nonfarm development, and limit the density of development. As with all zoning, agricultural zoning is a set of regulations that implement goals expressed in a master plan.

Agriculture as practiced today is essentially an industrial land use involving heavy machinery and chemical sprays and fertilizers to produce food and fiber. These activities generate noise, dust, and odors which can cause conflicts with neighboring nonfarm residential or commercial developments. In turn, nonfarm homes and businesses placed near farms can create traffic that interferes with the movement of farm machinery. Thus, local governments use agricultural zoning districts to separate areas where agriculture is the dominant and preferred land use from residential and commercial zoning districts. Agricultural zoning can also promote orderly growth by limiting how many nonfarm parcels can be subdivided from farms, thereby controlling sprawl and the cost of public services.

A key distinction in an agricultural zoning ordinance is what constitutes an agricultural use as opposed to a commercial use of the property. An agricultural use is the production of food and fiber and may include the processing and sale of those agricultural products on the farm where they are grown and processed. Also, the leading grape and wine producing areas, including Peninsula Township, may allow tasting rooms and the sale of wine-related products, such as wine glasses, but not goods unrelated to wine, such as coffee mugs. By contrast, a commercial use is

the sale of goods and services not related to agriculture and which can be sold or offered at locations in commercial zoning districts.

In an agricultural zone, agricultural production is the principal use; other uses, such as tasting rooms and the sale of wine-related products, are accessory. It is a common practice for local governments to restrict the size of tasting rooms and gift shops at wineries so that the accessory uses do not overtake the principal use of agricultural production, as shown in the four major wine-producing jurisdictions, discussed in section D below.

Agricultural zoning need not allow the highest and best use of a property, such as for a housing development, but must be a reasonable economic use of property in the jurisdiction that enacts it.²² The purpose of agricultural zoning is to maintain land in agricultural production to support the local agricultural economy and, as with zoning in general, to promote the public health, safety, and welfare.

An agricultural zoning ordinance first explains its purpose and defines uses allowed in the agricultural zone. Principal uses are typically those directly related to agricultural production, such as growing crops and raising livestock. Accessory uses may include related activities like processing, marketing, and sales of agricultural products. By-right uses typically include farming, farm dwellings, forestry, greenhouses and nurseries, and a limited number of residences. Special uses may include farm stands for direct sales to consumers, some processing of farm products, and bed and breakfast operations that are accessory to the principal farming operation.

The connection between land zoned for agriculture and land preserved by PDR is critical to the overall success of a community's effort to retain agricultural land and support agricultural operations.²³ The agricultural zone helps to buffer the preserved farmland, limiting residential and commercial development on neighboring properties that could cause conflicts with farming activities on the preserved farmland (see Figure 3). Also, land uses on farmland subject to a conservation easement must comply with the provisions of the underlying agricultural zoning.

D. Agricultural Zoning in Major Wine Producing Regions

Wine production begins with growing grapes, which may involve the use of fertilizers, pesticides, and herbicides. Harvesting can be done by machinery or by hand. Harvested grapes are destemmed, crushed, pressed, fermented, and aged. Then the wine is filtered or "fined," and bottled for sale. A winery is typically used for the post-harvest production steps and storage of finished products. It may or may not have a tasting room where visitors may sample and purchase the wines produced by the winery.

The growing and harvesting of grapes creates noise, dust, and potential chemical spray drift. Wineries require significant space for processing equipment and storage. In essence, wine

²² "Highest and best" use refers to the land use that would produce the highest value for a property.

²³ Daniels and Keene, 2018, *The Law of Agricultural Land Preservation in the United States*, Chicago: American Bar Association, pp. 329-331.

production is an industrial process. This means zoning should work to separate it from non-farm residential and commercial land uses to avoid conflicts and nuisance situations.

Below, I examine how four major grape and wine producing areas use agricultural zoning to regulate wineries: Napa County, California; Sonoma County, California; Yamhill County, Oregon, and Suffolk County, New York. This examination shows that local governments commonly require a special use permit for construction and operation of a winery, increase minimum required lot size for wineries with tasting rooms and retail sales, and regulate the percentage of grapes in wine sold by wineries to protect their appellations and wine reputation.²⁴

Napa County, California, is located in the northern region of the San Francisco Bay area and famous for its premier wines. Napa County has more than 400 wineries and 16 AVAs.²⁵ Napa County's prime grape and wine producing area is protected by an agricultural zoning district, known as the Agricultural Reserve. The Reserve covers 32,000 acres in the heart of the Napa Valley.²⁶ Sonoma County, California, is adjacent to Napa County and is another of America's premier grape and wine producing regions. Sonoma County has more than 425 wineries and 18 AVAs.²⁷ The Town of Southold is located on the north fork of the eastern end of Long Island in Suffolk County, New York. The town has about a dozen wineries and is part of the North Fork of Long Island AVA.²⁸ Yamhill County, Oregon, is located in the Willamette Valley, southwest of Portland. It is a famous wine producing region and part of the Yamhill-Carlton AVA, which has more than 50 wineries.²⁹ Yamhill County has three agricultural zoning districts, EF-80 with an 80-acre minimum lot size, EF-40 with a 40-acre minimum lot size, and EF-20 with a 20-acre minimum lot size. Wineries are a permitted use in each of these three agricultural zoning districts, subject to site design review.³⁰

i. Winery definition

Wineries are agricultural processing facilities. While many people experience them only by visiting their public-facing tasting rooms, wineries are primarily for making wine – not tasting or selling it on-site. Napa County defines a winery as “an agricultural processing facility used for the fermenting and processing of grape juice into wine; or the refermenting of still wine into sparkling

²⁴ See Napa County zoning ordinance, Section 18.104.250 - Wineries—Production capacity C. 1. and 2.

²⁵ Napa Valley Wineries. 2023. <https://www.napavalley.com/wineries/>. Accessed May 17, 2023.

²⁶ Napa Valley Life. 2018. Napa Valley Agricultural Preserve 50 Anniversary. <https://www.napavalleylifemagazine.com/napa-valley-agricultural-preserve-50th-anniversary/#:~:text=The%20best%2Dknown%20part%20is,to%20more%20than%2032%2C000%20acres.> Accessed May 17, 2023.

²⁷ Sonoma County Tourism. 2023. <https://www.sonomacounty.com/activities/wineries-wine#:~:text=With%20more%20than%20425%20wineries,to%20explore%20your%20own%20way.> Accessed May 17, 2023.

²⁸ See North Fork Wine Trail. 2023. <https://blog.signaturepremier.com/north-fork-wine-trail-guide/>. Accessed May 16, 2023; Wine-Searcher. 2023. North Fork of Long Island Wine. <https://www.wine-searcher.com/regions-north+fork+of+long+island#:~:text=North%20Fork%20of%20Long%20Island%20is%20an%20American%20Viticul%20Area,vinifera%20grapes%20will%20reliably%20ripen.> Accessed May 17, 2023.

²⁹ Yamhill-Carlton AVA. 2023. <https://yamhillcarlton.org/wineries/#:~:text=With%20over%2050%20member%20wineries,for%20everyone%20in%20Yamhill%2DCarlton.> Accessed May 23, 2023).

³⁰ Section 402.02.H.

wine.”³¹ Sonoma County defines wineries as part of “agricultural processing,” which is allowed through a special use permit and “must be sized to accommodate, but not exceed, the needs of the on-site growing or processing operation.”³² The Town of Southold defines a winery as “a place or premises on which wine made from primarily Long Island grapes is produced and sold.”³³ Yamhill County defines a winery as “a facility that produces and sells wine” subject to maximum capacity requirements.³⁴

ii. Special Use Permit for Wineries

Wineries are commonly permitted as special land uses, but sometimes allowed by right. Napa County allows wineries only through a special use permit.³⁵ Uses allowed include wine production and bottling, offices and labs, and the sale of wine.³⁶

Sonoma County requires a special use permit for agricultural processing, defined as “[c]hanging an agricultural product from its natural state to a different form, as grapes to wine, apples to juice or sauce.”³⁷ Processing is limited to agricultural products “grown or produced primarily on-site or in the local area,” and storage, bottling, and canning, is limited to products grown or processed on-site.³⁸

The Town of Southold allows wineries as a by-right use if the winery meets certain standards, including that the wine produced and sold is “made from primarily Long Island grapes.”³⁹ Yamhill County allows a winery by right but subject to site design review.⁴⁰

iii. Tasting Rooms, Food, and Retail Sales

Wine tasting and retail sales are separate uses that may be associated with wineries, regulated either as accessory uses that are incidental and subordinate to the principal agricultural processing use or subject to their own special use permitting process. Tasting and retail sales are generally limited to local wines and wine-related promotional items.

Napa County regulates tasting rooms through the special use permitting process for wineries. Uses permitted as accessory to the principal agricultural processing use of a winery include tours, tasting, and the sale of wine-related products.⁴¹

Similarly, Sonoma County regulates tasting rooms as an additional use that must be authorized in a winery's special use permit. Tasting rooms are defined as “[a] retail food facility where one (1) or more agricultural products grown or processed in the county are tasted and sold,” and include

³¹ Napa County Zoning Ordinance, Section 18.08.640.

³² Sonoma County Zoning Ordinance, Sec. 26-18-030.C.1.

³³ Town of Southold Zoning Ordinance, Section 280-13 (4)(a).

³⁴ Yamhill County Zoning Ordinance, Sec. 402.02(H).

³⁵ Napa County Zoning Ordinance, Section 18.16.030 H.

³⁶ Napa County Zoning Ordinance, Section 19.08.640 G and Section 18.104.250.

³⁷ Sonoma County Zoning Ordinance, Section 26-18-030 A.

³⁸ Sonoma County Zoning Ordinance, Section 26-18-030.

³⁹ Town of Southold Zoning Ordinance, Section 280-13 (4) (a).

⁴⁰ Yamhill County Zoning Ordinance, Section 402.02.H.

⁴¹ Napa County Zoning Ordinance Section 18.08.640 H. 1; Section 18.08.620.

“wine tastings, olive oil, honey, fruit preserves” while excluding farm stands and farm retail sales.⁴²

The Town of Southold allows wineries to have “an accessory gift shop on the premises which may sell items accessory to wine, such as corkscrews, wine glasses, decanters, items for the storage and display of wine, books on winemaking and the region and nonspecific items bearing the insignia of the winery.”⁴³ “Wineries may not have a commercial kitchen as an accessory use but may have a noncommercial kitchen facility for private use by the employees.”⁴⁴

In Yamhill County, a winery may sell only “[w]ines produced in conjunction with the winery” and “[i]tems directly related to wine, the sales of which are incidental to the retail sale of wine on-site and do not exceed 25 percent of the total gross receipts of the retail facility.”⁴⁵ Items may include “those served by a limited service restaurant,” meaning “a restaurant serving only individually portioned prepackaged foods prepared from an approved source by a commercial processor and nonperishable beverages.”⁴⁶

iv. Limits on Production Capacity

Zoning commonly limits winery production capacity by fruit source, facility size, and/or volume of finished product. In Napa County, the maximum production capacity of a winery is established in its special use permit.⁴⁷ Napa County requires that “at least seventy-five percent of the grapes used to make the winery’s still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the county of Napa.”⁴⁸ Napa County, named California’s first AVA in 1981, has a reputation and an appellation to protect and uphold.⁴⁹

Sonoma County requires agricultural processing, including winemaking, in its agricultural zones to be “sized to accommodate, but not exceed, the needs of the on-site growing or processing operation” and “limited to processing of agricultural products grown or produced on site, and bottling, canning, or storage of agricultural products grown and processed on site.”⁵⁰ Sonoma County also limits the combined square footage of all buildings used for processing or storage to 5,000 square feet.⁵¹

The Town of Southold requires that “[a]t least 66% of the agricultural products being processed must have been grown by that bona fide farm operation,” with an exception for “cases of a catastrophic crop failure.”⁵²

⁴² Sonoma County Zoning Ordinance section 26-18-210.

⁴³ Town of Southold Zoning Ordinance, Section 280-13. C. (10).

⁴⁴ Ibid.

⁴⁵ Yamhill County Zoning Ordinance Section 402. 10. I. 2. (a) and (b).

⁴⁶ Yamhill County zoning ordinance Section 402.10 I. 2.; ORS 624.010.

⁴⁷ Napa County Zoning Ordinance Section 18.16.030 H.

⁴⁸ Napa County Zoning Ordinance, Section 18.104.250 B.

⁴⁹ Daniels, *The Napa County Agricultural Preserve*, p. 106.

⁵⁰ Sonoma County Zoning Ordinance, Sec. 26-18-30(C).

⁵¹ Sonoma County Zoning Ordinance, Sec. 26-18-030(C).

⁵² Town of Southold Zoning Ordinance Section 280-13. C. (13)(e).

Yamhill County defines two sizes of wineries with production capacity limitations based on the size of the vineyards they support. Wineries with a maximum annual production of less than 50,000 gallons must own an on-site vineyard of at least 15 acres, a contiguous vineyard of at least 15 acres, have a long-term contract for the purchase of all grapes from a contiguous vineyard of at least 15 acres, or obtain grapes from a combination of those three options. For wineries that produce between 50,000 and 100,000 gallons, similar requirements apply with 40-acre vineyard requirements replacing the 15-acre vineyard requirements.

The limit on the use of grapes grown outside of Napa County, the Town of Southold, and Yamhill County is consistent with federal AVA standards, designed to ensure the authenticity of wine labeled from those distinct places and to protect the quality and reputation of those distinct wines. In Yamhill County, the requirement that the grapes to support the winery be produced on or adjacent to land on which the winery sits is also a reasonable requirement to protect the quality and reputation of the wine produced by and sold at Yamhill County wineries, and to limit wine production capacity to align with local farming capacity.

The limit on production capacity prioritizes local grape growing while allowing sufficient wineries to process those grapes. Tying the wineries to local grape sources allows the area's grape growing capacity to be a natural limit on the size and number of wineries. These grape source requirements are also part of the AVA designation. Local governments are under no obligation to allow as many wineries as possible, or to allow wineries to make as much wine as possible. Landowners who wish to propose a new winery but cannot meet AVA and local zoning standards may build elsewhere.

v. Summary

Based on my professional experience and research, it is my opinion that agricultural zoning in these four major wine-producing jurisdictions promotes agricultural preservation. By defining the land use to be principally winemaking and tying it to grape growing, these ordinances limit the initial scope of the land use. The ordinances that provide for special uses recognize the potential for additional site-specific considerations and conditions. Further, they restrict commercial, non-agricultural land uses that could otherwise turn agricultural processing facilities (wineries) into primarily commercial retail stores, selling merchandise unrelated to winemaking and tasting. Finally, they ensure agricultural focus through limited production capacity through requirements for the use of local grapes and size of wineries, which further supports the local distinctive AVAs.

E. A Brief History of Land Use Planning, Zoning, Agricultural Zoning, and Farmland Preservation in Peninsula Township

Protecting farmland has been a major goal of Peninsula Township since the first master plan was adopted in 1968. The Township's first zoning ordinance followed in 1972. The ordinance created an A-1 Agricultural zoning district which covered (and still applies to) nearly 12,000 acres or roughly two-thirds of the Township (see Figure 1).

In the late 1970s, with the pending sale of 500 acres at the northern tip of the Township, residents became concerned about the threats of large housing developments and scattered homes that could

rapidly change the rural and agricultural character of the Township. The Township's 1983 master plan called for the "continued viability of agricultural production by protection of valuable farm land." Its 2011 master plan recognizes that "the peninsula is a key asset for its open agricultural lands and recreational opportunities" and articulates a vision to "preserve and protect the unique and scenic character of Old Mission Peninsula."⁵³

Peninsula Township's agricultural zoning protects farmland by, among other things, indicating agriculture as the primary, preferred land use and limiting accessory uses and non-farm uses. It is tied to the goals of the Township's master plan, reflecting the Township's longstanding interest in protecting agricultural land.

Complementary to agricultural zoning, Peninsula Township drafted an Agricultural Preservation Plan (APP) as a subplan to the master plan in 1994.⁵⁴ The APP identifies an Agricultural Preservation Area encompassing a substantial portion of the A-1 Agricultural zoned land (9,861 acres). In 1994, Peninsula Township voters passed Michigan's first township PDR program, for which land in the Agricultural Preservation area is eligible (see Figure 2). Township voters have twice renewed the PDR program, in 2003 and 2022, indicating the importance of the Township's agricultural industry and character to the majority of residents, and reflecting the popularity of the Township's policies to maintain farmland and agriculture on Old Mission Peninsula.

The Township's PDR ordinance notes that "[i]t is the policy of the State of Michigan and Peninsula Township to protect, preserve and enhance agricultural and open space lands as evidenced by the Peninsula Township Master Plan including open space polices, the Farmland and Open Space Preservation Act of 1974 (P.A. 116), the Historic and Conservation Easement Act and the Township ordinances regulating land use by zoning and subdivision control."⁵⁵ Recognizing that "these policies and regulations, by themselves, have not been effective in providing long-term protection of farmland, shoreline, and open lands under the pressure of increasing urban development," the ordinance establishes a PDR program that will "permit these lands to remain in farmland and open space in a developing urban area and provide long-term protection for public benefits which are served by farmlands and open space lands within the Township."⁵⁶

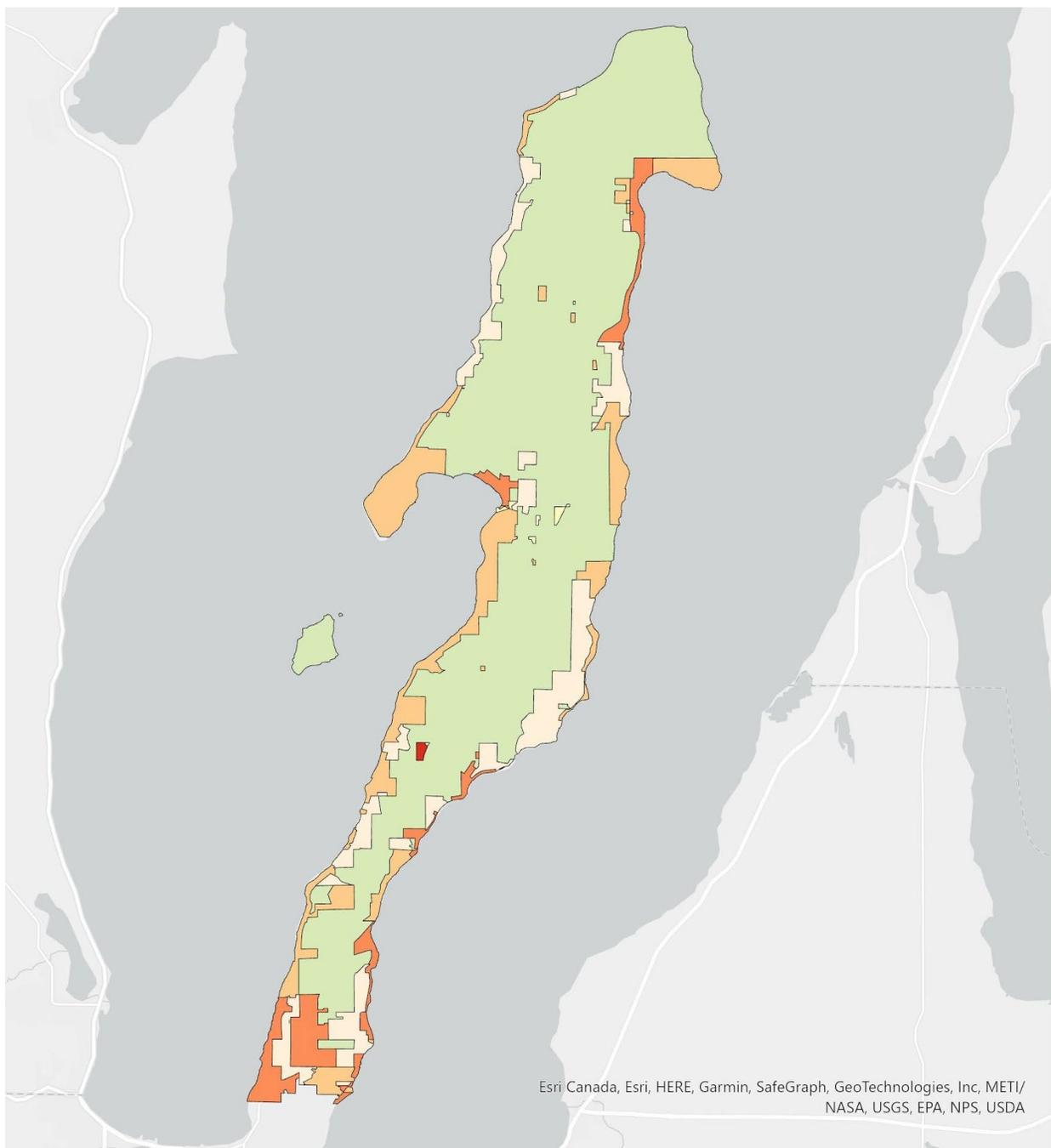
⁵³ 2011 Master Plan, p. 3.

⁵⁴ Williams, Jesse. 2022. Balancing Development, Agriculture, and Preservation: Evaluating the Success of the Old Mission Peninsula's Purchase of Development Rights Program.

⁵⁵ Peninsula Township PDR Ordinance Section 1 (4).

⁵⁶ Ibid.

Figure 1: Peninsula Township Zoning Map



- A-1 Agricultural Zoning
- C-1 Commercial Zoning
- R-1A Rural and Hillside Residential Zoning
- R-1B Coastal Zone Residential Zoning
- R-1C Suburban Residential Zoning
- R-1D Community Residential Zoning

Figure 2. Peninsula Township Agricultural Preservation Area



 Agricultural Preservation Area

This map highlights the Agricultural Preservation Area, the prioritized agricultural land that would be desirable to preserve. This does not represent the amount of land currently under conservation easements, although some land in this area is protected (see next figure).

“Properties on which the Township has purchased the Development Rights should remain substantially undeveloped in order to promote their ‘Agricultural Use,’” defined as “the production of plants and animals useful to man, including fruits; grapes; nuts; vegetables; green house plants; Christmas trees; forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; and other similar uses and activities on substantially undeveloped land.”⁵⁷

Peninsula Township has 5,181 acres of preserved agricultural land, accounting for more than half of the land identified in the Agricultural Preservation Area. This is an impressive achievement resulting from more than \$15 million the Township has invested in its PDR program.⁵⁸ In addition, the Township has received funding from the State of Michigan, American Farmland Trust, and the federal Farm and Ranch Lands Protection Program (now part of the federal Agricultural Conservation Easement Program).⁵⁹ The combination of Township and outside funding has provided strong support for the Township’s agricultural economy to enable a long-term future for agriculture on Old Mission Peninsula. The passage of an additional millage for the Township’s PDR program in 2022 is expected to generate additional millions of dollars for farmland preservation.

Four of the eleven wineries on Old Mission Peninsula own or lease preserved farmland: Black Star Farms, Bonobo, Chateau Grand Traverse, and Mari Vineyards. Chateau Grand Traverse sold a permanent conservation easement to the State of Michigan; the Township holds the development rights for Black Star Farms, Bonobo, and Chateau Grand Traverse.

As I reported in 2008:

Peninsula Township has created the most successful farmland preservation program in Michigan and one of the most successful among local governments in the United States. The measures of success are many: a) Nearly one-third of the Township’s 17,755 acres have been placed under permanent conservation easements; b) The preserved farms are often adjacent to each other; c) Landowners continue to apply to sell their development rights; d) The Township has identified a 9,200-acre Agricultural Preservation Zone in its Master Plan where agriculture is the preferred use and 80% of the preserved land is located within the APZ.

* * *

The strategy of the Township PDR program has featured the preservation of farmland with scenic views of Grand Traverse Bay. This strategy has attempted to accomplish two goals at the same time: 1) preserve the scenic views which both the

⁵⁷ Ibid., Section 2 (1).

⁵⁸ American Farmland Trust. 2021. Status of Local PACE Programs, 2020, p. 4. https://farmlandinfo.org/wp-content/uploads/sites/2/2021/02/Local_Purchase_of_Agricultural_Conservation_Easement_Programs_2020_2.21_A_FT_FIC.pdf. Accessed May 18, 2023.

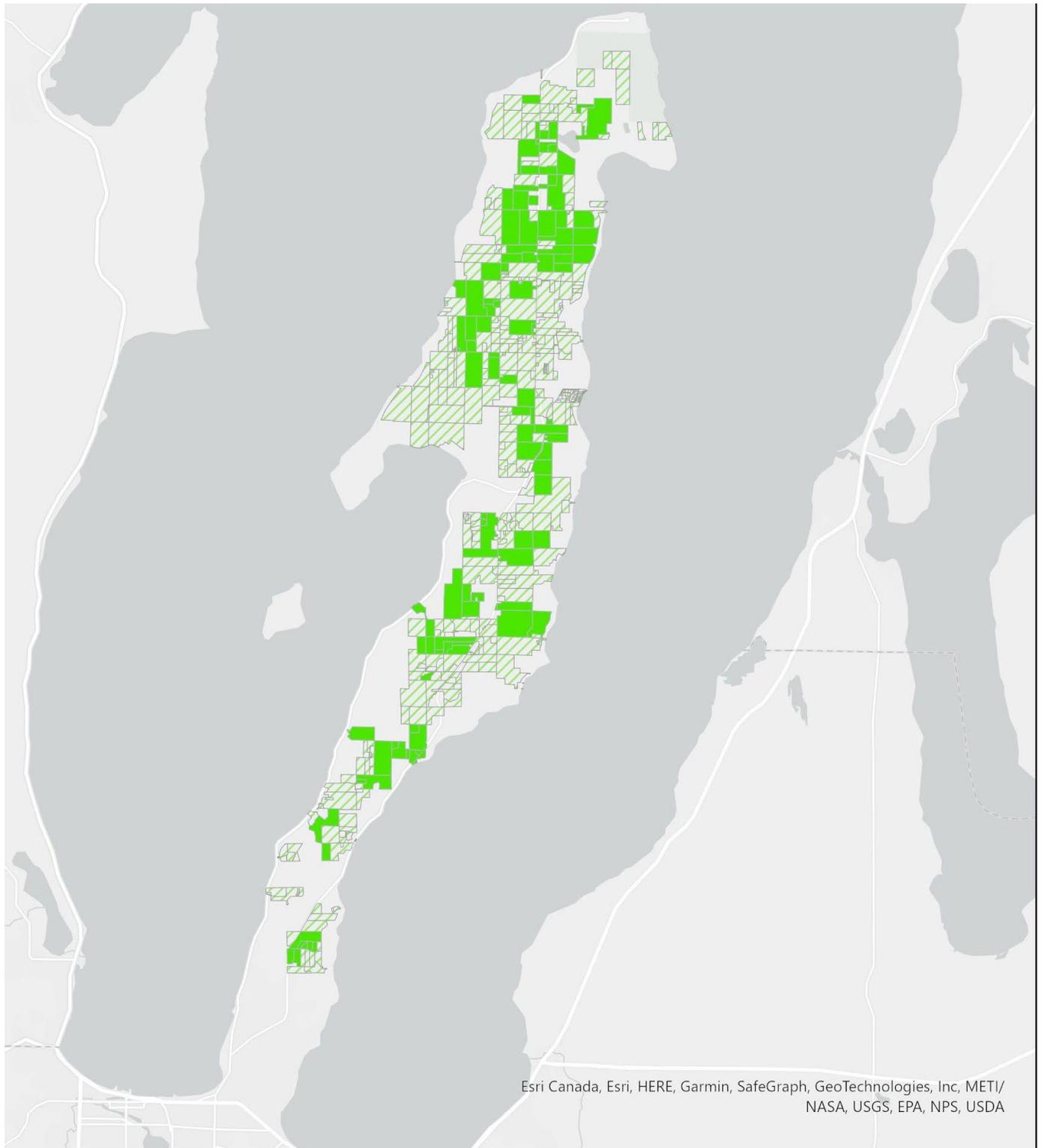
⁵⁹ Daniels, T. 2008. An Evaluation of the Peninsula Township Farmland Preservation Program, p. 4.

Township residents and tourists enjoy; and 2) preserve agricultural land in order to keep the fruit industry alive and thriving on the peninsula. The Township has done a good job of minimizing development along Michigan Route 37, and the views are often spectacular.⁶⁰

Figure 3 below shows how Township farmland has been preserved in several contiguous blocks, which helps to keep non-farm development at a distance, thus minimizing potential conflicts over farming practices.

⁶⁰ Ibid., pp. 5,7.

Figure 3. Preserved Farmland in Peninsula Township.



- Protected Parcels
- Agricultural Preservation Area

II. Analysis of Challenged Zoning Provisions

Plaintiffs challenge select subparts of Peninsula Township Zoning Ordinance sections that establish three winery uses in the A-1 District: Farm Processing Facility – a use by right under Section 6.7.2(19); Winery-Chateau – a special use under Section 8.7.3(10); and Remote Winery Tasting Room at 8.7.3(12). To analyze these challenges, I explain the purpose of the Peninsula Township Zoning Ordinance as a whole, the agricultural zoning provisions within the Township Ordinance, winery uses allowed by right and uses allowed by special use permits. The analysis shows that the challenged provisions are reasonable and are similar to provisions used by the four major wine producing areas cited in this report.

A. Peninsula Township Zoning Ordinance (PTZO)

The purposes of the Peninsula Township Zoning Ordinance (PTZO) are:

[T]o protect the public health, safety, morals and general welfare of the inhabitants of the Township; to provide for adequate light, air and convenience of access to secure safety from fire and other dangers; to avoid undue concentration of population by regulating minimum open spaces and by regulating and limiting types and locations of buildings and regulating the location of trades, industries, and buildings designated for specific uses; to provide for the orderly development of the Township; to encourage the use of lands and resources of the Township in accordance with their character and adaptability; to provide for safety in traffic, adequacy of parking and reduce hazards to life and property; to facilitate the development of adequate systems of fire protection, education, recreation, water supplies and sanitary facilities; and to conserve life, property, natural resources and the use of public funds for public services and improvements to conform with the most advantageous use of lands, resources and properties.⁶¹

To further these purposes, the Peninsula Township Zoning Ordinance divides the Township into six zoning districts: A-1 Agricultural, C-1 Commercial, R-1A Rural and Hillside Residential, R-1B Coastal Zone Residential, R-1C Suburban Residential, and R-1D Community Residential (see Figure 1). For each zoning district, it spells out required minimum lot sizes, setbacks, building height, lot coverage, and uses allowed by right or by special use permit. It also establishes who has zoning authority, the zoning permitting processes and procedures, appeals and requests for interpretation, land uses and their standards, enforcement procedures, and the amendment and re-zoning process. The A-1 Agricultural Zoning District in particular serves the goals of the Township master plan to “protect the unique and scenic character of Old Mission Peninsula” and to “retain and attract growers and agricultural entrepreneurs.”⁶²

i. The A-1 Agricultural Zoning District

⁶¹ Peninsula Township Zoning Ordinance Section 2.1.

⁶² 2011 Master Plan, pp. 3, 27.

The A-1 Agricultural Zoning district “is intended to recognize the unique ecological character of the Peninsula and to preserve, enhance, and stabiliz[e] existing areas within the Township which are presently being used predominately for farming purposes, yet recognize that there are lands within the district which are not suited to agriculture, therefore allowing other limited uses which are deemed to be compatible with agricultural and open space uses.”⁶³ Uses permitted by right include one- and two-family dwellings; mobile homes; “field crop and fruit farming, truck gardening, horticulture, aviaries, hatcheries, apiaries, green houses, tree nurseries, and similar agricultural enterprises along with accessory uses incidental to” those uses; raising and keeping of small animals and livestock; customary home occupations; “[r]oadside stands selling regionally grown fresh and/or processed farm produce, raw forest products, cut flowers, potted plants, agricultural and forest products”; cemeteries; farmworker housing; public parks and recreation areas; conservation areas; customary uses and structures incidental to principal rural residential uses; mining and topsoil removal subject to supplementary use regulations; day care; barn storage; and “Farm Processing Facility” wineries.⁶⁴

Uses permitted by Special Use Permit include Planned Unit Developments, special open space uses, recreational vehicle parks or campgrounds, food processing plants, institutional structures like schools and places of worship, greenhouses and nurseries with retail sales, riding stables, livestock auction yards, raising of fur-bearing animals for profit, for-profit game and hunting preserves, veterinary facilities and kennels, sawmills, agricultural storage, golf courses and country clubs, public buildings and service installations, waste disposal and treatment facilities, airports and airfields, warehouses and light industrial uses, wind energy conversion systems, bed and breakfast establishments, adult foster care facilities, and Winery-Chateau and Remote Winery Tasting Room wineries.⁶⁵

Peninsula Township’s roadside stand provisions are an example of how it seeks to allow some degree of retail activity while maintaining the A-1 District’s purpose of ensuring land is used primarily for farming. It excludes non-regional and non-agricultural items from sale and is intended “to provide only for the limited seasonal sale of agricultural and related products, but not to encourage the size of investment in equipment that would require a commercial zone.”⁶⁶

ii. Winery Uses in the A-1 District

The Peninsula Township Zoning Ordinance defines a winery as “a state licensed facility where agricultural fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility. The site and buildings are used principally for the production of wine.”⁶⁷

Until it was amended in December 2022, the PTZO permitted the following three winery land uses in the A-1 District: Farm Processing Facilities, Winery-Chateaus, and Remote Winery Tasting Rooms. A Farm Processing Facility is “a building or buildings containing an area for processing

⁶³ Peninsula Township Zoning Ordinance Section 6.7.1.

⁶⁴ Peninsula Township Zoning Ordinance Section 6.7.2

⁶⁵ Peninsula Township Zoning Ordinance Section 6.7.3, 8.7.2.

⁶⁶ Peninsula Township Zoning Ordinance Section 6.7.2 (8)(f)

⁶⁷ Peninsula Township Zoning Ordinance Section 3.2

equipment where agricultural produce is processed or packaged and prepared for wholesale and/or retail sales” and “may also include a retail sales area for direct sales to customers and a tasting room for the tasting of fresh or processed agricultural produce including wine, as well as “necessary parking, lighting and access to a public road.”⁶⁸ A Winery-Chateau is “a state licensed facility whereat (1) commercial fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility and (2) a limited number of guest rooms with meals are offered to the public.”⁶⁹ A Remote Winery Tasting Room is a tasting room not located on the same property as its associated winery.⁷⁰

Use by Right – Farm Processing Facility

The construction and use of a Farm Processing Facility winery is allowed by right as a way “to promote a thriving local agricultural production industry and preservation of rural character.”⁷¹ A Farm Processing Facility is intended to include retail and wholesale sales of fresh and processed agricultural produce but is not intended to allow a bar or restaurant on agricultural properties and does not include permission to hold “weddings, receptions and other social functions for hire.”⁷²

Most of the produce sold must be grown on the specific farm operation associated with the Farm Processing Facility and must be grown on Old Mission Peninsula. A Farm Processing Facility must be located on a parcel that meets minimum acreage requirements. While it may have unlimited underground facilities, its above-grade floor area and retail space are limited.⁷³ The above-ground size limitation affects, among other things, stormwater runoff and visual impacts and thus relates to the public health, safety and welfare purpose of zoning.

Limiting accessory uses like food service, marketing, and retail sales; and limiting production capacity, including through building size and grape source requirements, are common practice in the zoning ordinances of the leading grape and wine producing regions mentioned earlier.

Special Uses – Winery Chateau and Remote Winery Tasting Room

The Winery-Chateau is a special use permitting the “construction and use of a winery, guest rooms, and single family residences as a part of a single site.”⁷⁴ It requires a 50-acre minimum site, upon which the principal use is a winery. There are no local grape source requirements for wine produced and sold, but at least 75% of the site must be used for active production of crops that can be used to make wine.⁷⁵ Guest rooms, a manager’s residence, and single-family residences are allowed as support uses, and accessory uses are permitted so long as they are no greater than reasonably necessary to serve the principal use.⁷⁶ “Accessory uses such as facilities, meeting

⁶⁸ Peninsula Township Zoning Ordinance Section 3.2

⁶⁹ Peninsula Township Zoning Ordinance Section 3.2

⁷⁰ Peninsula Township Zoning Ordinance Section 8.7.3 (12)

⁷¹ Peninsula Township Zoning Ordinance Section 6.7.2. (19) (a)

⁷² Peninsula Township Zoning Ordinance Section 6.7.2. (19) (a)

⁷³ Peninsula Township Zoning Ordinance Section 6.7.2. (19) (b) (6)

⁷⁴ Peninsula Township Zoning Ordinance Section 8.7.3 (10)

⁷⁵ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (h)

⁷⁶ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (d)

rooms, and food and beverage services shall be for registered guests only,” and “not . . . greater in size or number than those reasonably required for the use of registered guests.”⁷⁷ The Township Board may approve activities for people in addition to registered guests – “Guest Activity Uses” – as support uses if certain standards designed to promote active crop production beyond the 75% minimum are met.⁷⁸ Guest Activity Uses include wine and food seminars and cooking classes, meetings of local nonprofit groups, and agriculture-related meetings.⁷⁹ “[E]ntertainment, weddings, wedding receptions, [and] family reunions” are excluded from the definition of permissible Guest Activity Uses.⁸⁰

The Remote Winery Tasting Room is a special use that is allowed for a tasting room that is not on the same property as the winery that produces the wine. It is another example of the Township’s effort to use zoning to balance agricultural production with the sale of agricultural products grown on Old Mission Peninsula and protect the public health, safety, and welfare. While it requires only a 5-acre parcel for the tasting room site, the tasting room and winery parcel must be under single ownership with “a minimum of 150 acres in Peninsula Township under that ownership and a minimum of 50% of the 150 acres shall be in active agricultural use.”⁸¹

A discretionary decision whether to approve a special land use requires “a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.”⁸² These findings and conclusions and any conditions appear in the Special Use Permits issued for Winery-Chateaus and the Remote Winery Tasting Room in Peninsula Township.

Seven wineries in the Township have Special Use Permits for Winery-Chateaus (Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Mari) and one has a Special Use Permit for a Remote Winery Tasting Room (Peninsula Cellars). As contemplated by the Michigan Zoning Enabling Act, some have conditions in addition to the requirements of the Peninsula Township Zoning Ordinance to further promote health, safety, and general welfare. For example, in the Mari Vineyards Special Use Permit, the Township added a condition saying there can be no amplified sound outdoors in order to protect the residential neighbors.

B. How the Peninsula Township Zoning Ordinance Promotes Agricultural Preservation

The Peninsula Township Zoning Ordinance serves to implement the Township Master Plan, protect property values, protect natural resources, prevent nuisances, and ensure the compatibility of uses.⁸³ It describes the purpose, intent, and land use regulations for each zoning district, including the purpose for the A-1 District to “preserve, enhance, and stabiliz[e] existing areas

⁷⁷ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (m)

⁷⁸ Peninsula Township Zoning Ordinance Section 8.7.3 (10) (u)(1)(a), 3

⁷⁹ Peninsula Township Zoning Ordinance Section 8.7.3 (10)(u) 2

⁸⁰ Peninsula Township Zoning Ordinance Section 8.7.3 (10)(u)(2)(d).

⁸¹ Peninsula Township Zoning Ordinance Section 8.7.3(12)(a)-(e).

⁸² MCL 125.3502(4).

⁸³ 2011 Master Plan, p. 45.

within the Township . . . used predominately for farming purposes” and allow limited, compatible other uses.⁸⁴

As Peninsula Township stated in response to Plaintiffs’ interrogatories, in adopting the challenged provisions, it “sought to prevent deterioration of the agricultural district and character of the Township’s lands and to the agricultural production industry and farming as well as promote the government interests outlined below.”⁸⁵ It described its interests as follows:

The government interests in enacting this Ordinance were, including but not limited to: preserving the agricultural production industry and providing permanent land for the same; maintaining the Township’s character; providing economically feasible public sewer and water systems to serve a future population; establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.⁸⁶

These statements express common and standard purposes for agricultural zoning and reflect local government’s strong interest in maintaining productive agricultural land and promoting orderly growth. The provisions that are being challenged further these stated interests. For example, by limiting retail sales to logo merchandise and wine-related items, the Peninsula Township Zoning Ordinance allows wineries to be profitable without changing them to commercial uses on agricultural land.

The A-1 Agricultural District “identifies those parcels within the Township where the land’s unique ecological and physical attributes allow viable agricultural operations and farming practices to exist”; its regulations “are designed to preserve, enhance, and stabilize existing areas within Peninsula Township where agriculture is the predominant use of the land.”⁸⁷ The performance standards in the Peninsula Township Zoning Ordinance for Farm Processing Facilities, Winery-Chateaus, and Remote Winery Tasting Rooms further this purpose, as well as the general purpose of zoning to promote the public health, safety, and welfare.

Establishing acreage minimums, limiting production capacity, and ensuring tasting room and other accessory uses do not overshadow the primary use of wine production also aligns with zoning in other major wine-producing jurisdictions.

The performance standards in the Peninsula Township Zoning Ordinance differentiate between principal uses and accessory uses, which cannot overtake the principal use to become the dominant use of the property. Generally, the more acreage in active agricultural production, the more accessory and/or support uses are permitted. A property owner needs only a small area for a Farm Processing Facility use by right, but there are additional grape source requirements and other restrictions (similar to Yamhill County’s agricultural zoning ordinance). More land is

⁸⁴ Peninsula Township Zoning Ordinance Section 6.7.1

⁸⁵ DEFENDANT PENINSULA TOWNSHIP’S SUPPLEMENTAL ANSWERS TO PLAINTIFFS’ FIRST SET OF INTERROGATORIES, p. 7.

⁸⁶ Ibid., p. 8.

⁸⁷ 2011 Master Plan, p. 15.

required for a Winery-Chateau with guest rooms and no grape source requirements. And, Guest Activity Uses can be added to a Winery-Chateau Special Use Permit if the winery produces and/or buys a certain amount of grapes grown on Old Mission Peninsula. Additionally, a landowner needs more land to locate a remote tasting room somewhere other than on the farm parcel.

Below I list the kinds of limitations that the plaintiffs are challenging. Then, I offer a response, part of which includes examples from the zoning ordinances of the major wine producing areas cited in this report to show that the Peninsula Township Zoning Ordinance are common zoning practices in other wine producing areas.

Plaintiffs are challenging the following limitations:

i. Limits on food and beverage service:

- 6.7.2(19)(a) – Farm Processing Facilities are not intended, among other things, to allow bar or restaurant uses.
- 8.7.3(10)(m) – Accessory uses such as facilities, meeting rooms, and food and beverage service at Winery-Chateaus are limited to what is reasonably necessary for registered (i.e., overnight) guests.
- 8.7.3(10)(u) – Notwithstanding 8.7.3(10)(m), Winery-Chateaus may offer food service to Guest Activity Use attendees under the following circumstances:
 - 8.7.3(10)(u)(2)(a) – Attendees of wine and food seminars and cooking classes may consume food prepared in class;
 - 8.7.3(10)(u)(2)(b) – Light lunch or buffet, but not full course meals, may be served at local nonprofit meetings (which are not to resemble a bar or restaurant use);
 - 8.7.3(10)(u)(2)(c) – Full course meals are permitted at agriculture-related meetings to demonstrate connections between wine and other foods; and
 - 8.7.3(10)(u)(5)(c) – The only alcoholic beverages that may be served during Guest Activity Uses are those produced on-site.

Section 6.7.2(19)(a) states that: “The majority of the produce sold fresh or processed has to be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the Specific Farm Processing Facility. Eighty-five (85) percent of the produce sold fresh or processed has to be grown on Old Mission Peninsula.” This provision reflects the American Viticultural Area designation for wine sold with the Old Mission Peninsula source on the label and helps maintain the distinctiveness and reputation of Old Missing Peninsula wine. The more distinctive a wine, the higher price it is likely to command, which benefits grape growers and wine producers alike. This is what branding is all about.

This provision is also consistent with requirements for a certain percentage of locally grown grapes in wine sold in the four major wine- producing areas cited earlier in this report. For example, Napa County requires at least 75% of grapes used to make a winery’s still wine or the still wine used by

the winery to make sparkling wine to be grown in the county.⁸⁸ The Town of Southold requires at least 66% of agricultural products being processed to have been grown by the winery's own farm operation.⁸⁹

Limitations on food and beverage service at wineries is common. For example, the Town of Southold prohibits wineries from having commercial kitchens.⁹⁰ So is allowing the tasting or sale only of wine produced onsite. For example, wineries in Yamhill County may only sell wines produced in conjunction with the winery.⁹¹

Bars, restaurants, and catering are commercial uses typically separated from other uses and limited to being located in a commercial zoning district. In my experience, a bar or restaurant is a commercial use and not an agricultural use because it does not produce agricultural commodities. By contrast, a tasting room is an accessory use that allows for the tasting and the sale of wine produced on the premises.

ii. Exclusion of weddings, wedding receptions, and other private events for hire from the scope of permitted uses:

- 6.7.2(19)(a) – “Activities such as weddings, receptions and other social functions for hire are not allowed, however, participation in approved township wide events is allowed.”
- 8.7.3(10)(u)(2)(d) – “Guest Activity Uses do not include weddings, wedding receptions, family reunions, or sale of wine by the glass.”
- 8.7.3(10)(m) – Accessory uses such as facilities, meeting rooms, and food and beverage service at Winery-Chateaus are limited to what is reasonably necessary for registered (i.e., overnight) guests.

A general concept in zoning is that uses not expressly permitted in a particular zoning district are presumed not to be permitted. For example, a zoning ordinance does not have to say event venues are not allowed in residential zoning districts. The ordinance would list the uses that are allowed in the zoning district, such as dwellings, churches, parks, and schools.

Wineries, which are the principal permitted use under the Farm Processing Facility and Winery-Chateau provisions, are agricultural processing facilities. Uses like tasting rooms and retail sales of wine produced in these facilities are accessory, meaning customary and incidental to the production of the wine. Winery-led events to promote themselves and local agriculture, like wine club promotional events in the tasting rooms, Guest Activity Uses, and Township-wide events like Blossom Days may be appropriate accessory uses.⁹² But private events for hire and facility rentals

⁸⁸ Napa County zoning ordinance Section 18.104.250B.

⁸⁹ Town of Southold Zoning Ordinance, Section 280-13. C. (13)(e).

⁹⁰ Section 280-13. C. (10).

⁹¹ Yamhill County zoning ordinance Section 402.02(H) 2 (a).

⁹² Blossom Day is a celebration of the cherry blossom in the spring in Peninsula Township. See Old Mission Peninsula Wine Trail. <https://www.ompwinetrail.com/event/blossom-day/>. Accessed August 27, 2023.

that use agriculture as a setting, like weddings, wedding receptions, corporate conferences, and family reunions, are not customary or incidental uses of agricultural processing facilities, so they are not principal nor support uses. At best, they are accessory uses that are reasonably limited.

Limitations on accessory uses, generally, are a common practice in the zoning ordinances of the major wine producing areas cited in this report. Limitations on activities and events such as weddings, wedding receptions, and family reunions are meant to keep non-agricultural uses out of agricultural areas. Like a bar or restaurant, uses such as weddings, receptions and other social functions for hire are commercial uses, not agricultural uses. These uses belong in a Commercial zoning district and that is where they typically occur. Weddings may also be appropriate as accessory uses at places of worship located in residential and agricultural districts, as they would be customary and incidental to those uses (unlike agricultural processing facilities).

iii. Establishing standards and requiring advance notice and/or approval for some activities or events:

- 8.7.3(10)(u) – Allowing the Township Board to approve Guest Activity Uses in a Winery-Chateau’s Special Use Permit as “Support Uses” in accordance with certain requirements, including that Guest Activity Uses are limited to food and wine seminars and cooking classes (8.7.3(10)(u)(2)(a)), local 501(c)(3) meetings (8.7.3(10)(u)(2)(b)), and agricultural-related meetings (8.7.3(10)(u)(2)(c)), which require either advance notice or (for ag-related meetings only) approval
- 8.7.3(10)(u) – Establishing standards for Guest Activity Uses, including:
 - 8.7.3(10)(u)(1)(b) – Guest Activity Uses are intended to promote Old Mission Peninsula agriculture by identifying local food/wine, providing promotional materials, or conducting tours;
 - 8.7.3(10)(u)(1)(d) – Guest Activity Uses do not include wine tasting and promotional activities and free entertainment in the tasting room;
 - 8.7.3(10)(u)(2)(d) – Guest Activity Uses do not include weddings, wedding receptions, family reunions, or sale of wine by the glass;
 - 8.7.3(10)(u)(5)(a) – Guest Activity Uses must promote Old Mission Peninsula agriculture by identifying local food/wine, providing promotional materials, or conducting tours;
 - 8.7.3(10)(u)(5)(c) – only wine produced on-site may be served during allowed events.
 - 8.7.3(10)(u)(5)(g) – no amplified instrumental music is allowed during allowed events; and
 - 8.7.3(10)(u)(5)(h) – no outdoor displays of merchandise, equipment, or signs are allowed during allowed events.

Limitations on the tasting and sale of wines only produced onsite is a common practice in the zoning ordinances of the major wine producing areas cited in this report as previously discussed. Limiting activities or events to those that promote local agriculture, including the wine they produce onsite, offers wineries an opportunity to increase their sales and profitability without allowing accessory activity and event uses to overtake the principal winery use of wine production.

Wineries are also likely to benefit from conducting tours of their facilities and promoting a local wine trail to visitors. In my experience, most visitors to a wine region look to sample wines from more than one winery.

Requiring notice or approval for certain activities and events is also, in my opinion, a reasonable way to regulate accessory activities, especially activities that are not normally permitted at a winery part of agricultural processing. The Township A-1 Agricultural District here is favorable to the wineries, in my opinion, by creating a process to allow meetings and activities that otherwise would not be permitted, generally related to food and agriculture at the wineries.

iv. Allowing retail sales of only wine and winery- and agriculture-related merchandise

- 6.7.2(19)(b)(1)(v) – Allows the retail sale of logo merchandise at Farm Processing Facilities “directly related to the consumption and use” of the agricultural produce sold at the winery (i.e., wine); the logo must be permanently affixed to the merchandise and prominent; the sale of wine glasses and corkscrews is permitted, but not clothing, coffee cups, or bumper stickers.
- 8.7.3(12)(i) – Allows the retail sale of logo merchandise that promotes the winery or Old Mission Peninsula agriculture at Remote Winery Tasting Rooms (such as Peninsula Cellars); the logo must be permanently affixed to the merchandise; the sale of corkscrews, wine glasses, t-shirts, and bumper stickers is permitted.

Limitations on the sale of wine and wine-related merchandise is a common practice in the zoning ordinances of the major wine producing regions cited in this report. For example, Napa County allows the sale of “wine-related products,” and the display, but not the sale, of art or items of historical, ecological, or viticultural significance to the wine industry.⁹³

These provisions, in my opinion, advance the goal of encouraging growers to produce, process, and market agricultural products” and thus maintain land in agricultural use. Merchandise not related to wine or the agricultural product grown on the farm property is a commercial activity, and that merchandise can and should be sold in a commercial zoning district.

v. Establishing maximum facility and retail space size

- 6.7.2(19)(b)(6) – Limits above-grade floor area of a Farm Processing Facility to 6,000 square feet or 0.5% of parcel size, whichever is less; requires retail space to be a separate room limited to the greater of 500 square feet or 25% of the facility’s total above-grade floor area.⁹⁴

Other wine-producing areas have provisions in their zoning ordinances to limit winery size. For instance, Yamhill County has a limit of does so by imposing a production capacity limit of 100,000

⁹³ Napa County Zoning Ordinance, Section 18.08.640 H.

⁹⁴ In January 2019, Amendment 197 changed this provision to allow a maximum above-grade facility size of 30,000 square feet with 1,500 square feet for retail, (or 250 square feet per acre with the retail space being no more than 25% of the total facility area, whichever is less).

gallons of wine.⁹⁵ The Town of Southold restricts accessory buildings to 3% of total parcel size.⁹⁶ Sonoma County requires agricultural processing, including winemaking, in its agricultural zones to be “sized to accommodate, but not exceed, the needs of the on-site growing or processing operation” and limits the combined square footage of all buildings used for processing or storage to 5,000 square feet.⁹⁷

C. The Harm If the Provisions of the Peninsula Township Zoning Ordinance Are Invalidated

The provisions discussed above limit or avoid threats to productive agriculture and advance the Township’s master plan principally by limiting nonagricultural uses in the A-1 District. The Plaintiffs through this lawsuit apparently seek to undo the Township’s agricultural zoning through the invalidation of the provisions that the Plaintiffs challenge. If these provisions were eliminated without the opportunity to replace them with other provisions intended to achieve the overall intent of the Peninsula Township Zoning Ordinance – *i.e.*, supporting agricultural preservation and ensuring compatible land uses – and if the result is that wineries may operate without effective limits on production and accessory uses, there would be several negative effects on the Township and its residents, in my opinion. These effects call into question whether the A-1 Agricultural District will be able to function according to its intent and purpose to further the Township’s interests as spelled out both in the Township Master Plan and the Peninsula Township Zoning Ordinance.

The likely negative effects that adversely impact agricultural operations, in my opinion, include but are not limited to:

1. More traffic and greater difficulty in moving farm machinery along roads. During my visit to the Township on Wednesday, August 9, 2023, I observed fairly heavy traffic along M-37 (Center Road) in the late morning and early afternoon. If wineries were allowed to offer additional commercial, non-farm-related goods and services, such as convenience store items, private events for hire, and non-local agricultural produce, traffic levels would likely increase, and the wineries would draw traffic during extended hours. Additional vehicles and additional times of heavier traffic would create additional challenges to moving farm machinery and harvested produce along the roads of Peninsula Township, as most of the wineries are located in the northern two-thirds of the Township.
2. The removal of on-site and local grape source limits will allow wineries in the A-1 District to increase the bottling, labeling, and retail sales of wine produced from juice or grapes produced elsewhere, to the detriment of local agriculture.
3. Adverse impacts on traditional farming through higher land prices brought about by the elevation of accessory uses for the sale of goods and services not related to agriculture above the principal use of properties for agricultural production.

⁹⁵ Yamhill County Zoning Ordinance, Section 402.02(H) 1 (b).

⁹⁶ Town of Southold Zoning Ordinance, 280-15.

⁹⁷ Sonoma County Zoning Ordinance, Sec. 26-18-030(C).

4. Undoing the Township's agricultural zoning to allow the sale of goods and services not related to agriculture and removing production requirements would likely open up agricultural lands to increased commercial development. The distinction between purely commercial use and agriculture would become blurred if wineries were allowed to buy, process, bottle, and sell wine without local active agricultural production. The wineries would simply become wine shops or bars, like those commonly found in a commercial district. Similarly, if the wineries are allowed to sell a variety of foods and generic items, then people on their way to the beaches will start visiting wineries for sandwiches and supplies, not wine tasting.
5. This commercialization of agricultural land would likely push up land prices, posing a threat to active agriculture, including stone fruit and apple production on the Peninsula. The opportunity for conversion from traditional farming to more lucrative land uses like facility rentals for private events and/or residential development will especially become a problem when the current generation of farmers retires because the next generation will be priced out of new entry or expansions due to the higher land costs.

D. Conclusions

Peninsula Township has invested considerable resources over many years to craft the Township Master Plan, A-1 Agricultural District, Agricultural Preservation Plan, Agricultural Preservation Areas, and PDR program to protect and maintain the agricultural land base and to support the agricultural industry on Old Mission Peninsula.

In my opinion, the Plaintiffs misinterpret the fundamental purpose of zoning and, in particular, the purpose of the Township A-1 Agricultural District, which is to "to preserve, enhance, and stabilize existing areas within the Township which are presently being used predominately for farming purposes."⁹⁸ The removal of limitations in the challenged provisions to allow more commercialized uses on agricultural land -would likely create externalities felt on neighboring properties, reducing the enjoyment of those properties by their residents and undermining efforts to maintain agricultural production as the primary land use in the A-1 district.

The Township, in my opinion, through its land use and related programs, strives to balance agricultural production, agricultural processing, and the sale of agricultural products against purely commercial activity with no direct relationship to agriculture. In setting this balance, Peninsula Township designed a zoning ordinance of by-right and special uses that is similar to those found in other leading grape and wine-producing areas in the United States. The balance is delicate but presently working. The A-1 District contains a significant amount of farmland in active agricultural production while allowing for the reasonable economic use of the property, as evidenced by some wineries operating their facilities as principally agricultural businesses in the A-1 District for decades.

Allowing retail sales of non-agricultural items in the A-1 Agricultural District invites a haphazard pattern of commercial development, which is contrary to the present rural and agricultural

⁹⁸ Peninsula Township Zoning Ordinance, Section 6.7.1

character of the Township. Furthermore, the retail sale of non-agricultural items and the addition of non-agricultural activities, such as weddings and receptions for hire, would push up land prices and make it more difficult for farmers on the Peninsula to maintain their agricultural operations over time.

Increased retail sales of non-agricultural goods and commercial hospitality services at the wineries would necessarily generate greater traffic along M-37, given that most of the wineries are located in the northern two-thirds of the county. This increased traffic, in turn, would create greater challenges for farmers attempting to move machinery along the Township's roads and move produce off the Peninsula during harvest time.

Also, the in-effect upzoning of agricultural land to allow for event venues for hire would raise agricultural property values in an undesirable way, reflecting not the fundamental agricultural productivity, but non-agricultural uses allowed on the properties. This puts farmers without venues for hire at a disadvantage in competing for land.

Upzoning wineries for more commercial activities would also create the opportunity to turn accessory non-agricultural uses into the principle uses in the A-1 district, contrary to longstanding Township plans and programs. Converting wineries into commercial uses would in effect mean re-zoning those parcels from agricultural to commercial, which only the Township Board has the authority to do.

In sum, it is my opinion that the Peninsula Township A-1 Agricultural District serves a common, standard, and reasonable public purpose in protecting agricultural land for agricultural production for the benefit and welfare of Township residents.

Exhibit 1



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Education

1984 Ph.D. in Agricultural and Resource Economics, Oregon State University.

1977 M.S. in Agricultural and Resource Economics, University of Newcastle-upon-Tyne, England. Study on a Rotary Foundation Fellowship.

1976 B.A. cum laude in Economics, Harvard University.

Planning Experience

July 2003-
Present

Full Professor with Tenure, Department of City and Regional Planning,
University of Pennsylvania.

Teach: Land Use Planning, Environmental Planning, Planning for Climate Change,
and Land Preservation. Acting Chair, January-June 2006, July, 2015-June 2016.
Crossways Professor, 2020-present.

Erasmus Mundo Scholarship, University of Venice IUAV, March, 2017

Clarkson Chair, Department of Urban Planning, University of Buffalo, October, 2011.

July 1998-
June 2003

Full Professor with Tenure, The University at Albany, State University of New
York. Director of the Planning Master's Program, Fall 1998-December 2001.

Fulbright Senior Fellowship, University of New South Wales, Australia,
February-June, 2002.

May 1989-
July 1998

Director, Agricultural Preserve Board of Lancaster County, Pennsylvania. Administered a nationally-recognized farmland preservation easement acquisition program with an annual budget of over \$4 million. Preserved over 16,000 acres in 188 easement projects. Assisted Planning Commission staff with growth management and agricultural zoning issues. The program received the 1993 Outstanding Program Award from the Small Town and Rural Planning Division of the American Planning Association. Received the 1996 National Achievement Award from the American Farmland Trust.

Aug. 1987-
May 1989

Associate Professor with Tenure, Department of Regional and Community Planning, Kansas State University.

Jan. 1985-
July 1987

Assistant Professor, Department of Community and Regional Planning, Iowa State University. Taught in Semester Abroad program in London, Fall 1986.

Publications

Books

- 2018 The Law of Agricultural Land Preservation in the United States. Chicago: American Bar Association. (Senior author with John Keene).
- 2014 The Environmental Planning Handbook for Sustainable Communities and Regions (Second Edition). Chicago: American Planning Association.
- 2011 The Planners Guide to CommunityViz: The Essential Tool for a New Generation of Planning. Chicago: American Planning Association. (Second author with Doug Walker).
- 2007 The Small Town Planning Handbook (3rd edition). Chicago: American Planning Association. (Senior author with John Keller, Mark Lapping, Katherine Daniels, and Jim Segedy.)
- 1999 When City and Country Collide: Managing Growth in the Metropolitan Fringe. Washington, D.C.: Island Press.
- 1997 Holding Our Ground: Protecting America's Farms and Farmland. Washington, D.C.: Island Press. (Senior author with Deborah Bowers).

1989 Rural Planning and Development in the United States, New York: Guilford Publications. (Second author with Mark Lapping and John Keller).

Refereed Journal Articles

2022 “The potential of nature-based solutions to reduce greenhouse gas emissions from US agriculture,” *Socio-Ecological Practice Research*, online August 4, doi.org/10.1007/s42532-022-00120-y

“How can the USA and China cooperate and learn from each other to reduce greenhouse gas emissions? *Socio-Ecological Practice Research*, online May 6, 2022. DOI 10.1007/s42532-022-00112-y

“Managing urban growth in the wake of climate change: Revisiting greenbelt policy in the US.” *Land Use Policy*. Han, Albert, Thomas L. Daniels, and Chaeri Kim. *Land Use Policy* 112: 105867. <https://doi.org/10.1016/j.landusepol.2021.105867>.

2021 “Re-designing America’s suburbs for the age of climate change and pandemics,” *Socio-Ecological Practice Research*, 3(2), 225-236. <https://doi.org/10.1007/s42532-021-00084-5>.

2019 “Protected Land Management and Governance in the United States: More Than 150 Years of Change,” (Senior author with Dan Moscovici). *Society and Natural Resources*, 33 (6).

“McHarg’s Theory and Practice of Regional Ecological Planning: Retrospect and Prospect,” *Socio-ecological Practice Research*, 1: 197–208. <https://doi.org/10.1007/s42532-019-00024-4>

“Assessing the Performance of Farmland Preservation in America’s Farmland Preservation Heartland:: A Policy Review. *Society and Natural Resources*. 33(6):1-11. DOI: 10.1080/08941920.2019.1659893

“California’s success in the socio-ecological practice of a forest carbon offset credit option to mitigate greenhouse gas emissions,” *Socio-ecological Practice and Research*, Vol 1, No. 2, pp. 125-138. (2nd author with Chaeri Kim).

“The Napa County Agricultural Preserve: 50 Years as a Foundation of America’s Premier Wine Region.” *Journal of Planning History* Vol. 18(2): 102-115 .

2018 “The Plan for the Valleys: Assessing the Vision of David Wallace and Ian McHarg.” *Journal of Planning History* Vol. 17, No. 1 (February, 2018) pp. 3-19. 2nd author with George Hundt, Jr.).

- 2017 "Preserving Large Farming Landscapes: The Case of Lancaster County Pennsylvania," *Journal of Agriculture, Food Systems and Community Development* Vol. 7, No. 3, pp. 67-81. (senior author with Lauren Payne-Riley).
- 2010 "Integrating Forest Carbon Sequestration Into a Cap-and-Trade Program to Reduce Net CO2 Emissions," *Journal of the American Planning Association*, 76 (4): 463-475.
- "The Use of Green Belts to Control Sprawl in the United States," *Planning Practice and Research*, 25: 2, 255 — 271.
- 2009 "A Trail Across Time: American Environmental Planning from City Beautiful to Sustainability. *Journal of the American Planning Association*. 75 (2): 178-192.
- 2005 "Land Preservation as a Key Element of Smart Growth," *Journal of Planning Literature*, 19:3, 316-329. (Senior author with Mark Lapping).
- 2001 "Smart Growth: A New American Approach to Regional Planning." *Planning Practice & Research*, Vols. 3 &4, pp. 271-281.
- 2000 "Integrated Working Landscape Protection: The Case of Lancaster County, Pennsylvania," *Society & Natural Resources*, 13:3, pp. 261-271.
- 1991 "The Purchase of Development Rights: Preserving Agricultural Land and Open Space," *Journal of the American Planning Association*, Vol. 57, No. 4, pp. 421-431.
- "The Goals and Values of Local Economic Development Strategies in Rural America," *Agriculture and Human Values*, Vol. 8, No. 3, pp. 3-9.
- 1989 "Small Town Economic Development: Growth or Survival?" *Journal of Planning Literature*, Vol. 4, No. 4 ,pp. 413-429.
- 1988 "America's Conservation Reserve Program: Rural Planning or Just Another Subsidy?" *Journal of Rural Studies*, Vol. 4, No. 4, pp. 405-411.
- 1987 "Small Town Triage: A Rural Settlement Policy for the American Midwest," *Journal of Rural Studies*, Vol. 3, No. 3, pp. 273-280. (Senior author with Mark Lapping).

Conference Papers and Presentations

- 2022 "The State of Farmland Preservation in Your County. Pennsylvania Land

- Conservation Conference, March 17, 2022 Gettysburg, PA
- 2021 “Suzhou, China, Environmental Planning: What China and the United States Can Learn From Each Other, Sept. 24/5, 2021
- 2019 “Agricultural Performance Results from the 2017 Census of Agriculture and Implications for Farmland Preservation,” Farmland Preservation Roundtable, Saratoga Springs, NY, October 30, 2019.
- 2018 “The Law of Agricultural Land Preservation,” Pennsylvania Land Trust Association Conference, Malvern, PA, April 13, 2018
- 2017 “Using GIS to Measure Progress in Farmland Preservation,” Pennsylvania Land Trust Association Conference, Lancaster, PA, May 4, 2017.
- 2016 “Large Landscape Conservation: East,” American Planning Association National Conference, Phoenix, AZ, April 2, 2016
- 2015 “Green Infrastructure for Urban Stormwater Management,” Association of Collegiate Schools of Planning Conference, Houston, TX, October 22, 2015.
- “What’s New in Environmental Planning?” American Planning Association Conference, Seattle, WA, April 18, 2015
- 2014 “A Comparison of Urban Containment: Oregon, Maryland, and Four Hybrid Counties.” Association of Collegiate Schools of Planning, Philadelphia, PA, October 30, 2014.
- “Return on Investment: How PDR is Strengthening Local Economies and Remaining Relevant Moving Forward.” National Farmland Preservation Conference, Hershey, PA, May 12, 2014.
- 2013 “Planning for Climate Change: Mitigation and Adaptation,” Planners Training Session, Seattle, June 11-12, 2013.
- “Philadelphia: Urban Water: Managing Stormwater, Rivers, and Watersheds,” Urban Ecosystems Services and Decision Making: A Green Philadelphia Conference, Philadelphia, PA, May 23, 2013.
- “Climate Change Adaptation,” American Planning Association Conference, Chicago, IL, April 16, 2013.
- 2012 “Planning for Green Infrastructure,” Planners Training Session, Charlotte, NC, November 15-16, 2012.

- 2011 “Greenbelts to Control Sprawl in the United States,” American Planning Association Conference, Boston, April 10, 2011.
- 2010 “Landscape Scale Farmland Preservation,” American Society of Landscape Architects Conference, Washington, DC, September 14, 2010.

Professional Reports

- 2022 Regulating Utility-Scale Solar Projects on Agricultural Land, Kleinman Center for Energy Policy, University of Pennsylvania. August, 2022, 7 pp. (Senior author with Hannah Wagner).
- 2021 Study on Inclusionary Housing with Chrissy Quattro for Penn IUR, December 2021, 75 pp.
- 2020 The State of Farmland Preservation in Lancaster County. For Lancaster Farmland Trust, September 2020, 35 pp.
- An Analysis of the Economic Impact of the Farmland Preservation Program in Carroll County, Maryland. Westminster, MD: Carroll County, MD, 53 pp.
- 2019 Agricultural Land Protection, Annexation, and Housing Development: An Analysis of Programs and Techniques with Potential Use in Napa County: A Report for the Jack L. Davies Napa Valley Agricultural Preservation Fund, 108 pp.
- An Analysis of the Economic Impact of Pennsylvania’s Farmland Preservation Program, Pennsylvania Department of Agriculture, 78 pp.
- 2017 Land Use Study, Solebury Township, PA, 25 pp.
- 2010 Cost of Community Services Study for Four Municipalities and the Hempfield School District, for East and West Hempfield Townships and the Hempfield School District in Lancaster County, PA, 51 pp.
- 2008 Ideas for Rural Smart Growth, Promoting the Economic Viability of Farmland and Forestland in the Northeastern United States, for the Office of Smart Growth, US Environmental Protection Agency, Washington, D.C., 40 pp.
- An Evaluation of the Peninsula Township, Michigan Farmland Preservation Program, for the Grand Traverse Regional Land Trust, Traverse Bay, MI, 60 pages.

- 2007 An Evaluation of the Consistency of the Plum Creek Timber Company Proposed Concept Plan in the Moosehead Lake Region with the Comprehensive Land Use Plan of the Maine Land Use Regulation Commission, 46 pp.
- 2006 Final Report to the National Fish and Wildlife Foundation: An Evaluation of the Foundation's Conservation Easement and Capacity-Building Grants Program. 221 pp.
- 2003 Dakota County, Minnesota, Farmland and Natural Area Preservation Program Guidelines, 54 pp., co-author with Jean Coleman, June, 2003.

Grants

- 2022 Climate Social Science Network. Agricultural Organizations and Their Messaging About Climate Change and Recommended Responses. \$16,000. Principal Investigator.
- Robert Schalkenbach Foundation. The California Sustainable Agricultural Lands Conservation Program: Evaluating the Use of Cap-and-Trade Funds to Promote Climate Mitigation and Adaptation. \$5,000. Principal Investigator.
- 2021 Kleinman Center for Energy Policy. Regulating Utility-Scale Solar Projects on Agricultural Land. \$4,500. Principal Investigator.
- 2019 Pennsylvania Department of Agriculture, An Analysis of the Economic Impact of Pennsylvania's Farmland Preservation Program, \$13,500. Principal Investigator.
- 2013-17 U.S. EPA. Green Infrastructure for Urban Stormwater Management. \$1 million. Project associate.
- 2004-06 National Fish and Wildlife Foundation. Effectiveness of NFWF's Investments in Conservation Easements to Protect Wildlife Habitat. \$125,000. Principal Investigator.
- 2002 Open Space Institute, Study of Sprawl and Land Use Change in the Capital District of New York, \$40,000. Project associate.
- 2000 Hudson River Foundation, Study of Land Use Planning Techniques in the Chesapeake Bay Estuary and the Hudson River Estuary, \$61,396, Principal Investigator.

Professional Memberships

1983 - Member, American Planning Association
Present

2004- Member, Land Protection Committee, Lancaster County
Present Conservancy (PA)

2005- Member, Board of Trustees, Orton Family Foundation
2020

2011- National Advisory Board, Land Conservation Advisory Network, Yarmouth,
Present Maine.

2012- National Advisory Board, Equine Land Conservation Resource,
Present Lexington, KY

2014- National Advisory Board, Conservation Finance Network, Washington, DC
Present