

Case Nos. 25-1703/25-1705/25-1754

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, a Michigan Nonprofit Corporation (WOMP); BOWERS HARBOR VINEYARD & WINERY, INC, a Michigan Corporation; BRYNS WINERY, LC, a Michigan Corporation; CHATEAU GRAND TRAVERSE, LTD., a Michigan Corporation; GRAPE HARBOR INC., a Michigan Corporation; MONTAGUE DEVELOPMENT, LLC, a Michigan limited liability company; OV THE FARM LLC, a Michigan liability company; TABONE VINEYARDS, LLC, a Michigan liability company; TWO LADS, LLC, a Michigan liability company; VILLA MARI, LLC, a Michigan liability company; WINERY AT BLACK STAR FARMS LLC, a Michigan liability company; CHATEAU OPERATIONS, LTD, a Michigan Corporation

[25-1703/25-1705]/Cross-Appellants [25-1754]

v.

TOWNSHIP OF PENINSULA, MI, a Michigan Municipal Corporation

Defendant -Appellant [25-1703]/Cross-Appellee [25-1754]

PROTECT THE PENINSULA, INC.

Intervenor – Appellant [25-1705]/Cross-Appellee [25-1754]

**BRIEF OF AMICUS CURIAE AMERICAN FARMLAND TRUST IN
SUPPORT OF APPELLANT/CROSS-APPELLEE PENINSULA
TOWNSHIP AND INTERVENOR/APPELLANT PROTECT THE
PENINSULA, INC. AND SEEKING REVERSAL OF THE DISTRICT
COURT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(a)(4)(A), Fed. R. App. P. 26.1, and 6th Cir. R. 26.1, counsel for Amicus Curiae American Farmland Trust, Inc. certifies that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF INTEREST OF AMICUS CURIAE
AMERICAN FARMLAND TRUST¹

American Farmland Trust (“AFT”) is the only national 501(c)(3) nonprofit organization that takes a holistic approach to agriculture, focusing on the land itself, the agricultural practices used on that land, and the farmers and ranchers who do the work. AFT launched the conservation agriculture movement and continues to raise public awareness through its No Farms No Food® message. Since its founding in 1980, AFT has helped permanently protect over 8 million acres of agricultural land, advanced environmentally sound farming practices on millions of additional acres, and supported thousands of farm families.

AFT’s activities in pursuit of its mission include: the maintenance of the Farmland Information Center, the nation’s official clearinghouse for information about farmland protection that serves people working to save farmland and ranchland for agriculture; the development of evidence-backed federal, state, and local policies to keep land in agricultural production and famers on the land and to promote the adoption of sound farming practices; and direct farmland protection through fee land and agricultural conservation easement acquisitions.

¹ No party or its counsel authored any part of this brief or contributed money to support its preparation or submission. No person other than AFT contributed money to prepare or submit this brief.

The present appeals are of special interest to AFT, due in part to its decades-long involvement in Peninsula Township.² In the late 1980s and early 1990s, AFT helped to lay the groundwork for permanent farmland protection in the Township, by first acquiring the Murray Farm – a 507 acre locally significant property possessing prime cherry-growing land and shoreline access – saving it from residential development after bank foreclosure. Later AFT partnered with local leaders to educate Township residents about the merits of and to establish Peninsula Township’s purchase of development rights program. Today AFT holds agricultural conservation easements on three Peninsula Township farms, totaling 746 acres.

Moreover, AFT is troubled by the district court’s decision in this case. The lower court disregarded and at times outrightly dismissed the Township’s stated justifications for the various zoning ordinances attacked by the Plaintiffs and the tailoring of those ordinances to legitimate government ends. Yet in AFT’s experience working with dozens of local governments, zoning ordinances are effective regulatory measures widely adopted to preserve agriculture within their boundaries. The policies that underpin the Peninsula Township Zoning Ordinance (“PTZO”) are the same types of policies that AFT (together with leaders and

² The history of Peninsula Township’s adoption of various agricultural preservation tools, and AFT’s assistance therein is chronicled in Dennis P. Bidwell, *et al.*, American Farmland Trust, “Forging New Protections: Purchasing Development Rights to Save Farmland (1996) (Appx 1).

lawmakers at all levels of government) has endeavored to design, enact, and implement across the country for more than forty-five years. The district court substituted its own judgment for that of the local municipality as to the proper balance between agricultural and commercial uses within the A-1 zoning district, eviscerating the Township's intentioned land use regulation crafted over many years, often at the urging of the Plaintiffs themselves.

If allowed to stand, the erroneous reasoning of the district court could be asserted in communities facing development pressures similar to those in Peninsula Township, undermining thoughtful policy choices and ultimately further eroding the nation's land base available for agriculture. In the Amicus Curiae's view, the district court's decision greatly weakens the zoning and land use tools available to local governments to constrain uses and activities that consume real property and destroy productive soils forever.

It is no overstatement to say that the district court's decision in this case strikes at the very heart of AFT's work. Perhaps more than any other organization or agency, AFT understands what is lost when a community's agricultural lands slip into non-farm development – residential, commercial, or otherwise. AFT therefore strongly opposes the plaintiff wineries' efforts to dismantle critical provisions of the PTZO and implement additional, increasingly commercial uses on their properties.

Pursuant to Fed. R. App. P. 29(a)(2), AFT sought authority to submit this amicus brief by motion for leave, which was filed February 11, 2026. Counsel for Plaintiffs/Appellees did not consent to the filing of this brief. Counsel for Appellant/Cross-Appellee Peninsula Township has consented, and Intervenor/Appellant Protect the Peninsula, Inc. has consented.

INTRODUCTION

To Amicus Curiae AFT, the nation’s leading farmland protection and advocacy organization, the district court’s decision below represented a one-two punch: first vitiating common and effective land use regulations designed to maintain and promote agricultural use in agriculturally zoned areas, then crippling the renowned tool known as the agricultural conservation easement. In AFT’s estimation, the court suffered from a lack of appreciation for the importance of these preservation tools, and the government interests and goals they are designed to advance. This brief seeks to remedy that profound oversight.

BACKGROUND

National Agricultural Picture

In 2020 AFT released its “Farms Under Threat – State of the States” report³, a multi-year initiative to provide the most comprehensive assessment of the loss of

³ Julia Freedgood, *et al.*, American Farmland Trust, Farms Under Threat: The State of the States (2020) (Appx 90).

U.S. farmland and ranchland ever undertaken (“FUT”). FUT was financially supported by the U.S. Department of Agriculture, with the department’s Natural Resources Conservation Service (“NRCS”) providing technical support and data. Among AFT’s goals for the FUT analysis were to identify farmland and ranchland whose quality is of national significance, and to document the threats and offer policy solutions to ensure the long-term protection and conservation of agricultural land in the United States.

AFT tailored its assessment of agricultural land quality to identify the agricultural lands best suited for intensive cultivation, with a focus on production of human-edible food crops. It provides relevant information about the land’s productivity, versatility, and resiliency (“PVR”). Detailed spatial datasets representing soil productivity and capacity, land cover and use, food production for direct human consumption, production limitations, and length of growing season were developed, resulting in a PVR rating. The PVR model combined these datasets using weights elicited from a group of national agricultural experts, including a national soils scientist at NRCS, who served as technical advisor to the project. The higher the PVR value, the more productive, versatile, and resilient the land is for long-term cultivation and food production. These values were then used to identify “Nationally Significant” agricultural land, that which is best suited to long-term, intensive crop production within the contiguous United States.

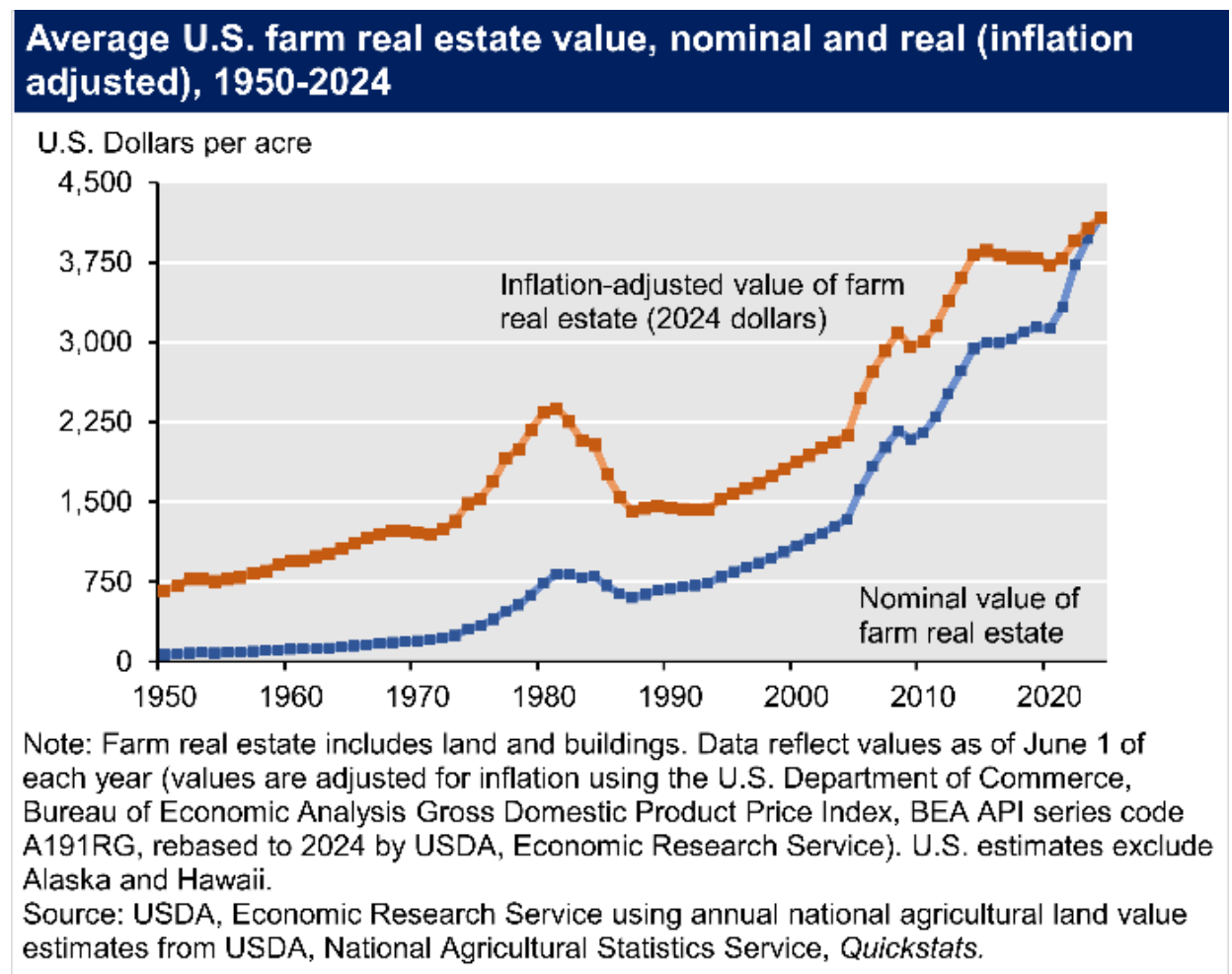
The United States is home to 10 percent of the planet’s arable soils. Yet even here, in what appears to be a vast agricultural landscape, only 18 percent of the continental U.S. is Nationally Significant land as determined by the PVR analysis. As we face growing demand for high quality food and environmental protection along with increasingly complex challenges from epidemics, extreme weather, and market disruptions, it is especially important to protect the land best suited to intensive food and crop production. Farms Under Threat, Appx 95.

As noted in the Farms Under Threat report, between 2001 and 2016, 11 million acres of farmland were converted to urban or low-density residential land use. Appx 94. During the same period, agricultural land in low-density residential areas such as Peninsula Township was 23 times more likely to urbanize than other agricultural land, driving farmland conversion in the short term and paving the way to more urbanized development. Appx 143.

Additionally, America is losing small and mid-sized farms at an alarming rate. According to the National Agricultural Statistics Service (“NASS”), since 1981, the U.S. has lost over 559,000 farms. Jenny Lester Moffitt, et al., American Farmland Trust, Thriving Farms and Ranches (2025) (Appx 158). Just since 2002, nearly 11% of our farms – mostly small and mid-sized family farms – have disappeared. Appx 160. At the same time, the average age of farmers continues to rise, with the number of farmers over the age of 65 increasing by 12% between 2017 and 2022. Appx 165.

Linked with these demographics, nearly 300 million acres of American farmland and ranchland — one-third of the land in farms in the contiguous US – are expected to change hands in the next 15 to 20 years. Appx 160.

Non-farm development pressure – that which the Township was hoping to avoid as it adopted farmland protection measures in the 1970s and 80s (*see infra*) – continues to be a problem. Such development has caused significant inflation in agricultural land values, especially for cropland which is the highest quality land for agriculture but also for development because it is flat, well-drained, cheap, and easy to develop:



Farm real estate values have reached an all-time high, up about 40% from 2010. Thriving Farms, Appx 164. They continue to face upward pressure from traditional development, as well as data centers, warehouses, utility solar projects, telework opportunities, and investors who view farmland as a stable asset class. Data centers in particular pose a substantial threat; recent reports suggest that the growth rate for data center load tripled from 2014 to 2024, accompanied by a dramatic rise in both the volume and size of land parcels purchased annually. *Id.* Likewise, cropland values have soared, rising 106% since 2010 and 37% since 2020. *Id.* Beyond inflated land values, these forces lead to the conversion of farmland to non-farm uses.

Appreciation in agricultural land values can also lead to a cycle of disinvestment and impermanence in agriculture. The more expensive the land, the more difficult it is for young and beginning farmers to establish viable farm operations. Julia C.D. Valliant, *Bipartisan Creation of US Land Access Policy Incentives* (Springer, 2024).⁴ And with an aging farmer population⁵ transferring land

⁴ Available at: <https://farmlandinfo.org/wp-content/uploads/sites/2/2024/10/bipartisan-creation-of-US-lapi.pdf> (last visited February 11, 2026).

⁵ Per the 2022 U.S. Census of Agriculture, the average age of a MI farmer is 56.5. https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Michigan/st26_1_052_052.pdf (last visited February 11, 2026).

to heirs less engaged in farming, many of those heirs will likely sell their inherited land, with the only buyers able to afford it being outside investors⁶ and amenity buyers interested in a pretty piece of land amidst farms. While these buyers may not be able to develop the land, they are not likely to run farm businesses that need agricultural support services and products. Over time, this transition to non-farming landowners can erode the viability of the local agricultural base.

Michigan Trends

Michigan's farmland acreage has experienced a long-term decline due to development and economic pressures, and land values are rapidly increasing. In 2025, Michigan's agricultural land values outpaced the national average with a 7.8% increase, driven by development, particularly for data centers. Total farmland has dipped, but specific sectors like corn and soybeans saw recent acreage increases. Overall, prime agricultural land is increasingly in demand for non-agricultural development, such as large-scale industrial projects.⁷ According to the USDA NASS 2025 Land Values Summary, Michigan's average farm real estate value (including land and buildings) reached \$6,800 per acre in 2025, representing an approximately

⁶ <https://www.reuters.com/markets/commodities/investment-funds-stocking-up-us-farmland-safe-haven-bet-2023-11-16/> (last visited February 11, 2026).

⁷ See <https://bridgemi.com/business-watch/michigan-farm-values-growing-faster-than-nation-amid-data-center-boom;>
<https://www.fb.org/market-intel/real-estate-rising-farmland-values-hit-record-high>
https://www.nass.usda.gov/Statistics_by_State/Michigan/Publications/Current_News_Release/2024/nr2446mi.pdf (last visited February 10, 2026).

36% increase from the 2020 value of \$5,000 per acre.⁸ Cropland values increased by approximately 30.9% between 2020 and 2025.⁹ Although land values have hit record highs, they come with softening farm economics and very tight margins. Farm incomes were bolstered by ad-hoc federal disaster and economic aid – not market fundamentals – with development pressure, investor demand, and changing rural economic trends driving localized land competition. *Id.*

Peninsula Township

Peninsula Township is no ordinary rural, agricultural landscape. As a narrow strip of glacially formed land stretching 18 miles into Lake Michigan, its geography and topography is certainly unique. But it also unquestionably possesses exceptional agricultural soil quality. Based on AFT's PVR analysis, an extraordinary 78% of Peninsula Township's agricultural land is classified as nationally significant, compared to that of Grand Traverse County (45%), the state of Michigan (66%), the entire continental U.S. (38%). The concentration of nationally significant agricultural land in the Township is therefore approximately 70% higher than the Grand Traverse County as a whole, and twice the concentration for the continental U.S. The table below compares these values.

⁸ https://www.nass.usda.gov/Charts_and_Maps/graphics/farm_value_map.pdf (last visited February 10, 2026).

⁹ https://www.nass.usda.gov/Charts_and_Maps/graphics/crop_value_map.pdf (last visited February 10, 2026).

| Area | Total Agricultural Land (acres) | Nationally Significant Ag. Land (acres) | Percentage of Nationally Significant Ag. Land |
|-----------------------------|---------------------------------|---|---|
| U.S. (contiguous 48 states) | 941 M | 357 M | 38% |
| Michigan | 11.7 M | 7.8 M | 66% |
| Grand Traverse County | 314,400 | 47,300 | 45.53% |
| Peninsula Twp. | 13,825 | 10,811 | 78.2% |

Peninsula Township possesses not only outstanding agricultural soil resources but also a unique microclimate specifically suited to growing fruit:

Cold air settles in the peninsula's valleys, creating warm pockets for planting atop hillsides. Lake Michigan, too, plays a large role. Its waters keep the area cool in the spring, thus preventing early buds that could be destroyed by frost. In fall, the lake warms the land mass long after summer has ended. As a result, the area has at least 50 more growing days per year than areas further inland at the same latitude.¹⁰

These unique properties and the peninsula's deep farming traditions have been consistently cited by the Township as support for its agricultural preservation goals and policies. Master Plan, RE 611-4, Page ID 25306-25308, 25318, 25329-25330.

¹⁰ Forging New Protections, Appx 15; *See also* Peninsula Township Master Plan, RE 611-4, Page ID 25308-25311. These unique characteristics were reiterated in the January 15, 1986 application from Plaintiff Chateau Grand Traverse to the U.S. ATF seeking designation of an American Viticultural Area (AVA) specific to the Old Mission Peninsula. *See* Edward O'Keefe, President of Chateau Grand Traverse, Letter to U.S. Bureau of Alcohol, Tobacco and Firearms, January 15, 1986,

https://www.tb.gov/system/files/images/pdfs/Old_Mission_Peninsula_petition.pdf (last visited February 9, 2026).

However, residential development competes with agriculture for the use of this unique landscape. As noted below¹¹, the 1950s, 60s, and 70s brought intense growth to the Peninsula, undoubtedly spurring the Township’s adoption of its first master plan (1968), zoning ordinance (1972) and its PDR program (1994). Forging New Protections, Appx 18-19.

| Year | Total Population | % Change from prior date |
|------|------------------|--------------------------|
| 1940 | 1,146 | 3.5% |
| 1950 | 1,531 | 33.6% |
| 1960 | 2,013 | 31.5% |
| 1970 | 2,642 | 31.2% |
| 1980 | 3,883 | 47% |
| 1990 | 4,340 | 11.8% |
| 2000 | 5,265 | 21.3% |
| 2010 | 5,433 | 3.2% |
| 2020 | 6,068 | 11.7% |

By the 1980s it was recognized that escalating land values and declining farm profits had combined with increasing conflicts between farmers and new homeowners to encourage conversion of farmland to residential development.¹² Those factors were

¹¹ The data in the table are taken from the 2024 Peninsula Township Master Plan, p 38. Available at:

https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/master_plan_07-02-24_final.pdf (last visited February 9, 2026).

¹² The Forging New Protections publication reported financially squeezed farmers were “tempted by land values exceeding \$4,000 per acre” in the late 1980s. Appx 16. Today, a single unimproved 5-acre lot could bring more than 50 times that amount. Last summer two 5.26 acre parcels on Peninsula Drive in the Township each sold for \$215,000.00. See https://www.zillow.com/homedetails/PARCEL-Peninsula-Dr-A-Traverse-City-MI-49686/2063903574_zpid/ and

threatening to “destroy the peninsula’s best soils and forever change its agricultural character and way of life.” Forging New Protections, Appx 16.

ARGUMENT

I. Planning, Zoning, and PACE/PDR Tools for Preservation of Agricultural Land are Critically Important and Substantial Government Interests.

The foregoing discussion paints a somber picture of the future of agriculture and farms in the United States. The resulting harms of a diminishing agricultural land base are obvious: increased cost, disrupted supply chains, and food insecurity, but the more immediate impact to an agricultural community is the loss of rural character and transformation of agricultural landscape to more intensive commercial uses.¹³ Applying the first prong of *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557 (1980), the district court found that the Township had demonstrated a sufficient government interest in preserving agriculture and conserving the serenity of the Township. Opinion, RE 623 Page ID 31456-31457. Yet the district court went on to credit Plaintiffs’ expert McDowell, concluding that “it was never about preserving farmland or rural character . . . These provisions were designed to keep land prices lower, so the Township could purchase more

https://www.zillow.com/homedetails/PARCEL-Peninsula-Dr-B-Traverse-City-MI-49686/2063903568_zpid/ (last visited February 9, 2026).

¹³ Often flowing from such intensive commercial uses are noise, traffic, and public nuisance impacts, which place cost and regulatory pressure on local governments.

development rights, which would again, protect NIMBY landowners.” *Id.* at Page ID 31463.

AFT could not more strongly disagree. In its vast experience in this arena, AFT has advocated for the adoption of zoning measures, other local ordinances, and the implementation of PDR programs nationwide, and observed how these tools further the goal of agricultural preservation.

A. Planning and Zoning provides the foundation for long-term viability of agricultural lands.

“Agricultural zoning, in all its variations and partnerships with other tools, is the primary basis for preserving farmland today.” Mark Cordes, *Agricultural Zoning: Impacts and Future Directions* 425 (Northern Illinois University, 2002).¹⁴ A 1995 AFT survey found that about 700 jurisdictions nationwide had “agricultural zoning.” Jill Clark, *Ohio Agricultural Zoning: Conditions and Recommendations* 7 (The Ohio State University, 2007).

Municipal planning sets forth the future vision for the community and answers the question of what a community values, what it wishes to protect, and what it wishes to become in the future. Zoning is the legal blueprint that implements the planning vision. Peninsula Township has had a clear and consistent vision starting in the 1960s that sustaining the agricultural industry (not just farming) and

¹⁴ Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808594 (last visited February 10, 2026).

preserving rural character were its foremost goals and objectives. Master Plan, RE 611-4, Page ID 25306-25308, 25318, 25329-25330; Forging New Protections, Appx 18-20. Supporting agriculture through planning can, and should, go beyond simply subdivision regulations that identify the minimum lot sizes that can result from development.

“Planning for agriculture” is a policy process to help ensure a future for agriculture in a place over a specified time period. It steers growth away from active agricultural communities, reduces regulatory barriers, encourages appropriate infrastructure development and new opportunities and addresses sustainable use of agricultural resources. Planning for agriculture is a community engagement process that establishes a public policy framework to protect and conserve farmland for current and future generations *and* to support agricultural economic development.¹⁵

Communities that have land use planning and zoning ordinances that support farming are typically more successful at retaining farmland and farming by:

- Creating a positive business climate that supports enhanced agricultural investment and profitability;
- Enabling operational flexibility so businesses can adapt to changing market conditions;
- Reducing land use conflicts between agricultural operations and non-farming residents and visitors;

¹⁵ <https://farmlandinfo.org/about-planning-for-agriculture/> (last visited February 9, 2026).

- Supporting economic development and marketing strategies that benefit local farms; and
- Supporting the permanent protection of farmland through one or more conservation strategies, including PDR.

“Many suburban and rural communities use rural-residential, or rural-agricultural zones, which allow but do not prioritize agriculture. Except sometimes by name, this is *not* agricultural zoning. Agricultural zoning...designat[es] farming and/or ranching as the preferred land use. It limits activities that do not support agriculture and sets performance standards for accessory and ancillary uses. Purpose, more than lot size, makes the difference.” Julia Freedgood, *Planning Resilient and Sustainable Food Systems* (Routledge, 2025).

The PTZO does exactly what the foregoing authorities recommend: establish zones for predominantly agricultural uses, including processing, together with accessory uses designed to increase revenue streams for agricultural operators. Daniels Report, RE 616, Page ID 30803, 30806, 30821; Daniels Testimony, RE 604 Page ID 23887-23888.

B. Purchase of Development Rights Programs Build on Zoning to Permanently Ensure an Agricultural Land Base.

Local governments having agricultural zoning may also employ a PDR program to purchase agricultural conservation easements.¹⁶ An agricultural

¹⁶ Peninsula Township’s program authorizes the purchase of development rights (“PDR”). Other programs authorize the purchase of agricultural conservation easements (“PACE”). Structurally, the concepts are the same, though the

conservation easement is a bargained-for private real property interest granted by a willing owner to an entity whose purposes include protection of agricultural land. The easement limits the owner's uses of the property to those consistent with the protection of the property's agricultural uses. Agricultural conservation easements include restrictions intended to protect the agricultural soils, agricultural viability, and agricultural productivity of farm property, such as restrictions limiting residential development and non-agricultural commercial development and activities.

Agricultural zoning and PDR programs both support the agricultural protection and viability goals and are generally complimentary. However, activities permitted or restricted by a PDR program's agricultural conservation easement and activities permitted or restricted under a local zoning ordinance may be different. An agricultural conservation easement is generally more restrictive than a zoning ordinance.¹⁷ For example, a zoning ordinance may permit more than one residential

terminology may slightly differ and each functions to limit non-agricultural development and preserve agricultural production on the land. For purposes of this brief, the two terms are roughly interchangeable.

¹⁷ As a negative restriction which limits the landowner's use of their property, agricultural conservation easements closely resemble negative covenants. "Zoning laws generally do not impair, abrogate, or destroy covenant rights or obligations and, similarly, covenants do not control zoning laws or variances. Government can zone to permit a use, activity or structure which is barred by a private covenant. Similarly, a zoning ordinance can be more restrictive than a private covenant." Gerald Korngold, *Private Land Use Arrangements: Easements, Real Covenants and Equitable Servitudes* 10.03 (3d ed. 2016)

dwelling on a certain parcel, but if an agricultural conservation easement on the same parcel limited the development of the property to one residential dwelling, the owner would only be permitted to build one home, notwithstanding the more permissive zoning ordinance.

“PDR is not the ‘silver bullet’ of farmland protection. Rather, it is merely one technique that is most effective when used in the context of a comprehensive approach to land use and growth management.” Forging New Protections, Appx 5; Farms Under Threat, Appx 119, 131; *see also* Daniels Testimony, RE 604, Page ID 23890-23892 (describing the relationship between zoning and PDR programs). PDR programs have the most leverage when combined with agricultural districts, agricultural protection, zoning, comprehensive growth management and programs to enhance the economic viability of farming. Forging New Protections, Appx 11, 44. PDR programs are more successful in communities that have properly planned for agriculture because the PDR program acts to reinforce, and not frustrate, implementation of the township’s long-term vision and land use plan. Such communities are more likely to support the use of local funds to pay for PDR program easements. Landowners are more likely to decide to participate in a PDR

available at:

https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1108&context=fac_books (last visited February 10, 2026).

program because they recognize the township seeks to maintain a positive business climate for farming and agricultural operations.

II. Planning, Zoning, and PACE/PDR Tools Advance Local Land Use and Preservation Goals and Have Been Indisputably Effective in Peninsula Township.

A. Planning, Zoning, and PACE/PDR promote agricultural protection and create conditions beneficial to farmers.

The District Court discounted the Township’s zoning ordinance’s usefulness in meeting its preservation goals, for essentially two reasons. First, because it deemed former Supervisor Manigold and PTP expert witness Dr. Thomas Daniels¹⁸ not credible, and second, because in the court’s view, “every one of the remaining PTZO provisions makes operating a farm or winery more difficult.” Opinion, RE 623, Page ID 31459, 31461. Neither should be sustained.

As noted by PTP, the district court’s expert witness assessment was “inconsistent and immaterial.” PTP First Br. 46. While deference is generally afforded a trial judge’s credibility determination, clear error may exist where the demeanor and the presence of conflicting evidence is not cited as a basis for such

¹⁸ Daniels’ qualifications as an expert witness were not seriously questioned. Dr. Daniels directs the concentration in Land Use and Environmental Planning at the University of Pennsylvania and frequently serves as a consultant to state and local governments and land trusts. From 1989 to 1998, Daniels managed the nationally famous farmland preservation program in Lancaster County, Pennsylvania. <https://www.design.upenn.edu/people/tom-daniels> (last visited February 11, 2026).

determination. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985). Error was committed here, where the district court merely recited portions of Daniels' testimony before summarily concluding he was not credible.

Further, the district court's conclusion that the ordinances authorizing various accessory uses on winery property make farming more difficult is plainly inconsistent with the structure of Michigan's permissive zoning system (*see* Intervenor-Appellee PTP's First Brief 27-28) and fails to acknowledge that any winery undertaking such use would be doing so *voluntarily*.

In AFT's view, the district court's findings and conclusions regarding the effectiveness and fit of the zoning ordinance (and for that matter, the PDR program) in advancing the Township's substantial interest in agricultural preservation are absurd.

Agricultural zoning supports the preservation of farmland and the continuation of farming activity, in multiple, well-established ways:

- *Stabilization* - Feeding the population will require a permanent agricultural land base. Planning for agriculture as a *permanent* part of the physical, cultural and economic landscape of a community is critical in not just stabilizing the land base but assuring a permanent future for the agricultural industry and of local food production.

- *Fragmentation* – Agricultural zoning helps to provide a stable environment for farming. Agricultural zoning that limits large-lot, low-density residential development can reduce fragmentation of farmland, which makes farming more difficult and economically challenging. As noted above, low-density residential development is more likely to urbanize over time; therefore, zoning for agriculture can maintain larger contiguous parcels for more efficient production. See Forging New Protections, Appx 24; Daniels Testimony, RE 604, Page ID 23895.
- *Avoiding conflict* – Agricultural zoning limits conflict such as noise, traffic, fertilizer and pesticide applications, and odors by intentionally separating agriculture activities from residential and commercial development.
- *Affordability* - Much of U.S. farmland is zoned for other, more monetarily valuable uses (such as residential housing, industrial development, commercial districts, etc.) and most of the value of the land is associated with the potential conversion of the land to some form of non-agricultural development. This non-agricultural development potential makes farmland more expensive, and as a result, it is very difficult for most farmers to compete with developers to purchase farmland for agricultural purposes. Zoning that allows large-scale economic investment in

nonagricultural infrastructure on farmland it wants to protect, or has already protected, (such as wedding venues or oversized residential structures) has the effect of making the farmland attractive to non-agricultural buyers, thus driving up the market value of the land and reducing the ability of farmers to compete for, own, and invest in the land for continued agricultural production purposes. *See Daniels Testimony, RE 604, Page ID 23919-23921.* Conversely, then, zoning for agriculture with appropriate restrictions on non-agricultural structures and uses makes the land less attractive to non-farmers, increasing the likelihood the property stays in farming.

PDR/PACE programs bring about all of the foregoing listed benefits in the advancement of agricultural preservation, but enhance and reinforce those benefits through permanence.

PDR programs enable farmland owners to monetize the nonagricultural development potential of their land without having to sell the land and convert the farm to another use; landowners receive compensation from a public PDR program or land trust in exchange for a perpetual conservation easement that removes the nonagricultural development and use rights, leaving the farmland restricted to only agricultural production and closely related uses, and therefore lower in value when compared to non-PDR farmland.

Consequently, PDR-protected farms are more likely to be more affordable to the next generation of farmer than non-PDR lands. This dynamic was highlighted in an AFT report, “The Power of Leveraging Local and Federal Dollars to Strengthen Agricultural Land Easement Investments.” Appx 182. That report described several case studies, including one about plaintiff winery Blackstar Farms:

Kerm Campbell, co-owner of Blackstar Farms, purchased land in Leelanau County^[19] that was already under an FRPP^[20] funded conservation easement. He started one of the first wineries on Leelanau Peninsula, and has since added a second winery on Peninsula Township. He credits the easement for likely lowering the price of his Leelanau County land, making it more affordable for an agricultural enterprise. However, Campbell says the most important aspect of FRPP and local farmland protection efforts is the permanence of the agricultural land base that these programs provide to businesses in planning for the future. Appx 186.

PDR also supports the transfer of farmland from one generation of a family farm to the next. Another case study recounted a land trust purchase of a Leelanau family farm by the local land trust:

The conservation easement sale will help Jim and Jan Bardenhagen pass the farmland to their children, Jim says. ‘We used some of the value of it to help pay off debt and make the farm more viable that way. It will enable us to move the land to the next generation at a lower cost. Land here is selling for \$8,000 to \$12,000 an acre. That’s just too high for farming purposes.’ Like his family, other farmers nearing retirement age are looking to conservation easement sales as a way of reserving their farmland for the next generation, Bardenhagen says. ‘Otherwise it

¹⁹ Leelanau County is adjacent to and directly west of Grand Traverse County, where Peninsula Township is situated.

²⁰ FRPP is the federal Farm and Ranchland Protection Program.

pretty much involves selling part of the farm to pay estate taxes.’ Appx 187.

On the question of property values in particular, the district court’s analysis was confounding. The court appeared more concerned that the wineries’ properties retain or appreciate value and criticized the notion that lower property values help farmers, dismissing PDR as a scheme designed for the government or meddling neighbors to scoop up adjacent properties cheaply. RE 623, Page ID 31463. The court’s perception ignores the experience of actual farmers and AFT’s expertise in this area and inverts the incentives behind these policies.

While appreciation resulting from broader permissions for accessory and/or non-agricultural uses (as the wineries seek in this case) may be good for any one plaintiff winery owner, appreciation comes at considerable cost to the broader community, which is the constituency local officials should be answering to, not any one particular landowner. It must be understood that an increase in land valuation like the district court envisions would likely not be supportable by an agricultural enterprise; a current or aspiring farmer seeking to buy the land at its increased value would find it difficult to finance such a purchase based on the land’s use for agricultural production. While a neighboring farmer may be able to justify the increased land valuation because the land adjoins their own, most others would not. And for a community seeking to support agriculture, escalating land values are especially problematic for young and beginning farmers, who have repeatedly cited

finding and accessing affordable land is the number one challenge they face. *See generally*, Mary Ahearn and Doris Newton, *Beginning Farmers and Ranchers*, United States Department of Agriculture (2009).²¹

B. Peninsula Township policies have produced lasting, positive impacts on agricultural preservation.

With respect to the success of Peninsula Township's planning and zoning efforts and PDR program, the results speak for themselves.

In 1994 Peninsula Township was the first Midwestern community to tax itself to protect farmland by purchasing development rights.²² When existing efforts to control growth appeared inadequate to protect farmland and open space in Peninsula Township, voters decided to pay farmers to keep their land in agriculture. Forging New Protections, Appx 3; PDR Ordinance, Findings, RE 615-7, Page ID 28695-96 (citing the desirability of the area to live and visit, the unique climate, development pressure, and the irreplaceable nature of farmland). The Township was at the leading edge of purchase of development rights, sixth in the nation to adopt such a program

²¹ Available at:

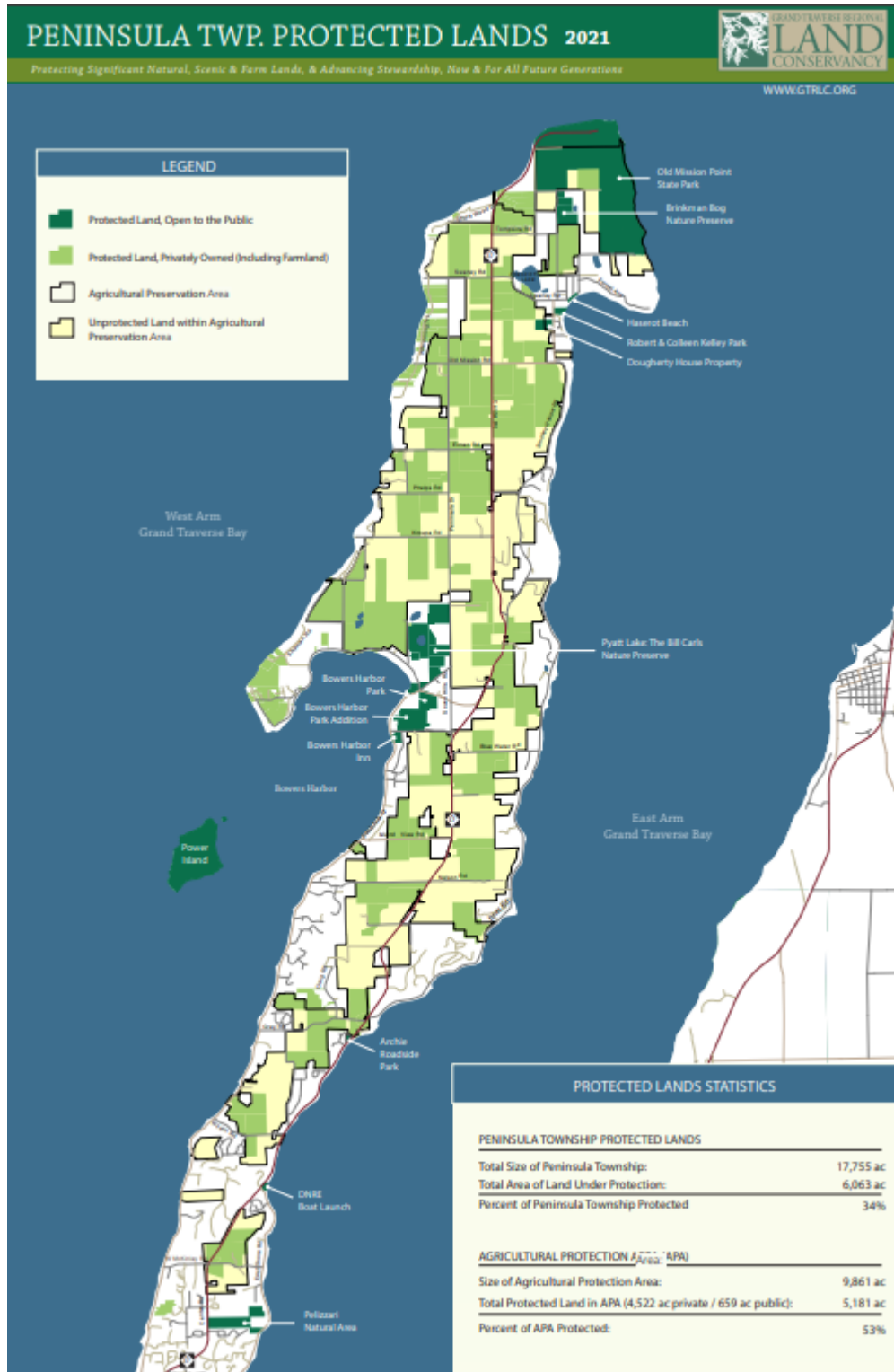
https://ers.usda.gov/sites/default/files/_laserfiche/publications/44395/9417_eib53_1_.pdf?v=61184%23~:text=Beginning%20farmers%20tend%20to%20be,contribute%20to%20U.S.%20agricultural%20production.&text=The%20authors%20appreciate%20the%20review,and%20the%20Economic%20Research%20Service.&text=Recommended%20citation%20format%20for%20this%20publication (last visited February 11, 2026).

²² The millage which pays for PDR easements was reauthorized in 2002 and again in 2022.

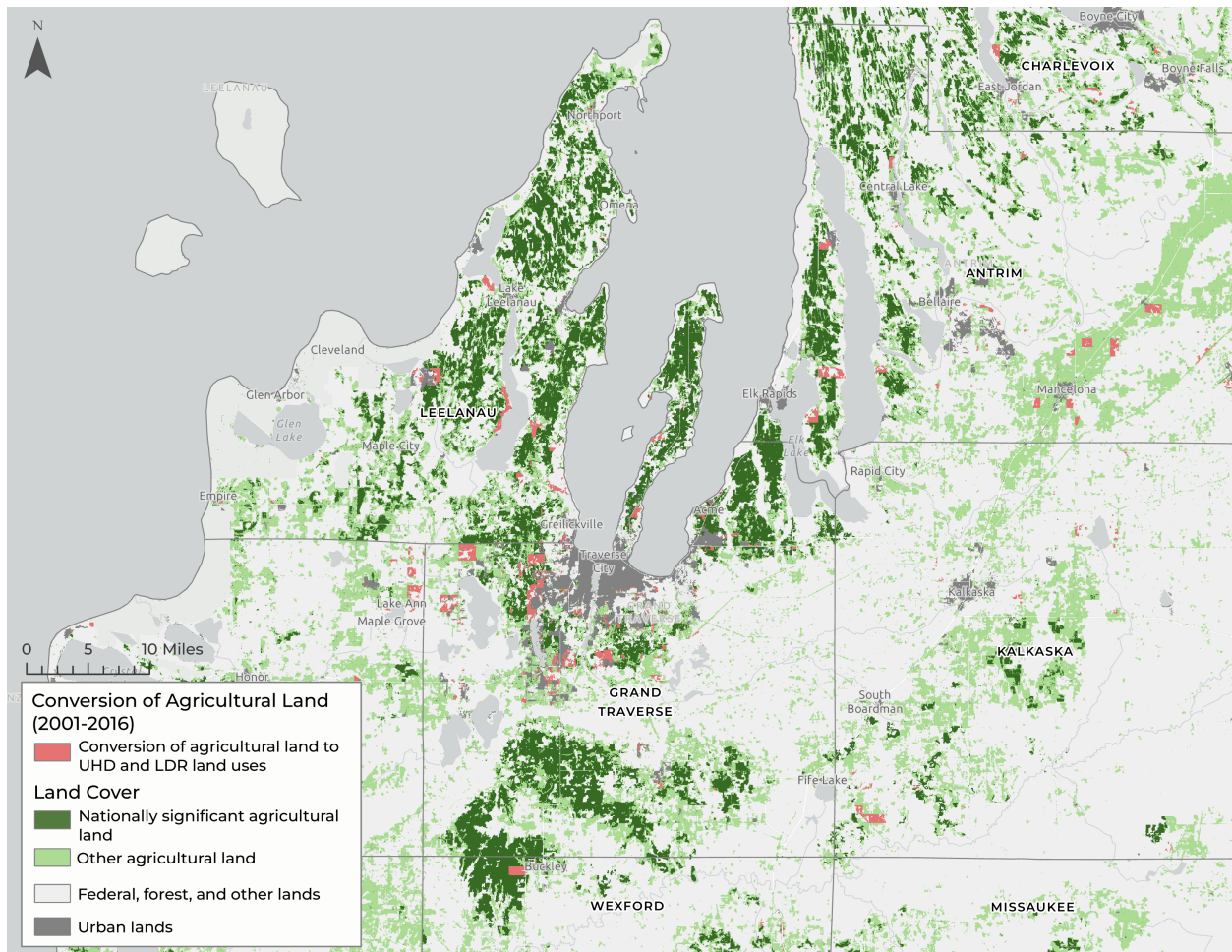
and first in Michigan. AFT Local PACE Program Factsheet, Appx 177-178. Since that time, the Township has earned a reputation as a pioneer in municipal PDR program implementation, ranking third in acres protected among municipally-administered programs and third in dollars invested – a sure sign of public support. *Id.*

Permanent land protection fosters a positive business climate for agriculture support businesses who see a long-term future due to the stability of the farmland base, and creates a self-perpetuating system wherein farms, processors, and supporting businesses such as equipment dealers and suppliers support one another. The Power of Leveraging, Appx 183.

Peninsula Township’s success in agricultural preservation is perhaps best visually demonstrated. The map below shows the extent of protected lands within the Township (34% of the total Township acreage, and 53% of the “Agricultural Protection Zone”):



The following map (appended at Appx 202) depicts the remarkably few areas within the Peninsula lost to development between 2001 and 2016:



Notably, the “Nationally Significant” ag lands in many places coincide with the protected areas shown in the first map. Clearly, this municipality is doing something right. *See also* Master Plan, RE 611-4, Page ID 25306 (“This plan is designed to build upon the Master Plan of 2004 by recognizing the results and opportunities created through the implementation of the Purchase of Development Rights program. The PDR program has created both a permanent agricultural industry within the community and increased the awareness and importance of maintaining farmland.”).

III. The District Court’s Cursory Interpretation of Agricultural Conservation Easements Was Erroneous.

Each of the three farms owned by Plaintiffs Winery at Black Star Farms LLC (“Blackstar”) and OV the Farm LLC (“Bonobo”) were permanently protected by separate agricultural conservation easements purchased by the Township in 1998 through its PDR program. Intervenor/Appellant PTP challenged Black Star and Bonobo’s standing to pursue zoning-related dormant Commerce Clause, First Amendment, and due process claims, asserting the commercial activities forming the basis of Plaintiffs’ claims were restricted by the agricultural conservation easements. PTP First Br. 75-76, 80-81. AFT strongly agrees.

In Michigan, agricultural conservation easements are codified as interests in land and are recognized as farmland protection tools in statewide and local laws and initiatives which protect the agricultural land base and agricultural and rural economy.²³ Though an interest in land, agricultural conservation easements are interpreted like a contract. *Dep’t of Agric. & Rural Dev. v. Engle*, 999 N.W.2d 73, 78 (Mich. App. Ct. 2022). Familiar canons of construction apply. *Id.* “Where the language of a legal instrument is plain and unambiguous, it is to be enforced as

²³ Public Act 197 of 1980, Conservation and Historic Preservation Easement, M.C.L. 324.2140 *et seq.*; Public Act 116 of 1974, Farmland and Open Space Preservation, recodified by Public Act 59 of 1995, M.C.L. 324.36101 *et seq.*

written and no further inquiry is permitted.” *Little v. Kin*, 664 N.W.2d 749, 750 (Mich. 2003).

Each of the agricultural conservation easements encumbering the Black Star and Bonobo wineries included in the preamble:

“WHEREAS, the Grantor is willing to grant and convey to the Grantee the Development Rights in the Property as such rights are defined in the Ordinance (such rights being the interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities where not incident to agricultural and open space uses), on the terms and condition and for the purpose herein set forth . . .” [RE 457-11, Page ID 16219; RE 457-12, Page ID 16234.]

Apparently, on the basis of this clause alone, the Court determined that “Black Star and Bonobo have the right to sell agricultural products under the easements, which is an inherently commercial function. The conservation easements prohibit ‘residential, commercial, and industrial purposes and activities which are not incident to agricultural and open space uses.’ (RE 457-10, Page ID 16204). There is an implication that uses that are ‘incident to agricultural and open space uses’ are allowed. The easements are not so sweeping as to preclude Black Star and Bonobo from having standing.” Opinion and Order, RE 559, Page ID 21901. The district court could only have reached its conclusion if it ignored other relevant sections of the easements.

Section I of the easements, “Uses Restricted to Agricultural and Open Space Use; Agricultural and Space Uses Defined,” provides that “[u]se of the land is

permanently restricted to *solely* agricultural and open space uses.” Agricultural use is further defined:

A. “Agricultural use” means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man, including fruits, nuts, vegetables, mushrooms, green house plants, Christmas trees, timber, forages and sod crops, grains and feed crops. dairy and dairy products, livestock, including breeding, boarding and grazing, and the following related uses and activities:

1. Retail and wholesale sales of *the above agricultural products grown on the farm*;
2. *Roadside stands* selling products as allowed by Township Zoning;
3. Composting of agricultural plants, animals manure and residential lawn materials;
- ...
9. Processing of agricultural products is allowed *provided a majority of the agricultural products processed are grown by the Grantor's farm operation*; and
10. Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.” (Emphasis added.)

Contract interpretation requires a court “to determine ... the parties’ intent on the basis of the plain language of the contract itself,” utilizing the plain and ordinary meaning of the terms while giving effect to every word, phrase, and clause. *AFSCME v. Detroit*, 704 N.W.2d 712, 715-16 (Mich. App. Ct. 2005); *Hunter v. Pearl Assurance Co., Ltd.*, 291 N.W. 58, 59 (Mich. 1940).

Taking all of the relevant provisions of the conservation easements together, the language makes plain that the restrictions were designed to limit the uses on the eased properties to agriculture and those specifically enumerated sales and processing activities supporting the on-site agriculture. Under the district court's loose reasoning, a winery could operate a fast-food restaurant on its property as the service of hamburgers would be "incidental" to agriculture because the beef would have necessarily been sourced from cows, or a wedding would be related to agriculture because the bride's bouquet was grown in a greenhouse. Such a construction defies the owners' acknowledgement that the property be perpetually bound "to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants . . ." RE 457-11, Page ID 16219; RE 457-12, Page ID 16234.

As noted above, conservation easements operate to *add* restrictions to the use of property, regardless of what underlying zoning might allow. The parties to the easement (and their successors) are contractually bound to abide those terms, forever. Blackstar and Bonobo freely purchased their properties subject to the easements, and later sought to collaterally attack the restrictions therein through this lawsuit. The district court erred in reading ambiguity into the easements that allowed those two wineries to dodge PTP's standing challenge, and should be reversed.

CONCLUSION

AFT respectfully requests that this Court award such relief as requested by the Township and PTP, and remand for proceedings consistent with this Court's decision.

Date: February 11, 2026

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CERTIFICATE OF WORD COUNT PURSUANT TO FRAP 32(g)(1)

This Response complies with FRAP 29(5). This brief was written using Times New Roman, 14 pt font, Microsoft Word 365 and has a word count of 6,492 words.

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CERTIFICATE OF SERVICE

I, Rebecca L. Millican, hereby certify that on the 11th of February 2026, I electronically filed the foregoing documents with the CM/ECF system which will send a notification of such to all parties of record.

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