

# PENINSULA TOWNSHIP

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August 28, 2024

Michigan Department of Agriculture and Rural Development  
Attn: Michigan Commission of Agriculture and Rural Development  
[MDARD-RTF@Michigan.gov](mailto:MDARD-RTF@Michigan.gov)

Dear Commissioners:

***Re: Written Comments Regarding the 2025 Draft Farm Markets GAAMPs***

The Peninsula Township Board has requested the undersigned to initiate this submission to the Michigan Department of Agriculture and Rural Development (“MDARD”) and the Michigan Commission of Agriculture and Rural Development regarding the Generally Accepted Agricultural & Management Practices (“GAAMPs”) for Farm Markets under the Michigan Right to Farm Act. As an agricultural community in Northern Michigan, we wish to express support for the language in the draft 2025 Farm Market GAAMPs that works to further clarify the role of local regulations in relation to farm markets so as to work towards reducing ambiguity regarding the applicability and scope of the Farm Market GAAMPs.

As part of this submission, we wish to provide background regarding the Township’s experience with interpretation of the Right to Farm Act. Within the Township, differing interpretations of the role of local regulation under the Right to Farm Act have led to several scenarios: (1) more complicated zoning reviews in parsing out the applicability of the 2024 Farm Market GAAMPs, (2) discerning the line drawing where the Right to Farm Act has preemptive effect, and (3) conflict related to a lack of clarity among the community. Some of the conflict related to the GAAMPs has been further expressed in lawsuits contending that the Township government is unable to regulate agritourism activities.

Language in the draft 2025 Farm Market GAAMPs that works to recognize where local regulations apply will greatly clarify these disputes; it ensures that local governments can support agriculture while regulating intense land uses and commercialization of agricultural land in ways that are compatible with their community. The clarification in the scope of local regulation also provides important clarity to local regulators in ensuring that their regulatory schemes maintain conformity with the Right to Farm Act. However, the Township would also like to provide several additional suggestions to clarify the role of local government regulation consistent with the GAAMPs.

## **Interest in Agricultural Preservation in Peninsula Township**

Peninsula Township is the local governmental body for the Old Mission Peninsula, a seventeen-mile-long narrow strip of land surrounded by Lake Michigan's Grand Traverse Bay on three sides. Peninsula Township is a predominantly agricultural community; the Township's unique geography provides a unique microclimate conducive to farming, as well as scenic viewsheds, with bay views and rolling hills.

Since the Township's inception, it has existed as a low-density agricultural area, with a long history of cherry and apple farming, as well as a more recent addition of grape farming and viticulture. Agriculture is a substantial economic driver for the Township and its residents, which is consistent with the desire and substantial work done by the Township's residents to preserve the land of the Peninsula in a scenic, open-space state. 71.1% of the Township's land is zoned for agricultural use, owing to the Township's long agricultural history. The lower-intensity agricultural land use for which Peninsula Township has planned is also compatible with the scenic character of the Township, with Center Road designated as a Pure Michigan Scenic Byway, and the high priority given to natural resources and environment in the community.

The unique geography and natural resources of Peninsula Township lead to the need to limit intensity and development. Peninsula Township is seventeen miles long, and at its widest is approximately 3.25 miles wide, a geographical distinction from other townships developed in a square pattern. Peninsula Township is also smaller than most townships, at approximately twenty-eight square miles total, and its narrow island-like geography creates limited space. Center Road (M-37) and Peninsula Drive are the only two roadways that extend from the Peninsula into Traverse City, with Center Road as the only major thoroughfare. The narrow, hilly, and winding roads are not conducive to large amounts of traffic, particularly as farmers within our agricultural community continue to move equipment and crops on the Township's roadways. As a result, Peninsula Township has consistently planned for low-intensity land uses that limit the traffic flow and prevent intense residential or commercial development.

The compatibility of agriculture with preserving scenic viewsheds and natural landscapes has led to the Township's support of farmers through the Purchase of Development Rights ("PDR") program. As the first Township-level PDR program in the country, initiated in 1994, the millage supporting the program has since been renewed twice by a strong majority of Township residents, most recently in 2022 for an additional 20 years, and has allowed for the compensation of farmers willing to sell their development rights to the Township. This program provides financial support to farm operations in exchange for the sale of a conservation easement, a legal commitment to keep the land in agricultural use. Born out of the desire to support agriculture and preserve the rural character and scenery of the Peninsula, farmers were among the originators of the PDR program in Peninsula Township, and community support has aided in the continued success of the program. Demand for the program continues to outpace its capacity, demonstrating that farmers on the Peninsula continue to desire this program. The Township has also been grateful to partner with the state in the success of this program; in addition to the Township's other past partnerships with MDARD, in March 2024, Peninsula Township was awarded the largest grant

from MDARD’s Michigan Agricultural Preservation Fund Board to support its farmland preservation program.<sup>1</sup>

Representatives of the agricultural industry continue to be highly involved with Township government and provide input into the Township’s governance, including on our forthcoming Agricultural Advisory Committee and past Citizen Agricultural Committee. The Township has a history of farmer involvement in elected and appointed positions, a function of the prominence of agriculture in the community. The Township continues to review its regulations relating to agriculture and agricultural uses to provide for the continued success of the Peninsula’s farmers while maintaining zoning consistent with the community’s land use needs and goals—even as demonstrated in the Township’s recent adoption of an amended master plan.

### **Right to Farm Act and Peninsula Township’s Community Land Use Conflicts**

As an agricultural community that has experienced the challenges that accompany increased build-out, the Township fully understands the intent of Michigan’s Right to Farm Act to prohibit individuals from bringing nuisance claims against pre-existing farm operations. Even with decades-long planning efforts, the Township has experienced increased residential development and intensified commercial development that at times conflicts with existing agricultural operations. Despite being an agricultural community since its inception, the community has not seen Right to Farm Act conflicts arise in the past.

The ongoing land use litigation in *Wineries of the Old Mission Peninsula v. Peninsula Township* has recently included testimony and arguments under the Right to Farm Act. For context, the winery litigation pertains to Peninsula Township’s prior zoning ordinance, which permitted several special land uses to operate wineries on agriculturally-zoned land. Under the prior ordinance, wineries were able to sell farm products on-site and were subject to other limits on the intensity of their operation. The additional provisions included limits on restaurant and catering service, non-farm product sales (such as merchandise), restrictions on the source of farm products to be sold on-site and on-farm activities. The winery litigation spans several years; since the initial challenge, the zoning ordinance has been substantially revised to comply with the findings of a federal district court and to increase clarity, but the prior ordinance is still being litigated under constitutional claims and, recently, arising Right to Farm Act violations.

In a May 2024 trial in this winery litigation, the wineries’ expert witness, Gary McDowell, former director of MDARD, alleged that tours, U-pick operations with food, weddings, merchandise sales, tasting room activities, bed and breakfast operations, cooking classes, and wine sales were preempted from local regulation as “marketing” activities under the Farm Market GAAMPs of the Right to Farm Act.

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<sup>1</sup> “MDARD, MI Agricultural Preservation Fund Board Awards \$2 Million to Local Farmland Preservation Programs,” Chelsea Lewis-Parisio, MDARD, March 27, 2024, <https://www.michigan.gov/mdard/about/media/pressreleases/2024/03/27/mdard-mi-ag-preservation-fund-awards-2-million-to-farmland-preservation-programs>.

These allegations were of particular concern to the Township, which, because of its unique geography and topography, has planned and regulated to avoid more intense and commercialized uses such as those listed. Considering that the Township has a majority of its land in agricultural use, the allowance of more intense activities on the Peninsula's agricultural land would result in adverse community impacts. In addition to the impacts on the Township's deliberate planning to prioritize farmland preservation, use of the Right to Farm Act to assert that more intense commercial activities are preempted agricultural uses has negative implications for the properties under agricultural conservation easements through the Township's PDR program.

In our community, the testimony and arguments presented in the winery litigation have resulted in amplified misinformation about the legitimacy of the Township's regulations of on-farm activities and sales of non-farm products under the Right to Farm Act. A recent complaint in a separate zoning challenge, *Family Orchards, LLC v. Peninsula Township*, similarly alleges that the Township may not regulate wineries' agritourism activities and restaurant service, as they constitute "marketing" activities under the Farm Market GAAMPs and are preempted from local regulation. The Township's planning staff and legislators have worked with other applicants to navigate the special use permitting process, who have similarly received information that on-farm activities are exempt from zoning under the Farm Market GAAMPs. As you can imagine, given these differing interpretations and resulting conflict, these are challenging circumstances in which to operate, both for applicants and for the Township.

#### **Support for Delegations to Local Authority Under the GAAMPs**

Given the need for Peninsula Township and other rural townships to limit commercial activity on agricultural land, a lack of explicit reference to local zoning authority in the existing GAAMPs has led to difficulty supporting that the GAAMPs are intended to work in tandem with local authority and that not all uses that may occur with a Farm Market operation are preempted from local regulation. Clear mention of local regulatory authority, as in the 2025 Farm Market GAAMPs, will limit the debate and litigation experienced regarding more intense agritourism activities.

Explicit descriptions of the bounds of local authority under the GAAMPs also aid townships in developing regulations that are compatible with the GAAMPs. Therefore, townships can work to maintain ordinances that are compatible with the Right to Farm Act provisions, to work in tandem with the GAAMPs to regulate agricultural land use and activities. Without a clear delegation to local authority regarding certain activities that may also be compatible with GAAMPs-conformant farms, agricultural communities face difficulty in determining the scope of jurisdiction.

We also wish to support the draft language that encourages farm market owners to contact local and other regulatory authorities to determine the requisite permits, as we hope this will lead to collaborative engagement with farm owners. As our township has faced challenges regarding commercialized activities, such as the sales of non-farm products and intense on-farm activities such as restaurants and weddings that are not incidental to the primary use as a farm operation, we wish to support the inclusion of these activities as more intense activities that may be subject to local jurisdiction. Similar language regarding the case-by-case consideration of agritourism activities will also be helpful in supporting local regulation of more commercialized agritourism activities.

### **Areas for Continued Clarification and Engagement**

We wish to affirm that the substantial steps taken towards defining local authority are helpful to local governments in agricultural communities in defining, and defending, the scope of their regulation. However, further clarification of several areas of the GAAMPs could prevent inconsistent interpretation and more clearly set helpful expectations for both applicants and local governments.

Further description of incidental marketing uses would aid both applicants and local governments in understanding the bounds of the uses. It is currently not clear whether incidental marketing activities are also subject to local regulation. Since the intensity of some incidental marketing activities coincides with uses which are regulated in zoning districts (for instance, farm-to-table dinners in a district where food service is incompatible), we would presume that such activities are subject to local governmental regulation but do support further clarification of the scope of local government regulation of these activities. We would ask that the GAAMPs state that marketing activities are governed by the parameters of the zoning district.

However, if the intent of the GAAMPs is to exempt incidental marketing activities from local regulation, we would ask a) for the GAAMPs to specifically state that to avoid confusion in local administration of regulations, and b) for the GAAMPs to provide additional clarification, examples, and guidance about the types of activities preempted from local regulation. Specifically, if preemption is intended, we would ask that the GAAMPs further define the “incidental” standard for activities, providing parameters such as maximum size of the area of the activity, hours of the activity, attendance limits, and frequency. This is both to ensure that local approvals are consistent with the GAAMPs, and to differentiate incidental marketing activities from on-farm activities that are subject to local regulation.

Similarly, if the GAAMPs do intend to preempt incidental marketing activities, further guidance would aid local governments and applicants in distinguishing preempted activities from locally regulated on-farm activities. Including a list of activities preempted from local regulation would provide clear expectations to both applicants and local governments. Similarly, including a list of activities subject to local regulation (as was the case in prior versions of the GAAMPs) would aid local governments in supporting their regulations of certain activities. Without a clear delineation of incidental activities, litigation between applicants and governments will likely occur to determine the balance of authority. As the Peninsula Township community has experienced, litigation over permissible zoning uses is both economically and socially costly – a clear delineation would avoid these kinds of disputes over the scope of preemption in the Right to Farm Act.

Lastly, based on experience in the Township, we would ask for the Farm Market GAAMPs to consider how “retail floor space” is calculated when determining that at least fifty percent of the farm products sold on-site are produced on and by the specific farm. The Township has experienced that the opening of field space as a U-pick operation causes the amount of retail floor space on the site to vastly increase. The result is an upward pressure on off-site farm products being sold within the farm market. We raise this for consideration to the extent that practical result was not the intention of MDARD and the Commission.

**Importance of Local Land Use Regulation**

The Township wishes to generally affirm the role of local land use regulation, in partnership with the Farm Market GAAMPs, in regulating and preserving agricultural land. Local zoning and local ordinances create a land use pattern that is consistent with the community’s unique needs and desires. Land use authority has been traditionally sited at the local level because of community-based knowledge of most appropriate land use practices. Local land use regulation is rooted in frequent connection and communication with residents, detailed knowledge of the land being regulated, and policy decisions made by representative legislators who consider their community’s needs. Local regulation incorporates the intent of each community’s unique existing ordinances and Master Plan as well as recognition of the distinct economic, geographical, topographical, and environmental needs of the community.

While adopting a regulatory scheme, communities undergo thorough land use planning and public input, frequently incorporating community feedback to ensure regulations and plans are consistent with the needs of the community and its residents. In Peninsula Township, community planning has resulted in a high priority of preservation based on the need to limit intensity due to the Township’s unique geography and natural features that the community wishes to preserve. Draft language in the 2025 Farm Market GAAMPs that substantiates local government regulation of more intense commercial activities supports townships’ efforts to regulate land to meet their community’s needs.

**Conclusion**

Based on the difficulties the Township has faced in interpretations of the Farm Market GAAMPs, Peninsula Township appreciates and affirms the importance of language within the draft 2025 Farm Market GAAMPs that provides more clarity to how local zoning and regulatory authority interplay with the Right to Farm Act and the GAAMPs. This current draft language should aid rural agricultural townships such as Peninsula Township, which seek to regulate in a way that supports agricultural preservation, limits incompatible commercialization, and is consistent with state statutory requirements.

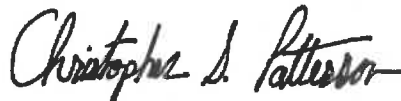
The implementation of draft language referencing local authority will reduce conflict and confusion regarding inconsistent interpretations associated with application of the Right to Farm Act. This will also ensure that townships are able to regulate in conformity with the requirements of the Right to Farm Act and that townships’ ordinance provisions work in tandem with the requirements of the Right to Farm Act to manage and preserve agricultural land.

We thank you for your consideration as you finalize the next updates to the GAAMPs, thank you for your work in formulating these GAAMPs, and would welcome any outreach you may have about our community and its agricultural industry.

Sincerely,



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Peninsula Township Supervisor



Christopher S. Patterson  
Peninsula Township Attorney

CC:

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Ryan Coffey Hoag, Chair of Advisory Committee, Generally Accepted Agricultural and Management Practices for Farm Markets