LAND USE AND RESOURCE LAW UPDATE

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I. What is Agriculture?

***West Lampeter Solar 1, LLC v. West Lampeter Twp Zoning Hr'g Bd.*, 351 A3d 383 (Pa. Commw. Ct. Jan. 2026).**

Solar energy development company brought action for judicial review of decision by township's zoning board to deny company's application for special exception to allow development of 25-acre agrivoltaics solar farm, which would include leasing area under and around solar panels for sheep grazing, in area zoned for agricultural use and limiting non-agricultural use to five acres.

Noting that "agrivoltaics" is not defined in the Zoning Ordinance, the Zoning Board relied on definitions from several governmental sources that establish its meaning as "the use of land for both agriculture and solar photovoltaic energy generation." Because the Zoning Ordinance does not define "agriculture," the Zoning Board used the dictionary definition, *i.e.*, "[t]he science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products[.]"Based on these definitions and Applicant's evidence, the Zoning Board found that Applicant sought to use the Garber farm for the principal use of a mounted solar array with the accessory use of grazing sheep beneath and between the solar panels.

The Court of Common Pleas affirmed zoning board's decision. Company appealed. The Commonwealth Court held that the proposed agrivoltaics project was not agricultural use under zoning ordinances. The company did not establish by credible evidence that application for special exception complied with all applicable zoning ordinance requirements. The evidence supported board's conclusion that production of photovoltaic energy would be principal use of property. Affirmed.

***CPV Stonecrop Solar, LLC v. Hardin Cnty. Plan. & Dev. Comm'n*, 724 S.W.3d 786 (Ky. Ct. App. 2025).**

This case involved the question of whether an agrivoltaics operation—the combined use of land for solar electric generation and agricultural activities such as sheep grazing, crop cultivation, pollinator habitat, and apiaries—qualifies as an "agricultural use" exempt from county zoning ordinances under Kentucky's agricultural supremacy clause and Right to Farm Act, Ky. Rev. Stat. Ann. § 413. The developer had sought a declaration that its proposed 82-megawatt, 640-acre operation was exempt from zoning regulation. The county denied the request and the circuit court dismissed for lack of subject matter jurisdiction. The Court of Appeals vacated and remanded, holding that the developer need not obtain a final administrative order before seeking a declaratory judgment in circuit court on whether property is used for an agricultural purpose. The court did not reach the merits of whether agrivoltaics constitutes an agricultural use, leaving that question for the circuit court on remand

***Meeker v. Nolt*, 2026-Ohio-2644 (Ohio Ct. App. 2026).**

In early 2004, Hall Ring Farm Partnership subdivided its 136-acre farm in the unincorporated territory of Jefferson Township, Brown County, into three parcels of land: 45.214 acres, 71.427 acres, and 19.855 acres. On February 12, 2004, Hall Ring conveyed the 45.214-acre parcel to Malcolm Lynn Truesdell and Arlene F. Day with certain covenants restricting the use of the land:

- "No swine, commercial dog kennels or game chickens shall beermitted. Large domestic farm animals (including but not limited to horses, cattle, sheep, goats and llamas) are permitted."
- "No noxious or offensive trade shall be carried out on any lot, nor shall anything be done thereon which may become an annoyance or nuisance, or on an occasion which will or might disturb the peace, comfort or serenity of the neighborhood."
- "No nuisance or obnoxious conditions shall be maintained on the property, including but not limited to, junk, scrap, paper, or debris of any kind or other unsightly condition. No lot shall be used or maintained as a dumping ground for rubbish or trash. Garbage, trash or other waste shall be kept in sanitary containers and all incinerators or other devices for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Storing unlicensed motor vehicles on the property at any time is prohibited."

The recorded covenants attached to the 45.214-acre deed further specified that all residences shall be "stick built" with a minimum 1500 sq. ft. of living space, trailer homes are prohibited on the premises, and "[a]ll remaining tracts of land on this farm will have the same deed restrictions when transferred."

Hall Ring conveyed the remaining 71.427-acre parcel to Hall-Ring, LLC on March 3, 2004, and the 19.855-acre parcel to Randy Meeker (Jim Meeker's brother) on May 19, 2004. Both conveyances were recorded with substantially the same restrictive covenants as the 45.214-acre deed and provided that "[t]hese restrictions shall be deemed to run with the land." The parcels were then conveyed over the years to different owners with the same covenants.

In 2010, Jim Meeker purchased the 19.855-acre parcel. Since then, he has used the parcel to farm corn and soybeans. In 2020, the Nolts purchased 71.3 acres of land derived from the 71.427-acre parcel, with the same restrictive covenants in place. In early 2024, the Nolts contracted with Granite Ridge Poultry LLC to develop a 64,000-layer commercial egg-production facility and recorded a "Release of Protective Covenants and Restrictions" signed solely by Hall Ring Farm Partnership. No construction or operation has begun.

In May 2024, Meeker filed a lawsuit against the Nolts seeking a declaratory judgment that the "Release of Protective Covenants and Restrictions" was null and void and should be removed from the Brown

County Recorder's records. He also sought to enjoin the Nolts from constructing or operating a commercial egg-production facility on the property, alleging that such use would violate the restrictive covenants and constitute a private nuisance.

The parties filed cross-motions for summary judgment. On December 16, 2025, the magistrate granted the Nolts' motion and denied Meeker's. In the same entry, the trial court journalized and approved the magistrate's decision, stating that it would become the court's order in 14 days unless timely objections were filed. Meeker did not object within that period. Instead, on January 5, 2026, he moved for an extension of time, which the trial court granted, and he filed his objections on January 12, 2026. In response, the Nolts argued that the trial court lacked authority to grant the extension because the magistrate's decision became a final judgment on December 30, 2025, thereby terminating the court's jurisdiction. On February 18, 2026, the trial court issued a decision that considered Meeker's objections, overruled them, and adopted the magistrate's decision.

Meeker appealed. The Court of Appeals of Ohio affirmed, concluding that the covenants remain in effect, but do not prohibit operation of an egg-production facility, and such a facility is not an anticipated nuisance. The court refused to modify the plain language of the covenants, which prohibit "game chickens."

***Pacho Ltd. P'ship v. Eureka Energy Co*., 115 Cal. App. 5th 598, 604 (2025).**

Pacho Limited Partnership and San Luis Bay (through their managing general partner, HomeFed) were successors to a 1968 lease of approximately 2,400 acres of undeveloped coastal ranch land in San Luis Obispo County ("Wild Cherry Canyon"). The lease had a 99-year initial term plus an option to renew for an additional 99 years, which (if valid) would extend the lease through about December 26, 2166. In 2018, plaintiffs exercised the renewal option. Eureka (the lessor's successor) responded that Civil Code § 717 capped the lease at 51 years because the land was leased for "agricultural … purposes," meaning that the lease expired around December 26, 2019, rendering the renewal option invalid. The property had long been used for cattle grazing and the trial court found grazing remained important for wildfire prevention. The lease itself stated the premises could be used "for any lawful purpose," and contemplated additional rent tied to non-agricultural activities. After a bench trial, the court concluded § 717 applied, limited the lease to 51 years, and declared plaintiffs had no remaining leasehold interest. Plaintiffs appealed.

The issues on appeal were: (1) Whether land leased for cattle grazing is generally leased for "agricultural purposes" under Civil Code § 717; and (2) whether § 717 applies where the lease allows any lawful use, the land was used for grazing, but the parties understood the grazing was principally for fire-risk reduction, not for raising livestock as a commercial agricultural enterprise.

The Court of Appeal held that cattle grazing generally falls within "agricultural purposes," but under the particular facts here—including the parties' understanding that grazing served wildfire suppression rather than livestock-raising—the lease was not for "agricultural purposes" within the meaning of § 717. The court accepted the broad historical understanding that "agricultural" can include cattle grazing but emphasized that § 717 applies only if the property was leased for "agricultural purposes," and that when a lease does not specify a purpose, courts may look to actual use and the surrounding circumstances to determine purpose. Here, multiple witnesses described grazing as a vegetation-management program to keep grass down and reduce wildfire risk—"for fireproofing" and "to suppress wildfires"—with little or no profit motive. The record also supported that the sublease rent was nominal compared to the property's scale and the plaintiffs' asserted leasehold value, reinforcing that the arrangement was not aimed at revenue generation. The court relied on two interpretive principles: (1) equity disfavors forfeitures and forfeiture-imposing statutes are strictly construed, and (2) statutes should be read to avoid absurd results. Applying § 717 on these facts would have caused a $39 million forfeiture of plaintiffs' claimed leasehold interest based on their efforts to reduce wildfire risk, which the court found untenable and inconsistent with legislative intent. Reversed.

***Surber v. Greenville Twp. Bd. of Trs.*, 2026-Ohio-1305 (Ct. App. 2026).**

Surber owns a 15.2-acre property in an Industrial Zoning District, approximately 11 acres of which he farms in corn or soybeans. Between 2019 and 2020, he erected three buildings on the property. Building A, erected in March 2019, was first used for personal storage and then, beginning October 2019, operated as an automotive repair shop. Surber obtained a commercial zoning permit and paid the $864 permit fee for Building A, but around the same time submitted a "Building Notice" certifying agricultural use, and the Township subsequently refunded the fee. Building B housed Surber's personal farm office (in which he kept records for his various farming operations) along with month-to-month rental storage. Building C was used exclusively by Kraut Creek Natural Feed Company, a non-GMO livestock feed manufacturer, to process, store, and distribute feed sourced from another farm. For Buildings B and C, Surber obtained no zoning permits and instead filed only Building Notices certifying agricultural use, which the then-county zoning inspector approved. After a new Township zoning inspector reviewed the records, the Township issued zoning violation notices in 2021, finding that none of the three buildings had been properly permitted.

Suber filed an administrative appeal challenging township board of zoning appeals' decision that he failed to obtain proper zoning permits for three buildings erected on his property. The Court of Common Pleas, Darke County, reversed the board's decision as to one building and affirmed the board's decision as to the other two buildings. Township board of trustees and related officials appealed, and property owner cross-appealed. On appeal the issue was whether Buildings B and C qualified for an agricultural exemption under R.C. 519.21(A).

The Court of Appeals affirmed as to Buildings B and C. Buildings B and C were not agriculturally exempt and therefore required zoning permits. R.C. 519.21(A) exempts buildings used for agriculture or incident to an agricultural use of the land, and the inquiry turns on the building's "principal or dominant use." R.C. 519.01 defines "agriculture" to include "the processing, drying, storage, and marketing of agricultural products," but only when those activities are "secondary to" husbandry or production.

Building B's predominant uses—Surber's personal farm office and rental storage—fall outside the statutory definition. Storage of mowing and weed-clearing equipment, and a nearby lavender operation unconnected to the building, were ancillary. Building C's processing and distribution of livestock feed, though an agricultural product, was not secondary to any on-site husbandry or production because the feed was sourced from another farm. Processing, storing, or marketing agricultural products qualifies as “agriculture” only when it is connected to and secondary to agricultural production or husbandry on the land. Farm offices, rental storage, and general maintenance-equipment storage do not make a building agricultural merely because the surrounding property is farmed.

***Stuart v. East Drumore Township Zoning Hearing Board*, No. 19 C.D. 2025, 2026 WL 2210007 (Pa. Commw. Ct. July 31, 2026).**

The question before the court is whether operating a landscaping business on property located in an agricultural zoning district constitutes a prohibited commercial use and whether the business qualified for a special exception as a farm-support business. The trial court affirmed the Zoning Hearing Board's decision denying the landowners' appeal and application for a special exception.

The Commonwealth court affirmed. The court held that the landscaping business constituted a commercial use rather than an agricultural use permitted by right. Although the property was located in an agricultural district and the owner raised livestock, the landscaping business used the property to store trucks, trailers, snowplows, salt, and equipment. The landscaping business also used the property for maintaining vehicles, conducting office work, and accommodating employees who reported to the property before traveling to job sites. Relying on *County of Fayette v. Blout*, the court explained that storing commercial vehicles and having employes report to the property to begin and end their workday can constitute operating a business, even when the services themselves are performed elsewhere.

The court also concluded that the landowners failed to establish that the landscaping business satisfied the zoning ordinance's requirements for a farm-support business. Although landscaping businesses could qualify for a special exception, they had to remain incidental and secondary to the property's principal agricultural use and comply with specific restrictions. The proposed operation exceeded the three-employee limit, failed to satisfy the outdoor-storage fencing requirement, and exceeded the permitted building and outdoor-storage areas. Because the landowners failed to meet these objective requirements, the Zoning Hearing Board properly denied the special exception.

Finally, the court held that substantial evidence supported the Board's findings. The Board reasonably discounted the landowners' consultant's calculations because he omitted several areas used by the landscaping business, including salt storage, mulch and stone bins, fuel tanks, snowplow storage, and outdoor racking. Therefore, the court affirmed the trial court's order upholding both the enforcement notice and the denial of the special exception.

***Futurewise v. Thurston*, No. 61611-4-II, 2026 WL 2923112 (Wash. Ct. App. Sept. 29, 2026) (unpublished opinion).**

The critical question in this case is whether Thurston County complied with Washington's Growth Management Act (GMA) when establishing criteria for designating agricultural lands of long-term commercial significance (ALLTCS). The GMA requires counties to identify and protect land that is used or is capable of being used for agricultural production and has long-term commercial significance. In 2024, Thurston County amended its designation criteria for such land, focusing on the percentage of prime farmland soils and excluding certain soils that would require irrigation or drainage to qualify as prime farmland. When the County applied its new designation criteria, no new land met the criteria. Therefore, the County did not designate any new land as ALLTCS in its comprehensive plan amendments.

Futurewise challenged the County's amendments before the Growth Management Hearings Board, arguing that the County failed to adequately protect agricultural land, improperly applied its designation criteria, and failed to account for the long-term economic viability of agriculture. The Board largely upheld the County's amendments but remanded the matter for the County to consider "farmlands of statewide importance." Futurewise then appealed the Board's decision to the Washington Court of Appeals.

The Court of Appeals affirmed, emphasizing that the GMA's definition of agricultural land focuses on land primarily devoted to commercial agricultural production and having long-term commercial significance. The court explained that determining which lands qualify for designation requires consideration of multiple factors, including soil quality, parcel size, proximity to urban development, and the economic viability of agriculture. The County was permitted to weigh these factors and determine that only land with sufficiently suitable soils and meeting its minimum block-size requirements qualified for designation. The court also concluded that the County was not required to reevaluate its existing agricultural designations whenever it amended its criteria, absent a showing that the original designations were erroneous or that the land had substantially changed.

The court held that substantial evidence supported the County's application of its criteria and its determination that the designated acreage was sufficient to maintain the agricultural industry's long-term economic viability. Although the court upheld the County's discretion in determining which land qualified as agricultural, it agreed that the County had erred by failing to meaningfully consider farmlands of statewide importance, leaving the County to address that factor on remand. Ultimately, the court affirmed the Board's decision, concluding that the County's agricultural land designation process largely complied with the GMA.

***Lease v. Mankato Township*, No. A25-1124, 2026 WL 980824 (Minn. Ct. App. April 13, 2026) (nonprecedential opinion).**

This case concerns whether Blue Earth County's proposed public works facility qualified as a permissible conditional use in Mankato Township's agricultural zoning district. The county sought approval to construct a 90,780-square-foot facility containing maintenance buildings, outdoor storage areas, fuel tanks, and other infrastructure on land zoned for agricultural use. Although the township's ordinance did not expressly list public works facilities as permitted uses in the agricultural district, it allowed other uses determined to be similar to specifically listed conditional uses. The township planning commission recommended denying the application, finding that the project was inconsistent with agricultural zoning and the township's development goals. Nonetheless, the township board approved the conditional use permit (CUP), determining that the facility was sufficiently similar to other uses allowed in the agricultural district.

Appellants, community members who opposed the granting of the CUP, challenged the permit, arguing that a public works facility was not an agricultural use and, therefore, could not lawfully be located in the agricultural district. They also argued that the township board lacked authority to approve the permit contrary to the planning commission's recommendation and that the project violated other provisions of the township's land-use ordinance. The district court granted summary judgment to the township and county, and the community members appealed.

The Minnesota Court of Appeals affirmed, holding that the ordinance permitted the facility as a conditional use similar to the other uses authorized in the agricultural district, even though the facility was not itself a traditional agricultural operation. The court emphasized that the ordinance expressly allowed uses similar to listed conditional uses, including grain elevators, landscape contractors, mineral extraction operations, and private commercial landing fields. Those uses may involve heavy equipment, vehicle traffic, noise, fueling stations, and outdoor storage. The board reasonably determined that the proposed public works facility shared these characteristics and could be less disruptive than some expressly permitted uses. The court also concluded that the township's planning staff qualified as a planning department authorized to determine whether a proposed use was sufficiently similar, and that the board had final authority to approve the permit despite the planning commission's opposition.

The court further held that the board's decision was supported by sufficient evidence and had a rational basis, warranting judicial deference. The ordinance's failure to expressly identify a public works facility as an agricultural use did not prohibit its approval under the similar-use provision. Because the facility qualified as a permissible conditional use, the court rejected the property owners' remaining challenges concerning scattered development and other zoning restrictions. Therefore, the court affirmed the grant of summary judgment in favor of the township and county.

***Shafer v. Santana*, 36 N.W.3d 731 (2026).**

Frank Santana was mowing his pasture with a horse-drawn sickle mower, while Jenny Shafer videoed him. After Santana concluded mowing, he dismounted from the mower and directed Shafer to hold the horses while he raised the sickle bar. Shafer held one of the horses by a lead rope attached to its halter, standing next to the horse on the side away from the sickle bar. The sickle bar dropped to the ground, spooking the horses. The horses initially moved backward, at which time Shafer yelled, "Whoa." The horses began moving forward, and Shafer fell down. The steel wheel of the sickle mower ran over her, and she was dragged several feet. She suffered severe injuries that required her to be in intensive care for two weeks and to spend over three months in a rehabilitation hospital in Colorado.

Shafer suffered catastrophic, permanent injuries to her spinal cord, leaving her paralyzed from the waist down. Her medical expenses exceeded $700,000. Shafer filed a personal injury suit against Santana, alleging damages of $18.2 million. On a motion for summary judgment, the district court dismissed the suit after ruling Santana was immune from liability under the Iowa Domesticated Animal Activities Act. The court of appeals affirmed the ruling that Santana's conduct was covered by the Domesticated Animal Activities Act but reversed the ruling that there was no question of material fact of recklessness to support Shafer's argument that the recklessness exception to the act applies.

The Supreme Court of Iowa vacated the decision of the court of appeals and affirmed the district court decision, finding insufficient evidence to support recklessness. To prove recklessness the plaintiff must show that "the actor performed an act of unreasonable character, that the intentional act was in disregard of a known risk or risk so obvious that the actor should have know of it, and that the intentional act made it highly probable that harm would follow." Here, Santana was never deposed to no evidence exists regarding his knowledge of the risks of operating the horse-drawn sickle mower.

II. Heirs Property

***Sielert v. Sielert*, 737 S.W.3d 210 (Mo. Ct. App. 2026).**

The Sielert brothers (Loren, Brian, and David) received title to the Farm from their mother as joint tenants with right of survivorship and not as tenants in common. Nearly 20 years later, Loren executed and recorded a beneficiary deed (transfer on death deed) purporting to transfer his interest in the Farm to his son, Jordan, on Loren's death. That beneficiary deed contained the following recital:

> It is intended that this beneficiary deed shall sever and supersede any joint tenancy with right of survivorship interest of [Loren] in all of the tracts described herein so that [Loren's] interest shall be as a tenant in common and said interest shall pass under the provisions of this beneficiary deed instead of by survivorship under joint tenancy.

Loren died about two months after recording the beneficiary deed. David subsequently conveyed his interest in the Farm to Brian. Brian filed suit for a declaration that he was the sole owner of the Farm in fee simple, or, in the alternative, for partition. Brian moved for summary judgment on the theory that Loren's beneficiary deed had no effect, and Brian alone owned the Farm as a result of Loren's death and David's conveyance of his interest to Brian. Jordan filed a competing motion for summary judgment. Brian's motion was granted; Jordan's was denied. The Circuit Court, Brian's motion for summary judgment and denied Jordan's motion for summary judgment. Jordan appealed.

The Court of Appeals held that a beneficiary deed, even one with a recital of intent, cannot sever a joint tenancy and convert it into a tenancy in common. Therefore, the beneficiary deed did not convey Loren's interest in farm to Jordan on Loren's death. Affirmed.

***Flouret v. Sagland, LLC*, 2026 N.Y. Slip Op. 05009 (N.Y. App. Div. 2026).**

The subject property, located in Suffolk County, was originally owned by brothers Stephen and Mark Perlbinder as tenants in common since 1969. In December 2020, Stephen conveyed his 50% interest to Sagland, LLC, managed by his daughter. In September 2023, Mark conveyed his 50% interest to the Mark Perlbinder 2023 Irrevocable Trust, with his daughter, Muffy Flouret, as trustee. The property is now wholly owned by Sagland, LLC, and the trust as tenants in common. The property consists of 17.41 acres of undeveloped land used for residential or agricultural purposes. The plaintiff, as trustee, sought partition and sale of the property, while the defendant argued that the property qualified as heirs property under RPAPL 993.

The court determined that the plain language of RPAPL 993 repeatedly uses terms that apply only to human individuals, such as "relative," "ascendant," and "descendant," which cannot describe trusts or limited liability companies. The court emphasized that trusts and LLCs cannot have relatives, marry, adopt, or have children, and therefore cannot qualify as individuals under the statute. The legislative intent of RPAPL 993 was to protect families from predatory speculators, not sophisticated entities like trusts and LLCs, which are inherently protected by their legal structures. The court rejected the defendant's argument that the property should qualify as heirs property because the managers of the entities are relatives of the original owners, reasoning that such relationships are coincidental and do not meet the statutory requirements. The court noted that the brothers used sophisticated estate planning to transfer their interests, further demonstrating that the property does not fall within the scope of RPAPL 993. The Appellate Division reversed the Supreme Court's order denying the plaintiff's motion for summary judgment on the amended complaint.

III. Regulatory Takings

***Pung v. Isabella County*, 146 S. Ct. 1964 (2026).**

Personal representative of deceased homeowner's estate brought action against county following tax sale of home for $76,008 to satisfy tax debt of $2,241.93, contending that the sale of the home, which had a tax-assessed value of $194,400, violated the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The United States District Court for the Eastern District of Michigan granted in part personal representative's motion for summary judgment on the takings claim, ordered county to return $73,766.07 in surplus funds to the estate, and granted in part motions for summary judgment for county and county treasurer. Personal representative appealed, and the United States Court of Appeals for the Sixth Circuit affirmed. Certiorari was granted.

The Supreme Court held that the baseline for measuring just compensation following a tax sale of real property is the auction sale price, not the property's hypothetical fair market value. Surplus funds constituted "just compensation" as required by the Takings Clause. Finally, a tax sale for less than fair market value did not violate the Excessive Fines Clause. Vacated and remanded.

***Kipping Farms, LLC v. Wakenda Levee District of Carroll County*, __ S.W.3d ___, 2026 WL 1729925 (Mo. Ct. App. 2026).**

Farm landowners alleged that a neighboring levee district's construction or operation redirected or increased floodwaters onto their properties. They asserted inverse-condemnation claims and sought injunctive relief. The circuit court entered summary judgment for the district. The Court of Appeals reversed, concluding that genuine factual disputes remained concerning causation, the character and recurrence of flooding, and whether governmental conduct took or damaged compensable property interests. The existence of a potential damages remedy did not automatically eliminate every basis for carefully tailored injunctive relief.

***Quarterman v. United States Dep't of Agric.*, No. 3:25-cv-161-TES, (M.D. Ga. Jan. 15, 2026).**

In this case, Plaintiff alleged a regulatory taking when the USDA denied their application for a farm loan and caused Plaintiff to miss out on a lucrative farming contract. The court found that the Plaintiff had no property interest that was taken; their application for the loan was merely that: an application. Further, they had no property interest in the lucrative farming contract, because they had not entered any sort of binding contract to that effect; a letter of intent attached to their complaint was insufficient.

***Benedetti v. Cty. of Marin*, 113 Cal. App. 5th 1185, 1191, 336 Cal. Rptr. 3d 571, 575 (2025).**

Marin County amended its Local Coastal Program ("LCP") to allow owners of certain agricultural parcels in the coastal zone to build additional residential units *only if* the owner records a restrictive covenant that the new residential unit(s) will be occupied by a property owner "actively and directly engaged in agriculture." The Program defines "actively and directly engaged in agriculture" to include either (1) being directly engaged in commercial agriculture or (2) leasing to a bona fide commercial agricultural producer. The Benedettis filed a petition/complaint for declaratory and injunctive relief challenging the restrictive-covenant condition as facially unconstitutional (including under *Nollan*/*Dolan* and due process).

Whether the LCP's restrictive-covenant requirement (conditioning new residential development on an "actively and directly engaged in agriculture" covenant) is facially unconstitutional under (1) the *Nollan*/*Dolan* unconstitutional-conditions framework and (2) substantive due process (asserted as a fundamental "right to work").

The court held (1) a facial *Nollan*/*Dolan* challenge is available in light of *Sheetz* (rejecting a categorical legislative/adjudicative carveout), but (2) the restrictive-covenant condition satisfies *Nollan*/*Dolan* (essential nexus and rough proportionality), and (3) the due process claim fails because strict scrutiny does not apply and the condition is reasonably related to legitimate legislative goals.

On the takings/unconstitutional-conditions theory, the court explained that *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024), clarifies *Nollan*/*Dolan* is not limited to individualized adjudicative exactions, so plaintiffs may bring a facial challenge to this kind of permitting condition. On the merits, the court found an essential nexus between the covenant and the government's coastal/agricultural objectives—especially preserving agriculture's viability in the coastal zone and preventing non-agricultural residential development from incrementally converting the market for agricultural lands into a market for residential land. The court also found rough proportionality because the covenant targets each development's own incremental effect: each additional residential development in the zone must be tied to agricultural use, rather than requiring the landowner to offset impacts caused by other developments.

On due process, the Benedettis argued the covenant violates a fundamental right to work and thus triggers strict scrutiny, but the court followed *Nash v. City of Santa Monica* and applied rational-basis review. The court emphasized the condition does not force landowners to personally labor in agriculture: they remain free to satisfy it by leasing to someone else to farm, or to sell the property. It upheld the condition as reasonably related to maintaining agriculture as a viable industry in the coastal zone while still allowing housing that supports agricultural work.

Judgment affirmed.

***AK Indus. Hemp Ass'n v. Alaska Dep't of Nat. Res.*, No. 3:23-cv-00253-KFR, 2025 LX 414714 (D. Alaska May 23, 2025).**

Corporate participants in hemp industry and individual users of hemp products brought action against Alaska Department of Natural Resources (DNR) and various Alaska officials, challenging amendments to Alaska's industrial hemp regulations barring endorsement of certain hemp products, as required for human or animal consumption, and removing requirement that a person obtain an endorsement to transport within or through Alaska hemp products intended for human or animal consumption. Plaintiffs sought injunction and declaration that amended regulations violated Supremacy Clause, violated Dormant Commerce Clause, constituted regulatory taking under Fifth Amendment's Takings Clause, and were void for vagueness under Fourteenth Amendment Due Process Clause. Defendants moved for summary judgment.

However, the court disagreed for a few reasons. First, there was no evidence that the regulations prevented the Plaintiffs from selling their products in other states; there was no evidence that they could not derive any economic benefit from the products. There was also no evidence disputing Alaska's public health and safety justifications for the laws, which sought to protect minors from certain intoxicating components in hemp products. The court ultimately granted summary judgment for the Defendant.

The court found that no genuine issues of material facts existed with respect to the Penn Central balancing test factors. The factors weighed in favor of the state.

With respect to preemption, plaintiffs alleged that the 2018 Farm Act implicitly preempts the State's amended hemp regulations. Specifically, Plaintiffs submitted that the regulations impermissibly conflict with the 2018 Farm Act by: (1) "declaring any [hemp] product for human consumption containing delta-9[-]THC as public nuisances and injurious to the public interest," and (2) "pronouncing that Alaska no longer intends to permit the endorsement and therefore the sale of virtually all hemp derived products as all hemp products contain at least some trace amounts of delta-9[-]THC." Plaintiffs insist that these purported developments create a "prohibition on hemp products," which is "diametrically oppose[d]" to the purpose of the 2018 Farm Act.

Defendants argued that the State's amended hemp regulations are not preempted by the 2018 Farm Act. Defendants noted that the 2018 Farm Act contains two preemption-related provisions: one that expressly states that "[n]o State ... shall prohibit the transportation or shipment of hemp or hemp products ... through the State,"[58] and another that expressly states that "[n]othing in this subsection preempts or limits any law of a State ... that—(i) regulates the production of hemp; and (ii) is more stringent than this subchapter."[59] According to Defendants, these provisions demonstrate that Congress intended to preempt only state laws prohibiting interstate shipments of hemp, leaving states otherwise free to regulate hemp production in a manner more stringent than the 2018 Farm Act. The court agreed, finding that the Farm Bill left "plenty of room" for the state to regulate.

***Green Room LLC v. Wyoming*, 157 F.4th 1196 (10th Cir. 2025).**

Businesses that cultivated, distributed, and sold hemp products brought pre-enforcement action under the Declaratory Judgment Act and § 1983 seeking injunctive and declaratory relief against State of Wyoming, its Governor, Attorney General, and the Director of the Wyoming Department of Agriculture, alleging Wyoming statute that regulated the production, processing, and sale of hemp products was preempted by a federal statute, violated the Dormant Commerce Clause doctrine, constituted an unconstitutional regulatory taking, and was void for vagueness. The United States District Court for the District of Wyoming denied the businesses' motion for a temporary restraining order (TRO) or a preliminary injunction and granted the defendants' motion to dismiss. Businesses appealed and moved to supplement the record.

The Court of Appeals held that the Agricultural Improvement Act of 2018, which excluded hemp from definition of prohibited controlled substance under federal law, did not create any substantive federal right that would support preemption claim under § 1983. The businesses failed to state claim the statute violated Dormant Commerce Clause doctrine by placing substantial burden on interstate commerce. In addition, Wyoming did not effect regulatory taking of businesses' property by enacting the statute. The statute was not unconstitutionally vague under Due Process Clause. Finally, the businesses' appeal of denial of their motion for temporary restraining order or preliminary injunction was mooted by district court's subsequent dismissal of their complaint.

With respect to regulatory takings, the court discussed in depth the idea of Plaintiff's investment-backed business expectations. The court noted that such expectations are tempered by the State's police powers. Moreover, the court compared the regulation of hemp to that of alcohol and gambling. In doing so, the court explained that the State is not required to compensate every time there is regulatory adjustment in a contentious area which the State may not always consider favorable, such as hemp—a fact of which, the court said, Plaintiffs should have been well aware. The district court's dismissal of this claim on a 12(b)(6) was affirmed.

***Parks v. RW Trophy Ranch, Ltd.*, 712 S.W.3d 943 (Tex. App. 2025).**

Subject to a permit from the Parks and Wildlife Department, Plaintiff bred white tail deer. Plaintiff's deer population became infected with Chronic Wasting Disease ("CWD"), and the Parks and Wildlife Department ultimately notified Plaintiff that they would be depopulating his deer, which they eventually did.

Deer breeder brought action for injunctive relief and violation of his constitutional rights. The County Court at Law No. 2, Kaufman County, denied the Department's plea to the jurisdiction and granted a temporary injunction. Department appealed, and the Dallas Court of Appeals granted breeder's motion to prevent the Department from depopulating the deer. Department filed petition for writ of mandamus, and the Supreme Court conditionally granted the petition, and the Department subsequently depopulated the breeder deer. The appeal was transferred to the Austin Court of Appeals.

The Court of Appeals held that the mootness exception for actions capable of repetition but evading review applied/ However, the breeder lacked any vested, constitutionally protected property right in his deer. The breeder could not maintain a viable ultra vires claim absent any allegation that division director or some other Department official acted without authority or contrary to controlling law. The euthanization of breeder's captive deer herd due to chronic wasting disease did not constitute a regulatory taking under *Penn Central*. In addition, exclusion of breeder from property during the Department's euthanization of breeder's captive deer herd due to chronic wasting disease did not violate breeder's free speech rights Finally, the breeder could not establish a violation of his equal protection rights.

Among other things, the Plaintiff alleged a regulatory taking of his breeding facility. The court found that the Department's actions were limited in duration and scope. The court took note of the fact that Plaintiff still had his breeding permit, he could continue to breed deer in his facility, and that Plaintiff rejected earlier plans proposed by the Department that did not include full depopulation. In doing so, the court found that there was no regulatory taking.

***Alford v. Walton Cnty.*, 159 F.4th 844 (11th Cir. 2025).**

Property owners brought action against county, alleging that ordinance closing all beaches in county during COVID-19 pandemic constituted an uncompensated taking of their beachfront property in violation of the Takings Clause of the Fifth Amendment. The United States District Court for the Northern District of Florida dismissed owners' claims for declaratory and injunctive relief as moot and granted summary judgment in favor of county on owners' claims for damages. Property owners appealed.

The Court of Appeals held that the county's voluntary cessation of beach closures rendered property owners' claims for injunctive and declaratory relief moot. However, the closure of private beaches during COVID-19 pandemic constituted a "physical taking" of property owners' beachfront properties entitling owners to just compensation under Fifth Amendment. In addition, the officers' entry onto and occupation of private beaches constituted a "taking," rather than a "trespass." Affirmed in part, reversed in part, and remanded in part.

In finding that the ordinance enacted a physical taking, the court discussed *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021). Though this case involves a county ordinance, the Ordinance at issue effectuated a "physical appropriation" of the Landowners' property. Thus, "a per se taking has occurred, and *Penn Central* has no place."

> Ordinance 2020-09 physically appropriated the Landowners' property because it barred their physical access to the land. And to enforce the Ordinance, the County entered the Landowners' property at will for the specific purpose of excluding the Landowners. The County's officers parked their vehicles on private property to deter entry, used private property as their own highway, and forced Landowners to vacate their property under threat of arrest. Put simply, the County "entered upon the surface of the land and t[ook] exclusive possession of it," thereby triggering the right to just compensation.

Alford at 856 (citations omitted).

***Banks v. Charter Twp. of Bloomfield*, 2026 WL 1147661 (6th Cir. Ct. App. 2026). (unpublished). (From the inverse condemnation blog inversecondemnation.com).**

Are the rules in "regulatory" takings only applicable when the government has adopted a regulation?

After their land flooded due to broken pipes in a drain easement running beneath their property, Banks and Jackson sued the Township for a physical invasion taking and a regulatory taking. The district court dismissed for failure to state a claim and the Sixth Circuit affirmed.

The court dismissed the physical takings claim which asserted that "the County physically invaded their properties via the flooding in two ways: by undertaking the 2019 road-improvement project in Chestnut Run and by failing to maintain the pipes in the drain easement." Slip op. at 3. The first theory failed because the invasion must be the intended or foreseeable result of the government action, and the complaint didn't allege that the defendants "realized or could have foreseen that road improvements would lead to this problem." Slip op. at 4. There was, at best, an allegation that the defendants were negligent, and negligence isn't enough for takings liability.

The failure to maintain theory also failed because the pipes are not owned by the defendants under Michigan law. The roads which formed the road project are publicly owned, but there's no indication that the drain easements are publicly owned.

The court affirmed dismissal of the claim that government action resulted in a taking because here, there's no government *regulation* which the complaint points to which has resulted in a taking: the plaintiffs "fail to point to a land-use restriction burdening their properties. While they have alleged that a Bloomfield official told them that closing the drain under their land would be illegal, they point to no such regulation saying as much[.]" Slip op at 7.

See blog post for arguments that this case is wrongly decided:
https://www.inversecondemnation.com/2026/05/ca6-to-be-a-regulatory-taking-there-must-be-a-regulation.html

***Kiehne v. New Mexico Dep't of Game and Fish*, 2026 WL 1649348 (N.M. App. 2026).**

Property owners brought action against New Mexico Game Commission and New Mexico Department of Game and Fish, alleging that agencies' mismanagement of elk population damaged their properties and constituted an unconstitutional taking and nuisance. The District Court granted agencies' motion for summary judgment on takings claim but denied summary judgment on nuisance claim. Both parties appealed.

The Court of Appeals held that presence of elk on owners' property did not constitute a taking of property by indirect means and that agencies' actions did not result in a taking by physical interference with owners' property rights. The absolute defense to a nuisance claim based on due authorization to perform a public works project applied to property owners' nuisance claim. Affirmed in part and reversed in part.

The court rejected a claim that the state is liable for a physical taking because these elk have wrought damage. The elk are wildlife, not state actors. As the opinion puts it:

> As we have explained, the occupation of the elk—even though the state reintroduced the elk and Defendants manage the elk population—is not generally attributable to Defendants because wildlife and the natural condition of the land is generally out of the government's control.

The court also concluded that even if the elk were to be deemed state actors, the invasions do not infringe on the fundamental right to exclude and control access to the owners' land. The state doesn't require the elk to be there, and (at least in theory) allows owners some avenues to keep the elk from going onto property, or getting them off once they're there of their own accord.

None of these regulations generally require or authorize elk on private properties or prevent property owners from building fences to keep them out. *See* NMSA 1978, § 77-16-1 (1909) (requiring that "[e]very gardener, farmer, planter or other person having lands or crops that would be injured by trespassing animals, shall make a sufficient fence" to prevent the trespass). Though Plaintiffs' right to control access has been impacted by the elk, the regulatory program creates no entitlement for any physical invasion of private property and therefore, does not deprive Plaintiffs of any property right.

Please note: A petition for writ of certiorari has been granted by the New Mexico Supreme Court, *Kiehne v. New Mexico Game Comm'n*, 2026 LX 647943 (N.M. 2026)

***Campo v. United States*, 2026 WL 1425479 (Fed. Cir. 2026) (unpublished). (From the inverse condemnation blog – inveresecondemnation.com.)**

The plaintiffs leased submerged lands from the State of Louisiana which they used as oyster beds. In 2019, the Corps of Engineers opened the Bonnet Carré Spillway releasing thousands of cubic feet of fresh water. This fresh water diluted the salinity of the water on the oyster beds. Oysters, you see, prefer moderate salinities (brackish water), not fresh. In the plaintiffs' oyster beds, oyster mortality rates were up to 100% in some areas. The Louisiana Department of Health ordered several of the oyster areas closed due to low salinity levels.

The oyster farmers brought a claim for a permanent taking against the United States in the Court of Federal Claims (CFC). The property claimed to be taken was the oysters and the oyster reefs. The government sought dismissal for failure to state a claim, arguing that the plaintiffs oysters are not "property" protected by the Fifth Amendment. The State of Louisiana owns the waters, the government argued, and the Louisiana Supreme Court (in *Avenal v. State*, 886 So. 2d 1085 (La. 2004)), held that there's no private property in these situations.

At first the CFC didn't buy the argument that there's no private property in the oysters, holding that the plaintiffs put their labor into the oysters — but later shifted gears and held that there's no property because the plaintiffs' leases with Louisiana said there's no property right.

The Federal Circuit agreed. The "main issue on appeal is whether there was a permanent taking of Appellants' property interests in violation of the Fifth Amendment." Slip op. at 5. No private property, no taking. Footnote 1 is key: "Appellants conceded at oral argument that if the relevant 2016 Louisiana statutes applied, then they would not have a takings claim." Slip op. at 5 n.1.

These statutes defined the scope of the rights granted by the state leases. The statute stated that any property rights granted by the leases are "subordinate" to the "rights or responsibilities" of the state and the federal governments, "to take action in furtherance of coastal protection, conservation, or restoration." Slip op. at 6 (quoting La. Stat. Ann. § 56:423(A) (2006)). The statute also made clear that "no lessee shall have any right to maintain any action against" the state or federal governments "for any claim arising from any project, plan, act, or activity in relation to coastal protection, conservation, or restoration[.]" Slip op. at 7 (quoting La. Stat. Ann. § 56:423(B)(1)).

What sealed it for the Federal Circuit was the statute's defining the spillway project as a "project, plan, act, or activity for the protection, . . . maintenance, or management of the coast." Slip op. at 7. Thus, Appellants have failed to state a claim under the 2006 amendments, which subordinate Appellants' oyster leases to the Corps' operation of the Spillway and place limits on claims against the United States. Slip op. at 8.

***Baker v. City of McKinney*, 2026 WL 1453172 (5th Cir. 2026) (per curiam) (unpublished). (From the inverse condemnation blog - inversecondemnation.com.)**

The U.S. Court of Appeal for the Fifth Circuit, in an unsigned per curiam opinion approved of the property owner's "reelection of remedy" to ask for relief under the Texas Constitution, after the original section 1983 just compensation claim was rejected.

You remember this case, one of those "SWAT takings" claims that actually succeeded in the district court. The Fifth Circuit, however, said that the Fifth Amendment doesn't require compensation if the government is validly exercising its police power, and the U.S. Supreme Court (over the mild objections of two Justices) denied cert.

But that wasn't the end of the road:

After our court denied panel and en banc rehearing, *see Baker v. City of McKinney*, 93 F.4th 251, 251 (5th Cir. 2024) (per curiam), and the Supreme Court denied Baker's petition for writ of certiorari, *see Baker v. City of McKinney*, 145 S. Ct. 11, 11 (2024) (mem.), this case returned to the district court. In December 2024, Baker filed a "Reelection of Remedy," requesting the district court "reenter judgment pursuant to Article I, Section 17 of the Texas Constitution." The City opposed Baker's reelection and moved to dismiss her Texas takings claim, arguing that the district court should decline to exercise supplemental jurisdiction. In June 2025, the district court granted Baker's reelection of remedy, denied the City's motion to dismiss, and entered final judgment in favor of Baker. The City timely appealed the district court's opinion and order, final judgment, and other filings in favor of Baker on her Texas takings claim.

Slip op. at 3.

With the federal claim gone, the City asserted that the district court should not have continued to exercise its (supplemental) jurisdiction over the remaining state law claim. Often, we see federal courts, when asked to consider state law claims after the federal claims go away, back off. But not here.

The Fifth Circuit first considered the question of whether there was a Texas taking. The court noted that the standards for liability "are not the same." Slip op. at 6. The court also noted that the Texas Supreme Court has affirmed that the Texas Constitution may require compensation even if the government has destroyed property in the course of apprehending criminal suspect. *See Steele v. City of Houston*, 603 S.W.2d 786 (Tex. 1980). Slip op. at 6-7. So yes, a property owner who has suffered damage resulting from a police power action may recover for a taking under the Texas Constitution.

The Fifth Circuit also rejected the city's claim that Baker didn't properly reelect her state law remedy after remand:

The district court plainly instructed the jury on Baker's federal and state takings claims, and our court has explained that, "[w]hen a plaintiff prevails on both federal and Texas state law causes of action for the same injury, federal courts apply Texas's one satisfaction rule, which requires the prevailing party to elect between the alternative claims for purposes of recovery." *Malvino v. Delluniversita*, 840 F.3d 223, 233 (5th Cir. 2016) (citation omitted). Baker was given the choice to make such an election and chose to pursue relief via § 1983, *see Baker I*, 84 F.4th at 382, and the City fails to identify "any authority holding that [Baker] cannot change h[er] election" in this case, where "the [§ 1983] claim [s]he elected to recover on [wa]s reversed" in *Baker I*, *Malvino*, 840 F.3d at 233. The "equitable nature" of Texas's "one satisfaction rule counsels against such a stringent approach," as there is no risk of "double recovery" for Baker post-*Baker I*. *Id*. at 233–34. As such, we do not disturb the district court's application of Texas reelection of remedies law.

Slip op. at 7-8.

***State ex rel. AWMS Water Solutions, L.L.C. v. Mertz*, 2026-Ohio-1487 (2026).**

The question before the court was whether Ohio's suspension of a saltwater-injection well that caused earthquakes constituted a compensable regulatory taking. AWMS sought a writ of mandamus compelling the State to initiate eminent-domain proceedings and pay compensation. After the court of appeals initially denied the claim, the Ohio Supreme Court reversed twice and remanded for further proceedings. On the third review, the court of appeals rejected the total-taking claim but found a partial taking, prompting appeals by both parties.

The Ohio Supreme Court affirmed the denial of the total-taking claim because AWMS failed to prove that the suspension deprived its leasehold of all economically beneficial use, as alternative uses remained available. Applying the *Penn Central* factors, the court reversed the finding of a partial taking. AWMS knew that injection wells could cause earthquakes and trigger regulatory shutdowns, making its investment-backed expectations unreasonable. The court also emphasized that the suspension served to protect public health and safety.

The court affirmed in part, reversed in part, and denied the writ, holding that the State's suspension order did not constitute a compensable regulatory taking.

***State ex rel. Sahbra Farms, Inc. v. Streetsboro*, No. 2025-P-0036, 2026 WL 1792920 (Ohio Ct. App. 11th Dist. 2026).**

Sahbra Farms owned approximately 225 acres in Streetsboro, OH, that had been used as a horse farm. In 2016, Sahbra entered into a mineral lease with Shelly Materials, allowing Shelly to extract sand and gravel in exchange for royalty payments. At the time, surface mining was permitted only with a conditional use permit (CUP). The Streetsboro Planning and Zoning Commission denied Shelly's CUP application in September of 2016, prompting years of litigation. The Ohio Supreme Court ultimately reversed the appellate court's decision upholding the denial, and the parties settled the dispute, allowing mining to begin in October 21.

Sahbra subsequently filed a mandamus action against the City and Commission, alleging that the permit denial deprived it of economically beneficial use of its property and constituted a regulatory taking. After the trial court initially denied its petition, the Eleventh District remanded the case for further consideration of Sahbra's property interests and whether a taking had occurred. On remand, the trial court again denied the petition, finding no cognizable property interest supporting the claim and no regulatory taking. Sahbra appealed.

The appellate court affirmed. It held that Sahbra retained a cognizable property interest in unaccrued royalties under the mineral lease, giving it standing to pursue its takings claim. However, it found no total taking because the property retained other potential uses, including horse farming, residential development, and agricultural leasing. Nor was there a partial taking under the *Penn Central* factors: the economic impact consisted primarily of delayed royalty payments, Sahbra's investment-backed expectations were limited by the regulated nature of surface mining and the known permit requirement, and the City's denial was a legitimate exercise of its zoning authority. The court also rejected the temporary-taking claim because the City's actions did not involve bad faith or an unreasonable or extraordinary delay. Accordingly, the court affirmed the denial of Sahbra's petition for a writ of mandamus.

IV. Cannabis

***Rubicon Real Estate Holdings, LLC v. City of Pontiac*, 179 F.4th 431 (6th Cir. 2026). (From the inverse condemnation blog - inversecondemnation.com.)**

Real estate developer, its managing member, and managing member's separate design business brought § 1983 action in state court against city and interim city clerk, alleging violations of Equal Protection Clause, Due Process Clause, and Takings Clause arising from delays in approving zoning changes and licenses for medical marijuana facilities, and alleging First Amendment retaliation for pressuring another developer to terminate contract with design business. Case was removed to federal court. The United States District Court for the Eastern District of Michigan granted defendants' motion for summary judgment. Plaintiffs appealed.

The Court of Appeals held that the developer had Article III standing. However, neither developer nor its potential tenants had a cognizable interest in using developer's property for medical marijuana cultivation or processing, thus precluding developer's due process claim. The city council's approval of a resolution to rezone developer's property did not cause developer's interest in using property for medical marijuana facilities to evolve into an entitlement subject to protection under Due Process Clause.

The court also found that the delay in city's issuance of special exemption permit was not "extraordinary," nor did the delay in approving zoning changes required for developer to use property for medical marijuana facilities eliminate all value of developer's property. In this case, the delays lasted for a year and a half and the prospective tenants then pulled out of the project. Then a related business lost another opportunity. Slip op. at 2-3.

The court found that even though the owner's "saga with the City of Pontiac may have fallen short of an experience in good governance[,]" the city's treatment of Rubicon was within the behavior we expect from government and that "City officials at worse simply lagged in granting discretionary zoning and licensing approvals[.]" Slip op. at 3. "When, then does a government's delay in issuing a permit or zoning change amount to a taking? Seldom, if ever." Slip op. at 16.

As for the takings claim, the court found that the delays did not amount to a taking. "[B]uilt into the 'incidents of [property] ownership] is the understanding that 'governmental decisionmaking' takes time, meaning that delays in obtaining approval before a property can be altered ordinarily does not amount to a taking." *Id*. (citing *Agins v. City of Tiburon*, 447 U.S. 255, 263 n.9 (1980), *abrogated on other grounds by Lingle v. Chevron U.S.A. Inc*., 544 U.S. 528 (2005)).

The delay must be "extraordinary." And "ordinary" means a long, long time. This is the government, after all. At the start of this opinion we noted that bureaucrats suck, but come on Rubicon, you shouldn't have expected more. "Delay was plainly expected[,]" and "the delay here is about what one might expect in dealing with local government bureaucracy and is far from an actionable deprivation under the Takings Clause." Slip op. at 17.

Yes, "significant and long-term delays of a project caused by government foot dragging could amount to a taking," slip op. at 19, but you live in "a 'bureaucratic world'" meaning you should have an "expectation that the project will not occur overnight and will need sufficient review by public officials." *Id*.

On the equal protection claim, the developer failed to put forth any relevant comparator to support its equal protection claim under a class-of-one theory. Finally, the managing member of developer and member's separate design business could not show a connection between city and any unconstitutional act by city's mayor, thus defeating their First Amendment retaliation claim.

Affirmed. Please note: A petition for certiorari was filed with the United States Supreme Court on September 14, 2026.

***Blue 42 Organics, LLC v. Georgia Dep't of Pub. Safety*, No. S25G1439, 2026 WL 2647440 (Ga. 2026),**

The case arose when the Governor's Drug Suppression Task Force flew helicopters and a fixed-wing aircraft at low altitude over a licensed hemp farm in Dahlonega, destroying two rows of legally registered hemp crops valued at approximately $37,000. The Court of Appeals had affirmed dismissal of the hemp grower's inverse condemnation claim, reasoning that the damage was a non-compensable exercise of police power. The Georgia Supreme Court reversed, holding that there is no automatic exception to the Just Compensation Clause for exercises of police power, that there was no evidence the hemp field was a nuisance in need of abatement, and that there was no evidence the operation was conducted in response to an emergency. The case was remanded for further proceedings on the inverse condemnation claim.

***Lasa Extract, LLC v. Suffield Zoning Bd. of Appeals*, 362 A.3d 144 (Conn. 2026).**

Cannabis cultivation and processing company Lasa Extract, LLC brought action appealing the denial of local zoning approval to produce and manufacture cannabis containing tetrahydrocannabinol (THC). The property at issue, located in a single-family residential zone in Suffield, Connecticut, was historically used to farm and process tobacco as a legal nonconforming use before being approved for hemp cultivation and processing. Lasa Extract sought to transition the property's use from cultivating and processing hemp to cultivating and processing cannabis, using identical methods for the same plant species but omitting a dilution step that reduces THC concentrations. Suffield’s zoning enforcement officer determined that Lasa could not process cannabis as a lawful continuation of the existing nonconforming use, a decision which the Town of Suffield Zoning Board of Appeals (ZBA) subsequently upheld.

The plaintiff appealed the ZBA’s decision to the Connecticut Superior Court, which reversed the ZBA's decision. The ZBA appealed to the Appellate Court. The case was subsequently transferred to the Supreme Court of Connecticut, where it affirmed the trial court's judgment. The court held that under the unique, non-retail operational facts of the case, the different statutory and licensing treatment of hemp and cannabis based solely on THC concentration did not constitute substantial evidence of a change in the character of the property's use for zoning purposes. Consequently, the court ruled that the proposed cannabis cultivation and processing was a lawful continuation of the existing, legal nonconforming use of the property.

Affirmed.

V. Water

Texas v. New Mexico

On May 26, 2026, the U.S. Supreme Court entered the final consent decree in *Texas v. New Mexico and Colorado*, No. 141, Original, resolving the states' dispute over Rio Grande water below Elephant Butte Reservoir. Texas filed the lawsuit in 2013, alleging that groundwater pumping in southern New Mexico intercepted water owed to Texas under the 1938 Rio Grande Compact. The settlement combines an interstate allocation decree with separate agreements involving the United States and the affected irrigation districts. Those agreements resolved federal objections that caused the Supreme Court to reject an earlier settlement in 2024. The Court dismissed the United States' claims with prejudice on June 8, 2026. (Court docket.)

The decree implements an approximate 57% New Mexico–43% Texas division of Rio Grande Project water below Elephant Butte, based on the project's historically authorized irrigable acreage. A delivery formula called the Effective El Paso Index measures compliance using releases from Caballo Dam, historical operating conditions during 1951–1978, and adjustments that include Texas water use above the El Paso measuring station. Delivery requirements vary with available supplies, with rules governing accumulated overdeliveries and shortages. Specified shortages trigger corrective management actions, while repeated violations require additional water deliveries. New Mexico retains discretion over management measures, and the Supreme Court retains jurisdiction to enforce or modify the decree. (Final decree, §§ II–V.)

For agricultural water users, a central provision appears in the separate New Mexico–United States groundwater agreement: New Mexico must acquire and permanently retire groundwater rights sufficient to reduce annual depletions by 9,100 acre-feet within five years and 18,200 acre-feet within ten years. Those figures measure reductions in consumptive depletion. Eligible rights may come from groundwater-only farms, farms with combined surface-water and groundwater rights, or nonagricultural users. New Mexico also must adopt a Lower Rio Grande water management plan within two years and implement aquifer monitoring and management provisions. For agricultural lawyers nationwide, the settlement illustrates how interstate delivery obligations and federal irrigation-project interests can drive groundwater-right acquisitions, permanent retirement, and changes in farm water management. (Groundwater agreement, §§ III–V.)

***Sanchez v. Torres*, 173 F.4th 1202 (10th Cir. 2026). (Taken from the inverse condemnation blog - inversecondemnation.com.)**

For decades, New Mexico has acknowledged that the public did not have the right to access nonnavigable waters, and did not have the right to trespass on privately-owned land. State agencies, and even the state legislature, adopted rules and statutes in accord. But in 2022, the New Mexico Supreme Court "held that the public waters provision of the New Mexico Constitution granted the public, in addition to the right to fish and recreate in public waters, a right to touch the privately owned beds of public waters because '[w]alking and wading on privately owned beds beneath public water is reasonably necessary for the enjoyment of many forms of fishing an recreation.'" *Adobe Whitewater Club of New Mexico v. New Mexico State Game Commission*, 519 P.3d 46, 56 (N.M. 2022),

Landowners brought § 1983 action alleging that state officials' enforcement of the New Mexico Supreme Court's recognition of public right to walk or wade in non-navigable streambeds on private property effected taking of their right to exclude public from their property without just compensation, in violation of Fifth Amendment. The United States District Court for the District of New Mexico dismissed complaint, and landowners appealed.

The Tenth Circuit Court of Appeals held that the landowners satisfied injury-in-fact , traceability, and redressability requirements for standing. In addition, the action fell within scope of *Ex parte Young* exception to state's Eleventh Amendment immunity and the landowners were not required to exhaust their state remedies before bringing suit. Further neither the *Coeur d'Alene* exception to *Ex parte Young* nor the *Rooker-Feldman* doctrine barred the landowner's claim. However, the court ultimately found that the state court's decision did not effect taking.

The standing and justiciability holdings were unanimous. However, the panel split 2-1 on what to do next, with the majority concluding that the complaint failed to plausibly plead that the plaintiffs had the right to exclude and thus did not state a claim for a taking (dismissed!), while the dissenting judge, having concluded that the case was justiciable, would have sent it back to the district court for more and would not have dismissed. The concurring (in part) and dissenting (in part) judge summed up the outcome of the appeal in his separate opinion:

> I fully agree with the majority's incisive analysis of the standing, sovereign immunity, and other jurisdictional issues in this appeal. I therefore join Parts I–II.D of the majority opinion in concluding that we have jurisdiction to hear this case. From there, however, I part company with the majority. While the majority affirms because the plaintiffs (Landowners) fail to state a claim for a judicial taking, I would have stopped our decision at jurisdiction.

Adobe Whitewater (Federico, J., concurring in part and dissenting in part) at 1232.

Judge Federico would have stopped there and sent the case back to the district court for further factual development and determination. But the two-judge majority concluded that the complaint failed to state a claim because it didn't plausibly allege that prior to 2022, the plaintiffs possessed the right to exclude:

> The Landowners fail to show their claimed right to exclude was established such that their property rights were taken as opposed to merely clarified. We therefore assume without deciding that the Fifth Amendment protects against judicial takings and affirm on the alternative ground that the Landowners fail to state a claim for relief.

Adobe Whitewater at 1225 (footnote omitted).

The majority relied on the plurality opinion in *Stop the Beach Renourishment*, holding that the owners must show that their property rights alleged to have been taken were "sufficiently established" before the change in the law.

Judge Federico saw it differently:

> The parties to this appeal have not sufficiently illuminated their arguments on the merits of the Landowners' judicial takings claim. Between their opening and reply briefs, the Landowners allocate just over five pages to the matter. In their response brief, the New Mexico Officials offer even less, providing little more than a page. The parties' district court briefing is also of little help. It is similarly sparse, totaling five and half pages between both sides, and it contributes no additional substance to the parties' appellate arguments.
>
> More importantly, the parties' cursory briefing fails to grapple with the complexity and novelty of the matter at hand. The law on judicial takings is unsettled, and even the most basic question – Is there such a thing as a claim for a judicial taking? – remains largely unanswered. Assuming such a claim exists, as the majority does, invites more questions. We know that a judicial takings claim would require the Landowners to prove the existence of an "established" property right and the taking of that right, but we don't know much more than that. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot*., 560 U.S. 702, 732 (2010). By what standard do we measure whether a property right is sufficiently established? And how does that legal standard intersect with the pleading rules under Federal Rule of Civil Procedure 12(b)(6)? The parties don't say.

Adobe Whitewater (Federico, J., concurring in part and dissenting in part) at 1232-1233.

***Yurok Tribe v. U.S. Bureau of Reclamation*, 179 F.4th 663 (9th Cir. 2026).**

Indian tribes and fisheries associations filed suit against Bureau of Reclamation, challenging water management project plan's impacts on threatened and endangered species, under Endangered Species Act (ESA). After irrigation district and water users association intervened and Oregon Water Resources Department (OWRD) issued order prohibiting Bureau from releasing water classified as stored at lake in Oregon, National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) filed cross-claim, seeking declaratory relief confirming Bureau's authority to operate project in compliance with ESA. The United States District Court for the Northern District of California granted agencies summary judgment on cross-claim, upon determining that ESA applied to Bureau's operation of project so that OWRD's order was preempted, and enjoining OWRD from attempting to enforce order. Irrigation district and water users association appealed.

The Court of Appeals held that ESA's consultation requirement applied to Bureau's operation of project. A judicial taking was not effected for irrigation district's water rights. The doctrine of prior exclusive jurisdiction did not apply. Finally, *Colorado River* abstention did not apply. Affirmed.

***Egger Enterprises, LLC v. State Engineer*, 585 P.3d 460 (Nev. 2026).**

Egger Enterprises, LLC, owned High Desert Ranch in Nevada and converted its irrigation system to center pivots, leaving the corners of its fields unirrigated. After failing to use portions of its water rights for decades, Egger sought to transfer the excess water to adjacent public land, but delays in obtaining the necessary land and water permits prevented the proposed use. Following a notice of nonuse, the State Engineer initially granted Egger a one-year extension but denied a second extension and declared the unused water rights forfeited.

Egger challenged the forfeiture, arguing that the State Engineer failed to make findings on all nine factors listed in NRS 534.090(3). After the district court denied its petition for judicial review, the Nevada Supreme Court affirmed, holding that the State Engineer need not make findings on factors irrelevant to the extension request. The court found substantial evidence supporting the forfeiture because Egger had not demonstrated reasonable diligence in resuming beneficial use and sought to retain unused water rights while pursuing new uses on land it did not yet own.

The court also rejected Egger's request for equitable relief, concluding that the prolonged nonuse and lack of evidence of estoppel did not justify reinstating the rights. The decision reinforces Nevada's policy that water rights must be supported by beneficial use and cannot be retained indefinitely for potential future development.

***United States v. Idaho*, Nos. 25-947, 25-1191, 25-1203, 25-1214, 2026 WL 2795423 (9th Cir. Sept. 18, 2026).**

The federal government sued Idaho, challenging several statutes known as the "stockwater amendments." These amendments altered the rules governing thousands of federal stockwater rights previously confirmed in the Snake River Basin Adjudication (SRBA). The federal government argued that the amendments unlawfully interfered with its established water rights and discriminated against the United States in violation of the Supremacy Clause.

The district court ruled partly in Idaho's favor, rejecting the federal government's challenge to Idaho Code § 42-224 while holding § 42-113(2)(b) facially unconstitutional. The United States appealed the adverse ruling, and Idaho challenged the district court's jurisdiction and its ruling invalidating the latter statute.

The Ninth Circuit upheld federal jurisdiction and affirmed the district court's determination that § 42-113(2)(b) was facially unconstitutional because it discriminated against the federal government by making stockwater rights associated with federal grazing lands appurtenant to private ranchers' property and allowing those rights to transfer with grazing permits. The court reversed the district court's ruling upholding § 42-224, concluding that the statute's forfeiture procedure was unconstitutional as applied to the United States because it threatened the federal government's previously established stockwater rights. Thus, the court affirmed in part and reversed in part the district court's judgment.

***Maley v. D'Antonio*, 595 P.3d 224 (N.M. Ct. App. 2026).**

This case focuses on issue of first impression in New Mexico: whether the State Engineer, in the course of processing a permit application seeking permission to repair old wells, may consider and rule on whether a declared water right is invalid and/or abandoned.

Landowner applied through the Office of the State Engineer (OSE) for permits to repair three wells on his property. The landowner also claimed water rights under previously filed declarations. When the OSE granted the repair permits, the OSE also imposed conditions prohibiting appropriation and beneficial use of water. Such conditions substantially limited the landowner's ability to draw water from the wells.

Landowner asked for and received an administrative hearing on the issue, and the Hearing Examiner found for the OSE, stating that the landowner's claimed water right "is not valid and existing and has otherwise been abandoned." The state engineer then accepted the Hearing Examiner's order and denied the landowner's application. Landowner appealed to the district court, which ruled that the OSE did not have the authority to adjudicate the landowner's water right. The OSE now appeals, claiming that the district court "should not have entertained the jurisdictional argument made by [the landowner] because [the landowner] failed to exhaust his administrative remedies and/or failed to preserve the issue of the OSE's authority" and that the State Engineer has the authority to consider and rule on water rights in the course of processing permit applications.

The Court of Appeals of New Mexico rejected the OSE's first argument but found that the State Engineer does have the authority to rule on water rights in the course of processing permit applications. The district court's ruling was, thus, reversed.

VI. Oil and Gas

***Concerned Residents of W. Deer v. Twp. of W. Deer*, 2025 LX 569482 (Commw. Ct. Dec. 11, 2025)**.

A company was conditionally approved (subject to 30 conditions) to construct a facility and associated natural gas pipeline with respect to the relevant zoning ordinance. Such ordinance authorized oil and gas development as a conditional use, and even though an "interconnect" was not explicitly listed as a conditional use, the court found that it was clear that an interconnect is necessary for the oil and gas operation.

***Citizens for Clean Air & Clean Water in Brazoria Cnty. v. Dep't of Transportation*, 188 F.4th 384 (5th Cir. 2026).**

Texas GulfLink applied to construct a deepwater port, including a pipeline, off the coast of Texas. MARAD approved Texas GulfLink's application but excluded the proposed pipeline from the designated application area. The statutory definition of "deepwater port" includes pipelines located seaward of the high-water mark. Better Brazoria, an environmental organization, challenged the approval, citing concerns from member AJ Jinkins, who lives near the proposed tank farm and pipeline route and identified risks such as flooding, well water pollution, noise, light pollution, property devaluation, and road deterioration.

The Fifth Circuit was asked to determine whether the Deepwater Port Act requires the Secretary to include a deepwater port's proposed pipeline in its application area. The Fifth Circuit held that it does because the Deepwater Port Act requires the Secretary to designate "an application area encompassing the deepwater port site," and that "Texas GulfLink's application area, properly drawn, would intersect with another deepwater port's pipeline, violating the DWPA's requirement that there be only one deepwater port per application area."

VII. Right to Farm

***Sheik Island Farm, Inc. v. Covington Farm, Inc.*, 429 So. 3d 1095 (Fl. Ct. App. 2026).**

The question before the court is whether operating a wedding barn constitutes a "farm." The trial court ruled that it did and granted summary judgment to the plaintiffs.

The appellate court reversed. The court found there were genuine issues of material fact as to whether Covington Farms, which operated a wedding barn was, in fact, a "farm" as defined by the Florida Right to Farm statute. The court noted that the trial court relied too extensively on the legislative purpose behind the statute in its decision. That type of legislative reasoning could not override the statute's operative definitions. Finally, the court held that the property appraiser's agricultural classification may be relevant, but it is not controlling because the Right to Farm Act does not make tax classification dispositive of whether a property is a farm under the Act.

***Township of Fraser v. Haney*, 2025 WL 1900791 (Mich. Ct. App. July 9, 2025).**

Township brought a nuisance-abatement action seeking to enjoin defendant's pig operation on property zoned "commercial," where livestock had never been an allowed use under the township's zoning ordinance. Haney purchased most of the property in 1986, began farming activities in 1989, and started raising mule-foot hogs on the property in 2006. The township contended it did not become aware of pigs until 2016 and sued shortly thereafter for violating the township zoning ordinance. After a bench trial, the trial court entered judgment for the township.

The Michigan Right to Farm Act (RTFA) was passed in 1981, but it was amended in 2000 to include a provision exempting local ordinances from ordinances if they are a farm and operation under generally accepted agricultural management practices (GAAMPs).

The Michigan Court of Appeals held that the amendment to the RTFA providing that local governments shall not enact, maintain, or enforce an ordinance that conflicts with the RTFA or a generally accepted agricultural and management practice prohibits *prospective enforcement* of ordinances that are contrary to the RTFA and GAAMPs, even if the enactment of the ordinance predated the amendment. Further the pig operation was a "farm operation" as defined by the RTFA. The trial court failed to make factual findings regarding landowner's compliance with GAAMPs. Case was vacated and remanded.

***Lamb v. Crofoot*, 2025 LX 538870 (6th Cir. Nov. 19, 2025).**

Kevin Lamb began building a vegetable greenhouse in his front yard without a permit, violating local zoning ordinances. After enforcement actions, Lamb sued, claiming Michigan's RTFA preempted the ordinance prohibiting accessory buildings in front yards. The district court dismissed; Lamb appealed.

The court held that Michigan's RTFA does not preempt local zoning ordinances governing the location of a greenhouse, as it protects only against nuisance claims. The statute lacks provisions or generally accepted standards related to locations and siting of buildings like a greenhouse. The appellate court affirmed.

***State v. Anderson,* 2025 WL 1638448 (Minn. Ct. App. June 9, 2025) (nonprecedential opinion).**

Jodi Linn Anderson lived on a five-acre, agriculturally zoned property and described herself as a "full-time farmer." She kept Great Pyrenees guard dogs to protect livestock, but neighbors repeatedly complained about barking; police visited roughly 34 times beginning in 2020. The city ordinance makes it unlawful to keep a dog that "habitually barks," and a dog that violates the rule three or more times in three months is a public nuisance. After a bench trial, the district court found her guilty of five violations and imposed $640 in fines.

Anderson argued that the Minnesota Right to Farm statute prevented a farmer from prosecution for violating a city nuisance ordinance regarding barking dogs. The Minnesota Court of Appeals disagreed, finding that the Right to Farm statutory defense expressly does not apply to prosecutions for public nuisance. The verdict was affirmed.

***City S. Charleston v. Urban,* 2026 WL 693575 (W. Va. Int. Ct. App. 2026).**

South Charleston adopted an ordinance that effectively prohibited residents from keeping honeybees within city limits. Plaintiff Urban challenged the ordinance, and the West Virginia Department of Agriculture intervened.

The circuit court held the City's ban on beekeeping invalid for two reasons. First, the City lacked authority to regulate beekeeping under the "animal" power because bees were not "animals" under the statute. Second, even if they were "animals," the ban conflicted with the Right to Farm Act's protection of agricultural operations, meaning the ordinance was void and unenforceable. The court granted summary judgment to the plaintiff.

On appeal, the West Virginia Intermediate Court of Appeals reversed and granted summary judgment to the City. Bees are animals under the ordinary meaning of the statute. Undefined statutory terms receive their ordinary dictionary meaning. Dictionary definitions are preferred over borrowing definitions from unrelated statutes. No express or implied repeal of municipal authority occurred. The Apiary Act creates administrative oversight but not exclusive state authority. The Right to Farm Act does not invalidate municipal police powers.

***McNew v. E. Marlborough Twp.*, No. 29 M.D. 2022, 2026 WL 1758764 (Pa. Commw. Ct. June 18, 2026).**

This case calls into question whether an East Marlborough Township zoning ordinance unlawfully restricts timber harvesting in violation of Pennsylvania's Municipalities Planning Code, Agriculture Communities and Rural Environment Act, and Right to Farm Act.

McNew applied for a zoning permit to harvest timber on his property in East Marlborough Township, Pennsylvania. The Township denied the application because it did not satisfy several requirements of the Township's timber-harvesting ordinance. McNew did not appeal the permit denial but requested review by the Pennsylvania Office of Attorney General (OAG) instead. The OAG identified concerns with portions of the ordinance under state law, and McNew filed a petition for review in the Commonwealth Court of Pennsylvania. After preliminary objections, arguing, and discovery, McNew filed an application for summary relief, seeking to invalidate the zoning ordinance and prevent its enforcement.

McNew's argument was that his timber harvesting constitutes a "normal agricultural operation" under the Right to Farm Act and that the zoning ordinance in question is, thus, invalid and cannot be enforced. The Commonwealth Court of Pennsylvania denied summary relief, however, finding genuine issues of material fact as to whether McNew's proposed tree removal constituted legitimate forestry or was intended to clear the property for future land development. If the tree removal is found to be for future land development, it would not qualify as forestry under the Municipalities Planning Code.

VIII. Agritourism

***Padgett v. Meade Cnty.,* 733 S.W.3d 397 (Ky. Ct. App. 2026).**

The owners operated a bed-and-breakfast and recreational farming operation with hay and animals. On a separately identified, commercially taxed parcel across the road, they operated an RV park originally created largely for workers building a nearby steel mill. After the temporary conditional-use approval expired, the owners contended that the RV park was a protected farm stay or agritourism use and that Kentucky's Right to Farm Act and agricultural-supremacy provision barred county permitting.

The trial court granted a preliminary injunction but denied the request for a permanent injunction. The Kentucky Court of Appeals affirmed dismissal.

Kentucky law allows local governments to establish zoning regulations. There is, however, an exception that prevents most zoning regulations from applying to land used for agricultural purposes. The court refused to expand the definition of "agricultural purposes" under the agricultural supremacy clause to include agritourism activities. The court also rejected the effort to use the Right to Farm Act as a general exemption from ordinary land-use regulation.

***Angel v. Leesburg Animal Park, LLC*, Case No. CL23005507-00 (Loudoun Cnty. Cir. Ct. 2026).**

The plaintiff filed suit after injuring her hand on a slide at the Leesburg Animal Park. The defendant raised the Virginia Agritourism Act as a defense. In response, the plaintiff argued that the signage—a sign posted inside the gift shop and one at the outside entrance to the farm—failed to comply with the requirements of the Act. The Act requires "every agritourism professional shall post and maintain signs that contain the notice specified" at a clearly visible location at the entrance to the agritourism location and the site of the agritourism activity. The plaintiff contended that, pursuant to the Virginia statute, signs should have been placed at each and every agritourism activity.

The trial judge issued a bench ruling agreeing with the plaintiff and holding that the defendant was disqualified from the Agritourism Act defense because of its failure to post signs at each separate activity.

Read more here.

IX. Renewable Energy

***West Lampeter Solar 1, LLC v. West Lampeter Twp Zoning Hr'g Bd.*, 351 A3d 383 (Pa. Commw. Ct. Jan. 2026).**

A solar developer proposed an agrivoltaics project on a 55-acre farm in an agricultural district. Solar panels would occupy 25-acres and sheep would graze beneath and around the panels. Developer sought a special exception from the Zoning Board.

The Zoning Board rejected the application, finding the principal use of the land was a mounted solar array. It found the sheep grazing was an "accessory use." Thus, the proposed use was not an agricultural use listed in the Zoning Ordinance. The law limited non-agricultural uses to 5 acres. Because this project was larger than the 5-acre minimum, the application was denied. The developer appealed.

The trial court affirmed. The developer appealed.

The appellate court affirmed finding that agrivoltaics is not agriculture because there was no connection between the technological advance and the preparation of an agricultural product. The court also rejected the argument that the solar panels and the sheep were dual uses. It noted that the solar panels would produce 12 months of the year, while sheep were only on the land half of the year, and if drought struck, the sheep would be there even less time. Because the solar energy production is a nonagricultural use, it cannot exceed the 5-acre minimum.

X. Chickens

***Commonwealth v. Moore*, 2026 Pa. Commw. Unpub. LEXIS 498; 2026 WL 2819776 (2026).**

Moore owns residential property in the City of Pittsburgh. After receiving complaints from Moore's neighbors, City of Pittsburgh Operations Inspector Ben Carozza visited the Property and observed chickens and a chicken coop. The City charged Moore with violating Section 922.02A.1 of the Code, which requires a record of zoning approval for all development permitted under the Code, including "Urban Agriculture (Accessory Use) With Animals," under Section 912.07B of the Code. A magisterial district judge found Moore guilty and imposed a fine of $500. Moore filed a notice of appeal from the summary conviction in the trial court.

On appeal from the trial court, Moore argued that she was not required to obtain a zoning permit to raise chickens for non-commercial agricultural use. The Commonwealth Court affirmed the trial court.

The court found that Moore failed to include her argument regarding the non-requirement of a zoning permit in her Rule 1925(b) Statement, resulting in waiver of the issue. Even if preserved, the court determined that the Zoning Code explicitly requires a permit for housing chickens, regardless of compliance with other standards.