



AGRITOURISM

STUDY APPENDICES



APPENDIX A: HISTORY OF THE AGRICULTURAL RESERVE

Formation of the Agricultural Reserve

In 1964, Montgomery County adopted its first General Plan – *The General Plan (On Wedges and Corridors) for the Physical Development of the Maryland-Washington Regional District in Montgomery and Prince George's Counties*. This plan was a precursor to the smart growth concept, concentrating development along transportation corridors and preserving wedges of open space between the corridors. The plan combined fiscal and social responsibility by avoiding haphazard or “leapfrog” development and established future infrastructure extensions like roads, water, sewer, schools and emergency services.

The 1969 General Plan Update reiterated the policies of the 1964 plan, but the rural areas of the county were discussed as one large “wedge” without distinguishing between different land uses. The 1969 “Program Open Space,” established by the Maryland Department of Natural Resources, provided financial and technical assistance to local subdivisions for the planning, acquisition and/or development of recreational land or open space areas. This program symbolized Maryland's efforts to conserve natural resources while providing exceptional outdoor opportunities for residents. This program was the first to implement land preservation measures and conceived the idea of an Agricultural Reserve in Montgomery County.

Montgomery County adopted its first Adequate Public Facilities Ordinance (APFO) in 1973. An APFO is an important growth management tool used by rapidly growing counties and municipalities to direct growth in suitable areas where facilities such as roads, sewers, public water and schools are adequate. The same year, the County Council broadly applied the Rural Zone designation to most of the land in the “Rural Wedge” through a Sectional Map Amendment. The Rural Zone created a lower density cap of one unit per every five acres, setting the foundation for protection of the county's farmland and open space.

By the late 1970s, it was increasingly clear that the Rural Zone was ineffective in reducing farmland conversions to non-agricultural uses. The county determined that the existing septic system suitability policy was inadequate to guide future population density. However, the lack of public water or sewer did not deter development activity, especially given new advances in small scale community sewerage system technology. The county reviewed and evaluated the viability and methods of protection of the low-density rural areas, resulting in the 1979 “Issues and Alternatives Report for the Protection of the Rural Wedge.” This report identified that an economically viable critical mass of farmland still existed in the county and identified alternative methods for the preservation of that land.

Four master plans and studies completed in 1980, including the *Preservation of Agriculture and Rural Open Space (AROS) Functional Master Plan*, the *Olney Master Plan*, the *Sandy Spring / Ashton Special Study Plan* and the *Poolesville Vicinity Master Plan* initiated and formed the Agricultural Reserve. These plans and studies identified specific agricultural protection areas and techniques, the Rural Cluster zone and the Rural Density Transfer (RDT) zone.

Transfer of Development Rights and Building Lot Terminations

Lands designated as the Agricultural Reserve in the 1980 *AROS Plan* were in the Rural Density Transfer (RDT) zone.¹ The development density within the RDT zone was one unit per 25 acres, a significant “downzoning” from the one unit per five acres allowed in the rural zone. To compensate landowners for this decrease in allowable density, the Transfer of Development Rights (TDR) program was implemented. This program established density “sending areas” and density “receiving areas.” Property owners in the RDT zone could “send” their density to other areas in the county by selling their excess development rights to land developers in those specified receiving areas, who could then use this “bonus density” in their projects in the receiving areas.

The number of development rights available to a landowner was based on the density of the Rural Zone at the time: one right per five acres. Thus, an owner who owned 100 acres of land would have 20 development rights. Theoretically, these 100 acres could be further subdivided into four 25-acre lots, using four of those 20 rights, but would leave 16 rights to sell to a developer for a project elsewhere in the county. Or that owner could retain one right for their dwelling unit and sell 19 rights.

The owners of land in the Ag Reserve could sell their development rights and still retain the title to their land without the need to carve out small residential lots from a farm. The sale of these rights could help finance farm equipment or make other capital improvements to the farm and offered an economic incentive to farmers to resist development pressure.

In 2013, the Building Lot Termination (BLT) Program was created, establishing a new land preservation tool for properties in the Agricultural Reserve. The BLT program effectively decreased density in the Agricultural Reserve by extinguishing the right to build a dwelling unit and transferring that density to Commercial-Residential (CR) and Life Sciences Center (LSC) zones. Acquisition of whole or partial BLTs is required for all optional method projects in the Commercial-Residential (CR) and Life Sciences Center (LSC) zones and an option for public benefit points in the Commercial-Residential Town (CRT) and Employment Office (EOF) zones.

While the TDR and BLT programs are effective tools to preserve farming, farmland and rural open space, they present some unintended challenges, including a reliance on private development to purchase development rights. Specifically, developers filing recent project applications have not elected to maximize density or pursued an alternative combination of public benefits and amenities to support incentive density, and therefore have not pursued purchase of TDRs or BLTs.

While the TDR and BLT programs provide an opportunity for landowners to sell their development rights, the market to purchase these rights is not robust. Further, removal of the development rights reduces equity in the property, which can limit the ability for landowners to secure financing for continued capital and operational expenditures. These are important factors in the evolution of agricultural education and tourism activities, as these initiatives provide an opportunity for farmers to diversify their income and enhance the economic viability of continuing farming operations.

¹ The RDT zone was renamed the Agricultural Reserve zone with the 2014 comprehensive zoning code rewrite.

APPENDIX B: EXISTING AGRICULTURAL EDUCATION AND TOURISM AND HERITAGE TOURISM

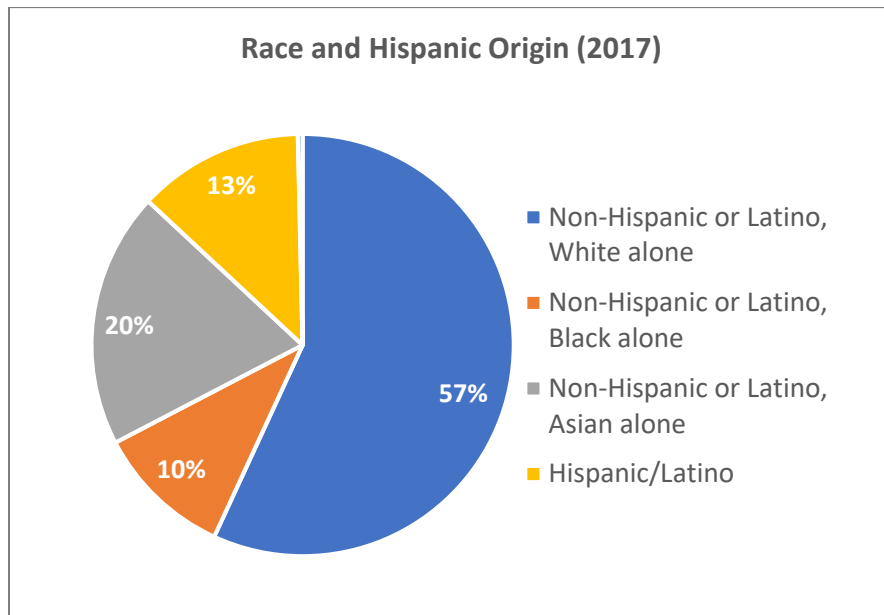
<u>Agritourism and Heritage Tourism Businesses and Sites</u>	
1	Agricultural History Farm Park and Newmantown
2	Aix La Chapelle Farm
3	Alden Farms
4	Audubon Naturalist Society Woodend Sanctuary
5	Black Ankle Vineyards
6	Blueberry Gardens
7	Boyd's Negro School
8	Brooke Grove Farm
9	Brookeville Beer Farm
10	Burnt Hill Project (Pending)
11	Butler's Orchard
12	Calleva Farm
13	Camp Olympia
14	Darby Store
15	East Rivendell Farm
16	Elder Pine Brewing and Blending
17	FarmAtHome Produce
18	Fox Hollow Farm
19	Great Meadows Farm
20	Greystone Farm
21	Hyattstown Mill
22	Heyser Farms
23	Historic Button Farm
24	Homestead Farm
25	Jerusalem
26	King Barn Dairy MOOseum
27	Kingsbury Orchard
28	Kingsley Schoolhouse
29	Lewis Orchard
30	Lockhouses and Canal Quarters (Lockhouse 6, 10, 21, 22 and 25)
31	Lone Oak Brewing Company (Pending)
32	Madison Fields
33	Meadowbrook Stables
34	Mills and Mill Ruins
35	Naughty Pine Nursery
36	Oakley Cabin (The Friends of Oakley Cabin and the Underground Railroad)
37	Pleasant Valley Farm Produce
38	Pleasant View Historic Site

39	John Poole House
40	Poolesville Town Hall Bank
41	Poplar Spring Animal Sanctuary
42	Potomac Horse Center
43	Red Wiggler Community Farm
44	Reddemeade Equestrian Center
45	Rock Hill Orchard & Woodbourne Creamery
46	Rocklands Farm & Winery
47	Sandy Spring Museum
48	Sandy Spring Slave Museum and African Art Gallery
49	Seneca Creek State Park
50	Seneca Quarry Master's House
51	Seneca Quarry Ruin
52	Seneca Schoolhouse
53	Smithville School Museum and Education Center
54	Soleado Lavender Farm
55	Sugarland Ethno-History Project
56	Sugarloaf Mountain Vineyard
57	Susanna Farm (Pending)
58	Tusculum Farm
59	Waredaca Farm and Brewing Company / Camp Waredaca
60	Warren Historic Site
61	Waters Orchard and Doc Waters Cidery
62	Wheaton Park Stables
63	White's Ferry
64	Windridge Vineyards
65	Woodland Horse Center
66	Woodstock Equestrian Park
67	61 Vineyard (Pending)
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69	Patuxent River and tributaries
70	Piedmont
71	Historic farm view sheds
72	Native American view sheds
73	Woodlands, Meadows and Rolling Hills
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75	C&O Canal towpath
76	Greenway Trail
77	Seneca hike and bike trails
78	Patuxent hike and bike trails
79	MNCPPC hike and bike trails

80	C&O Scenic Byway
81	Rustic Roads
82	Civil War Trails
83	Walking tours of Poolesville and Brookeville

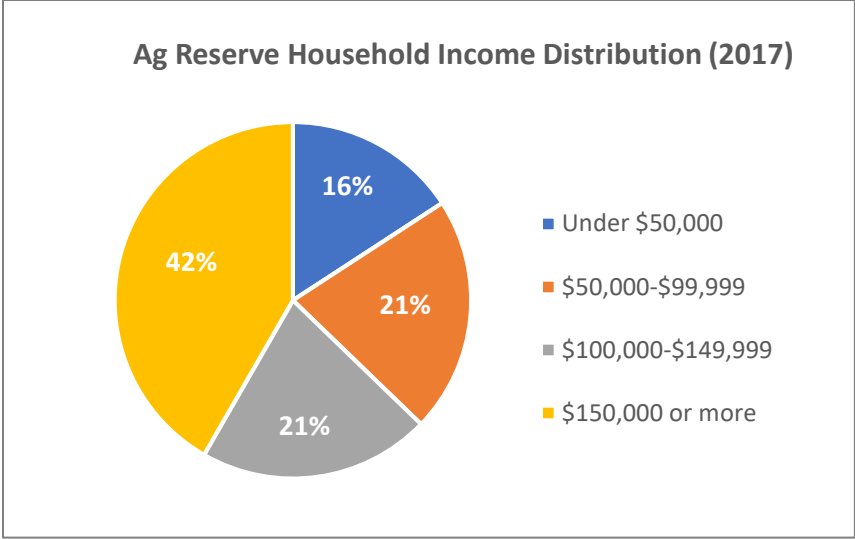
APPENDIX C: AGRICULTURAL RESERVE – DEMOGRAPHIC ANALYSIS

The total population of the Agricultural Reserve was 36,503 in 2017, less than 4 percent of Montgomery County’s total population. The average household size was 2.96, larger than the county’s average household size of 2.63. Though the age distribution of the residents in the Ag Reserve is like the rest of the county, the racial and ethnic makeup of the Ag Reserve is different. The majority of residents in the Ag Reserve are white (55 percent) as compared to the county’s 45 percent. The percentage of black (10 percent) and Hispanic residents (12 percent) are lower in the Ag Reserve, compared to the county (18 percent and 19 percent, respectively), while the percentage of Asian residents is higher (19 percent compared to the county’s 15 percent).



Source: 2013-2017 American Community Survey, 5-year estimate.

Most households (86 percent) in the Ag Reserve own their homes, as compared to 66 percent of the entire county. The average income of households in the Ag Reserve is \$153,271.10, higher than the county average of \$140,141.38. There are also a higher percentage of households (42 percent) earning \$150,000 or more, in comparison to the overall county (32 percent). Most households are families headed by married couples (68 percent), higher than those countywide (54 percent). Most residents commute to work by driving alone (77 percent), as compared to 65 percent of county residents.



Source: 2013-2017 American Community Survey, 5-year estimate.

In 2017, 90 percent of farms in Montgomery County reported access to the internet, compared to 77 percent in 2007. While 90 percent of Montgomery County farms have access to the internet, the service is often satellite-based with limited reliability.

7/1/2019

MONTGOMERY COUNTY AGRITOURISM STUDY COMPARATIVE REVIEW OF AGRITOURISM POLICIES



Prepared by Rhodeside & Harwell

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INTRODUCTION

PROJECT SCOPE & PURPOSE

Montgomery County has a long history of preserving its rural landscape, and recognizing the importance of its agricultural uses, historic sites and unique open spaces. Since the creation of the Agricultural Reserve in 1980, Montgomery County has been a national leader in the development of innovative land conservation policies. The County's vision of directing growth and development into the appropriate areas with public services, while preserving the County's rural areas, has led to the protection of over 93,000 acres in the Agricultural Reserve. Preservation and enhancement of these rural areas, and enhancement of the agricultural economy, have consistently been major County goals.

At the same time, the agricultural economy nationwide is undergoing significant changes, and this is especially pronounced in urban/rural counties such as Montgomery County, where the access to markets, sophisticated "locavore" consumers, and a growing interest in food sourcing and production, result in more intense uses of farmland that allow landowners more diverse economic options. The growth in agritourism, farm-to-table activities, wineries and breweries, culinary tourism and rural-themed event venues creates both new opportunities and new challenges for the County. While this new diversification of the rural economy offers the opportunity to enhance the economic potential of its agricultural land, it also poses the challenge of how to regulate these activities while protecting the core agricultural, natural and scenic assets of these lands along with the residential communities that surround them.

These issues are the focus of a two-part Zoning Feasibility Study, of which this document represents one half. The purpose of this task is twofold:

1. To consider the potential for agricultural economic and cultural development through appropriate land uses and economic development activities in the rural areas of the County while, at the same time, assessing the feasibility of revisions and enhancements to the County's code and regulatory framework to allow for activities of the emerging rural economy while ensuring the protection and preservation of farmland, historic sites and open space; and
2. To inform the study of agritourism by understanding how other jurisdictions, locally and nationally, are responding to and managing the activities of the changing agricultural economy.

This comparative review of regional and national jurisdictions' approaches to managing and regulating agritourism is intended to serve as a technical input to inform the larger Montgomery County Agritourism Study being developed by Montgomery County Planning Staff under the guidance of an Agritourism Study Advisory Committee. At the same time, the research conducted as part of this task served to inform a parallel effort, and second technical input, to assess Montgomery County code related to agritourism and identify potential future policy and regulatory options to consider.

CRITERIA FOR JURISDICTION SELECTION

Jurisdictions were selected for further study based on the following process:

1. Initial background research was conducted to understand agritourism regulatory issues and best practices generally, and to identify jurisdictions that are national and regional leaders in agritourism.
2. A subset of the jurisdictions identified were then evaluated based on the following criteria to select jurisdictions for further study:

Tier 1 (priority criteria)

- Local / regional competitor (where applicable)
- Similar system of government (county level)
- Zoning ordinance that controls agritourism
- Similar demographics (affluence, customer base, high land values)
- Similar development patterns (close to major metropolitan area, rural-urban interface)

Tier 2 (secondary criteria)

- Overall agricultural profile (#farms, farm acreage, avg. farm size, top crops by acreage)
- Comparable or larger agritourism economy, based on 2012 Census of Agriculture farm-related income
- Range of agritourism activities and similarities with Montgomery County.

Other Factors Considered

- Whether each jurisdiction considered has a designated agricultural reserve or growth boundary, to the extent known
- Recent efforts to revise or study agritourism regulations and policies, to the extent known
- State laws that affect agritourism/zoning
- Generally, how robust the agritourism industry appears relative to other jurisdictions (based on number of online listings, established farm loops/trails, etc.)
- Any unique administrative structures/entities for managing agritourism (for example, Agricultural Ombudsmen in several CA jurisdictions and Howard County, MD; close collaboration between agricultural specialists and planning/zoning staff)

Based on these criteria and other factors, the following eight jurisdictions were selected:

- Albemarle County, Virginia
- Clackamas County, Oregon
- Frederick County, Maryland
- Howard County, Maryland
- Loudoun County, Virginia
- San Diego County, California
- Sonoma County, California
- Thurston County, Washington

Subsequently, after initial research was completed, two additional jurisdictions were added to the comparative review at the request of members of the Agritourism Study Advisory Committee (ASAC). These jurisdictions included the following:

- Rockingham County, Virginia
- Suffolk County, New York

METHODOLOGY

For the selected jurisdictions, research activities consisted of the following:

1. Online research of selected jurisdictions' policies and regulatory approaches; review of jurisdiction websites, news articles, and other available materials to understand agritourism activities in the selected jurisdictions.
2. Review of relevant jurisdiction codes and related jurisdiction materials explaining relevant regulations and policies.
3. Telephone interview(s) with identified representatives of each jurisdiction. Depending on the jurisdiction, these individuals typically represented planning and zoning specialists, agriculture or economic development specialists, and/or staff from more than one department.

ORGANIZATION AND FOCUS OF JURISDICTION PROFILES

Each jurisdiction profile follows a similar structure, addressing the following topics:

- A. **Agritourism Context:** This section provides general information about agritourism activities in each jurisdiction and relevant information about the policy context for agritourism, such as the presence of agricultural and rural road preservation programs, as well as recent or soon-to-be-adopted efforts to revise agritourism zoning and policies.
- B. **Zoning:** This section provides an overview of jurisdiction zoning provisions related to agritourism, In addition to describing the overall approach, specific information addressed includes the nexus of agritourism activities to agriculture, approaches to regulating events and other activities, buildings and parking, roads and traffic, and lodging.
- C. **Other Considerations:** While the scope of research focused primarily on each jurisdiction's approach to zoning for agritourism, conversations with jurisdiction staff and other research often yielded additional information regarding such aspects of agritourism as enforcement, administrative structures and processes, economic development and promotion of agritourism, and approaches to educating the public and farmers about agritourism policies. Where such information was collected, it is summarized in this section.
- D. **Lessons Learned:** While the majority of each jurisdiction profile is factual in nature, jurisdiction staff frequently offered advice and "lessons learned" when they could. These kinds of observations are collected in this section. While not comprehensive and reflecting only the opinions of jurisdiction staff consulted, and the insights offered, these observations do offer some additional insight into the considerations on the minds of those implementing and managing agritourism in each jurisdiction.
- E. **Selected Definitions:** For use as reference, this section selects and compiles a selection of jurisdiction definitions related to agritourism that may inform Montgomery County's Agritourism Study.
- F. **Additional Resources:** This section compiles links to relevant resources, such as zoning ordinances, relevant policy documents, and websites that promote agritourism.
- G. **Jurisdiction Contacts:** This section lists each jurisdiction representative consulted as part of the research.

Finally, jurisdiction profiles are grouped by state to account for the ways in which state policies influence how localities regulate and manage agritourism. Relevant policies and legislation for each state are briefly summarized prior to the profiles of jurisdictions from that state.

A summary overview of key aspects of each jurisdiction's approach to agritourism is included as an appendix to this document.

STATE OF CALIFORNIA

Compared to some other states, State of California law has limited impact on agritourism requirements and how such activities are managed at the local level. Relevant state policies identified in conversations with jurisdiction staff include the following:

- State health laws include some provisions stating what can and cannot be sold, as well as Weights & Measures for items sold over a scale.
- California retail food code includes some requirements related to selling prepared foods.
- Through the Williamson Act, the state enables landowners to preserve 10 acres or more in return for tax benefits.

SAN DIEGO COUNTY, CALIFORNIA

A. AGRITOURISM CONTEXT

Located in southwestern California, San Diego County is California's second most populous county and includes the City of San Diego as its county seat. At the same time, San Diego County has a \$1.7 billion dollar agriculture industry, consisting mostly of smaller farms. Due to its location in a highly urbanized region, and the number of urban areas within county borders, the county has considerable loss of agricultural land and pressure to redevelop remaining agricultural areas into suburban or semi-rural land uses—primarily single-family housing. Agritourism is seen by the County as one means of preserving agricultural land while enabling agricultural operations to broaden their income streams and remain where they are.

These factors were the impetus for two sets of recent revisions to the County's agritourism regulations, both billed as "agriculture promotion" amendments. In 2014, the County revised its agritourism regulations to reduce barriers to agritourism. Subsequent code revisions in 2017 added new tiered winery regulations, intended to foster agritourism and spur interest in wine tasting and growing grapes while adding new definitions and accessory uses. The adoption of both sets of agritourism regulations was motivated by concerns that agricultural operators would sell to developers if they were not given an alternate means to make a living, particularly given the cost of land and the cost of providing water to farms. By designating agritourism uses as accessory uses, the County's hope is that this will enable farmers to earn a good income and continue farming.

Agritourism activities in the county range from pick-your-own, farm tours, harvest festivals, flower farms, and olive oil producers to a growing number of wineries and vineyards. The area also has a strong microbrewery presence, both within the City of San Diego and outside of it, and has experienced an increasing demand for hops and microbreweries.

Policy Context

The County offers two options for preserving agricultural land: land preserved under the State of California's Williamson Act (1965) and land preserved under the County's Purchase of Agricultural Conservation Easement (PACE) program. In the latter program, which is voluntary, willing agricultural property owners are compensated by the County for placing a perpetual easement on their property that limits future uses to agriculture. As a result, the agricultural land is preserved in perpetuity, while property owners receive compensation to make continued agricultural uses more viable.

In unincorporated County areas, which include the majority of agricultural areas, most roads are privately owned. This limits the County's ability to manage the character of these roads—many of which are constructed of dirt or gravel—on a broad scale.

B. ZONING

The County defines agritourism as *"an accessory agricultural use, which includes the act of visiting a commercial agricultural enterprise for the purpose of enjoyment, education or active involvement in the activities of the farm, ranch or agricultural operation."* The County's zoning code considers agritourism to be an accessory use to a commercial agriculture operation, provided that certain criteria are met.

Allowed activities include U-Pick operations, on-site tours, on-site agricultural instruction or demonstrations, lectures or classes about agriculture related topics and participation in agricultural operations on the premises.

Uses that are *not* considered agritourism uses include petting zoos, pony rides, mazes, and carnival events; weddings and/or wedding receptions; restaurants or food stands; retail or gift shops; retreats, festivals, live music, dances; and public stables, or boarding and breeding stables. Furthermore, no amplified sound is permitted as part of agritourism activities.

Uses that are regulated separately in the code include wineries, agricultural stands, and bed and breakfast uses.

The winery ordinance, adopted in 2017, includes four tiers, or classifications, of wineries. These tiers include Wholesale Limited Winery, Boutique Winery, Small Winery, and Winery. The Wholesale Limited and Boutique classifications are intended for smaller winery operations and are allowed without a discretionary permit, but must meet a set of performance criteria. Of these tiers, Boutique wineries are allowed to have on-site tasting rooms and sales to the public, while these activities are prohibited for Wholesale Limited. The Small Winery and Winery tiers encompass larger-scale winery operations, which may allow special events and require a discretionary permit. The Small Winery tier requires an Administrative Permit, while Winery requires a Major Use Permit.

According to the County’s FAQ document for the winery ordinance, both permitting processes “will ensure that the location, size, design and operating characteristic of the winery will be compatible with surrounding land uses.” The ordinance limits Boutique and Wholesale Limited wineries to two agricultural zones, while Small Winery and Winery are allowed in both agricultural and a range of rural and industrial zones. Each tier is also subject to differing requirements (described below under “On-Site Production And ‘Locally Grown’ Requirements”) regarding how much of the product must be grown on-site.

County zoning also includes two tiers of microbreweries and distilleries (small and large) with differing requirements, including the maximum production allowed per year and the amount of grain required to be grown on-site and locally.

NEXUS TO AGRICULTURE

Agritourism uses must be accessory to existing and operating agricultural uses, except for wineries. The County interprets the accessory nature of agritourism stringently, such that events and activities considered by other jurisdictions to be agritourism uses—for example, corn mazes, food stands, weddings and other events—are not allowed on farms.

EVENTS AND ACTIVITIES

Agricultural Operations

No weddings or for-profit events are allowed at agricultural operations; only non-profit events are allowed by right.

As of 2018, the County Board of Supervisors had asked staff to look at the potential of for-profit events at agricultural operations to further boost agritourism. Options were to be presented to the Board in late 2018. This revisiting of event requirements was motivated in large part by complaints from an apple-growing region of the county, where one particular operator who wanted to hold a for-profit events and sell apple pies along with the apples. The operator sought the ability to conduct a U-pick operation for nine weekends along with food sales.

Wineries, Breweries, and Distilleries

Event requirements and restrictions for wineries depend on a winery’s classification under the tiered winery ordinance. A winery classified as a Small Winery or Winery may hold events as specified in the associated

Administrative Permit or Major Use Permit. However, events—including weddings and parties—are prohibited at wineries classified as Boutique Wineries or Limited Wholesale Wineries. For the two tiers of microbreweries and distilleries, events are regulated in a similar manner: the smaller category of breweries and distilleries is limited to the types of events allowed under the county’s agritourism requirements, while events such as weddings may be allowed with an Administrative Permit.

County staff indicate that wineries, in particular, want to hold weddings, but roadway and noise impacts have prevented weddings from being allowed at this point.

BUILDINGS AND PARKING

The County regulates building size based on the size of the lot and the operation, along with requirements on how much of the surrounding site must be suitable for, or in active use as, agricultural land. Representative requirements include the following:

- Breweries, Distilleries, and Wineries: Maximum floor area determined based on lot size, up to a maximum of 5,000 square feet. One tasting/retail sales area that is accessory to beer or spirits production is allowed and may not exceed 30 percent of the total square footage of all structures.
- Creamery: Maximum floor area based on lot size up to 5,000 square feet maximum.
- Processing Facilities and Agricultural Stores: For processing facilities, at least 50 percent of total gross area must be “suitable and available for agricultural, horticultural, animal husbandry or open space use.” Operations greater than 200 acres in size must have at least 40 acres devoted to “actual active agricultural, horticultural, or animal husbandry use.” Agricultural stores carry similar requirements, which vary depending on the size of the store, along with maximum building sizes (1,500 square feet or 3,000 square feet), depending on the category of agricultural stores.

Adequate off-street parking must be provided to accommodate all employee and customer parking needs on the premises, and must be located entirely outside of public rights-of-way other than designated parking spaces. No parking on private roads is allowed.

ROADS AND TRAFFIC

In unincorporated County areas, most roads are privately owned. The county only has several public roads, while many neighborhood and agricultural roads are private. Some private roads are paved, but many are constructed of dirt or gravel. People who live on and use those roads typically have easements and agreements to repair damage and address other issues that may arise. According to County staff, this ownership structure leads to significant amounts of complaints from owners of portions of roads about traffic as well as objections to paying for “somebody else’s traffic.”

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

Wineries

The Wholesale Limited, Boutique and Small Winery tier all require that a minimum of 25 percent of the fruit used in winemaking is grown on the property where winemaking is occurring. In addition, grapevines must be planted on the property, and the vines must be producing fruit at the time of the tier designation. If the fruit is not grown on-premises, a Major Use Permit is required for a winery to operate.

The County also requires a certain percentage of grapes to be grown locally. For Wholesale Limited and Boutique wineries, up to 75% and up to 50% of grapes respectively must be sourced from within San Diego County, while 25% is required for the Small Winery tier. The Winery tier carries no origin requirement.

The ordinance also addresses, for each tier, the percentage of fruit, juice, or wine from outside San Diego County that may be utilized, as well as whether it may consist of fruit, juice, or wine. For Wholesale Limited and Boutique wineries, the product from outside the county may consist of fruit or juice, but not wine; wine produced outside the county is allowed for the Winery and Small Winery tiers.

Breweries and Distilleries

For small breweries and distilleries, a minimum of one acre of the premises is required to be planted with hops, barley or other grain, and/or used for the production of honey or other ingredients used in the on-site production of beer, or planted with grains or vegetables used in the on-site production of distilled spirits. Of the total ingredients used in brewing or distilling, at least 25 percent is required to be grown within San Diego County, while up to 75 percent may be grown outside of San Diego County. For larger breweries and distilleries, two acres of grain must be planted with grain, while percentages of the product grown in and outside of the county are the same.

LODGING

As part of the 2017 code revisions, the County amended the definition of agricultural homestays to make it less restrictive by removing limitations on the size of the lodging structure and the length of stay. According to County staff, homestays, in which visitors spend time on a farm for education, are considered agricultural uses because “people are completely immersed in the environment.”

Bed and breakfasts are regulated separately from agriculture. There are general, countywide requirements, but no specific requirements for agricultural zones.

C. OTHER CONSIDERATIONS

ENFORCEMENT

- Enforcement is conducted by the Code Enforcement division with the Planning and Development Services department and occurs by complaint only. Potential violations are investigated only if a neighbor or resident of the unincorporated portion of the county has contacted staff or submitted a code enforcement form. However, the County Board of Supervisors seeks to avoid the perception that staff are referring complaints to Code Enforcement in order to generate fee revenue.

EDUCATION AND COMMUNICATIONS

- For permitting, people typically start out at the zoning counter as there is no designated contact for such matters.
- UC Farm Extension has staff who specialize in Agritourism businesses and offers a lot weekend classes on how to start an agritourism business. The County also has a home advisor, in which UC extension staff works with the County’s Agriculture Weights and Measures Department too look at ways to streamline requirements related to pesticides, regulations, inspections and other considerations for agricultural operations, while helping people understand the permitting process and what the Agriculture Weights and Measures Department does.

D. LESSONS LEARNED

Lessons learned shared by County staff included the following:

- When streamlining regulations, it is really important to look at the impact of potential regulations—both potential pitfalls and their impact over time—to ensure that people will actually use or take advantage of them. For example, County staff were told by a dairy operator that regulations allowing mobile butchering (as an alternative to traveling to Los Angeles for this service) were ineffective in that the cost of shipping waste products to Los Angeles would be too high, making mobile butchers infeasible.
- County staff believes that the tiered wineries ordinance seems to be working in that it is supporting the wineries better than the previous ordinance. However, weather-related issues (periods of very high heat that have killed or damaged grapevines) have raised questions about whether some portions of the winery ordinance need to be temporarily waived to allow vintners to rebound from high heat events. The County is considering whether there is a regulatory response to issues of weather and climate.
- Thus far, the County has received only one application for microbreweries, even though they were expecting more applications to be coming in. County staff believes that competition from the City of San Diego and the plethora of options in the region may be partly responsible.
- One obstacle to agriculture in the County is fractured rock. As a result, there are areas in certain rural parts of the county where someone can drill and hit water, but then suddenly lose water supply if they use all of the water in the rock formation.
- County staff expects that there will be a need to refine its agritourism ordinances at some point in the future. Staff are finding that people are looking for less regulation and expect that people will continue to ask for changes to the regulations. However, at this point in time, County staff are unsure specifically what types of changes those might be, in terms allowing new uses.

E. SELECTED DEFINITIONS

Agricultural Tourism (also Agri-tourism or Ag-tourism): An accessory agricultural use, which includes the act of visiting a commercial agricultural enterprise for the purpose of enjoyment, education or active involvement in the activities of the farm, ranch or agricultural operation.

Commercial Agriculture: Shall mean a routine and ongoing enterprise associated with a farm, grove, dairy, or other agricultural business, and shall include: 1. The cultivation and tillage of soil; crop rotation; fallowing for agricultural purposes; the production, cultivation, growing, replanting and harvesting of any agricultural commodity including viticulture, vermiculture, apiculture, or horticulture; 2. The raising of livestock, bees, fur bearing animals, fish or poultry, and dairying for sale; 3. Any practices performed by a farmer on a farm as incident to or in conjunction with farming operations, including the preparation for retail sale, delivery to storage or to market, or delivery to carriers for transportation to market; or 4. Ordinary pasture maintenance and renovation and dry land farming operations consistent with rangeland management and soil disturbance activities. All such activities must be consistent with the economics of commercial agricultural operations and other similar agricultural activities. Commercial Agriculture does not include animal raising, crops or agriculture for personal consumption.

Microbrewery: A brewery that produces no more than 15,000 barrels of ales, beers, meads, hard ciders, and/or similar beverages on-site per year, in keeping with the regulations of the Alcohol Beverage Control (ABC) and

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and other applicable state and local requirements. (See Brewery)

Microbrewery, Agricultural: A Microbrewery allowed as an accessory use to active Commercial Agriculture operation producing hops, barley or grain grown on the premises for brewing on-site.

Micro-Distillery, Agricultural: A distillery allowed as an accessory use to an active Commercial Agriculture operation producing grains or vegetables the premises for distilling on-site.

Mobile Custom Butchering: A motor vehicle or trailer, licensed by the Department of Motor Vehicles that is a self-contained United States Department of Agriculture (USDA) approved and inspected mobile slaughter facility providing a service to farmers under the CFDA custom exemption for the consumption of the animal by the owner, the owner's family, farm workers and non-paying guests. Subject to all USDA restrictions.

Stand, Agricultural: A structure for the display and sale of farm products with no space for customers within the structure itself.

U-Pick or Pick-Your-Own Operations: An accessory use as part of a Commercial Agriculture operation such as a farm, orchard or grove where the customers themselves harvest the products grown on-site.

F. ADDITIONAL RESOURCES

County Zoning Ordinance (see especially Part 6, including 6157)

<https://www.sandiegocounty.gov/content/sdc/pds/zoning.html>

FAQs Related to Agricultural Tourism (San Diego County)

<https://www.sandiegocounty.gov/content/dam/sdc/pds/zoning/formfields/PDS-207.pdf>

FAQs: Tiered Winery Ordinance

<https://www.sandiegocounty.gov/content/dam/sdc/pds/docs/PDS586.pdf>

G. JURISDICTION CONTACT

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Land Use/Environmental Planner
Planning & Development Services
County of San Diego

SONOMA COUNTY, CALIFORNIA

A. AGRITOURISM CONTEXT

Located a two-hour drive from the cities of San Francisco and Oakland, the county has a large and established agritourism economy, supported by a well-established Farm Trail initiative. Although known for its large number of wineries, farm tourism is also growing and diversified, ranging from pick-your-own, pumpkin patches, and dairy operations to culinary tours, farm-to-table activities, and ranches.

Policy Context

Sonoma County has an agricultural preserve program to guide the long-term preservation of agricultural and open space lands. The program is governed by the Williamson Act (also known as the California Land Conservation Act) and is also subject to County requirements under the [Agricultural Preserves and Farmland Security Zones Uniform Rules](#) and the terms of recorded contracts between landowners and the county. Under the Williamson Act, landowners may enter into agreements that limit the use of the land to agricultural uses, in exchange for tax benefits.

No rural roads preservation program was identified as part of this research.

B. ZONING

The County does not strictly define agritourism. Its code regulates agritourism uses, but the term is not specifically called out in the code. Instead, the County's "Cultural and Special Events" definition is typically applied to agritourism events. The County's General Plan, however, does include a series of goals and policies related to "visitor serving uses" in agricultural areas. Specifically, the Plan recommends that the County "[a]llow new visitor serving uses and facilities in some agricultural areas but limit them in scale and location. In addition," these uses must be beneficial to the agricultural industry and farm operators and compatible with long term agricultural use of the land."¹

The County's zoning includes four agricultural districts: Land Intensive Agriculture, Land Extensive Agriculture, Diverse Agriculture, Resources and Rural Development. In addition, smaller agricultural parcels are located in the Agriculture & Residential and Rural Residential Districts. Allowable uses are spelled out for each district, but agritourism is not mentioned specifically.

Agritourism uses allowed by right in these districts are primarily limited to farm stands in the four agricultural districts; however, sales must comply with what is allowed under the California Retail Food Code. Most other uses require some form of permit.

NEXUS TO AGRICULTURE

The Planning Department applies the County's definition for "Special/Cultural Events" to agricultural events such as a pumpkin patches and, accordingly, requires a permit for such events. While the County's code does not specifically define agritourism or its relationship to agriculture, the Agriculture Elements of the County's General Plan does state that visitor-serving uses should be allowed in all agricultural land categories if they support and do not adversely affect the agricultural production activities of the area. Further, the Plan states that "visitor serving

¹ <https://sonomacounty.ca.gov/PRMD/Long-Range-Plans/General-Plan/Agricultural-Resources/>, page AR-12

uses shall promote agriculture and enhance marketing of Sonoma County agricultural products, but shall be secondary and incidental to agricultural production.”²

EVENTS AND ACTIVITIES

Agricultural Operations

Farm stands are allowed by right in all four agricultural zoning districts. Seasonal events such as pumpkin patches, as well as activities to increase the appeal of pumpkin patches, such jump houses, corn mazes, and slides, also require either a use permit or a zoning cultural permit, along with the fees associated with each.

The California Retail Food Code imposes additional restrictions on farm stands. Anything sold that goes beyond what is allowed in the Retail Food Code requires either a Special/Cultural Event permit (for activities that occur once or a few times per year) or a Conditional Use Permit (for ongoing events). No permit is required for produce sales, as long as all products for sale are produced on the farm, but the sale of off-farm products as well as the sampling or sales of package food require all require a permit. Permit requirements are more intensive for the sales of perishable foods such as cheeses and meats. Additional Health Department permits are required for all of the aforementioned activities, including farmstands.

Weddings are allowed on farm/ranch parcels under the County’s Cultural and Special Events definition. However, according to County staff, Planning Department does not “tend to look favorably on parcels doing these types of events.” Weddings require a conditional use permit if the farm wants to become an “event center,” which allows the farm/ranch to rent their facilities up a specified number of times a year up to a specified number of people. In this regard, “farms and ranches are treated just like the wineries.”

Wineries

Any and all events at wineries require a use permit, which as a rule of thumb typically covers three events during a 90-day period; anything beyond the three-events-in-90-days threshold is considered an ‘event center’ and subject to a Conditional Use Permit. The size of events is managed on a case-by-case basis.

Special Events/ Cultural Events are defined in the Sonoma County Zoning Ordinance as “*periodic special events which attract a large gathering of people such as parades, concerts, festivals, races, or any large gathering where amplified music, advertisement to the general public, or a fee is charged.*” A zoning permit is required for events that have any one or more of the following characteristics: live amplified music; admission fees; more than a one-day event or a one-day event beyond the hours of 7:00 am to 11:00 pm; overnight sleeping accommodations; an event occurring more than once in a 30-day period; an event publicized to the public at large through printed advertisements, newspaper, radio or television; sale of food or beverage.

Representative allowances under a conditional use permit include 25 “agriculture promotion events” per year, with a maximum attendance of 190 people per event. An “agriculture promotion event” means they will serve some farm products at the events along with information about the products.

The Planning Department does not require permits for Sonoma County Farm Trails events, which typically occur two time per year and involve farm visits.

² <https://sonomacounty.ca.gov/PRMD/Long-Range-Plans/General-Plan/Agricultural-Resources/>, page AR-12

According to County staff, the County is now looking for ways to “rein in” winery events, particularly the number of events. A planned re-evaluation of County zoning requirements was delayed due to recent wildfires in the county, but the County intends to assess criteria for evaluating winery event applications and has begun “working on definitions of events and authorizing use provisions in zoning districts for winery events distinct from other agricultural promotional events.”³

BUILDINGS AND PARKING

Section 7-7 of the Sonoma County Code requires a building permit for farm stands and farm retail sales over 120 square feet in size. There are building permit exemption provisions for “...buildings designed and constructed for use in housing farm machinery, animals, supplies or products that are harvested from or utilized on a parcel of land,” provided that an agricultural use presently exists on the property. Although the agricultural building does not need a building permit, the design and construction must comply with building code requirements and applies only to parcels greater than five acres in size.

Buildings for uses such as agricultural processing facilities, and farm retail sales are subject to minimum parcel size and maximum square footage requirements, while farm stands have no minimums or maximums. The Zoning Code does not provide a full list of standards for tasting rooms, which vary site to site and are determined on a case-by-case process through a discretionary review and hearing process for use permits.

Size requirements for a range of structure types are summarized below.

TYPE OF FACILITY	MINIMUM PARCEL SIZE	MAXIMUM SQUARE FOOTAGE
Farm Stand	No minimum	No maximum
Small-Scale	2 acres	3,000 square feet for lots 2-5 acres
Agricultural Processing		5,000 square feet for lots 5 acres or greater
Farm Retail Sales	2 acres	500 square feet
Tasting Rooms	Varies; determined on a case-by-case basis	Varies; determined on a case-by-case basis

ROADS AND TRAFFIC

Traffic and noise are recurring impacts resulting from both winery events and normal weekend traffic in areas with high concentrations of wineries. According to County staff, this is due to visitor traffic combined with narrow rural roads. In some locations, residents report not being able to leave their homes on weekends during certain times of the year, due to the amount of traffic.

Currently, the County requires a traffic study with a use permit. Other measures include requiring turn lanes and off-road parking. Many of the county’s roads are under the jurisdiction of California Highway Patrol and, thus, must meet the Highway Patrol’s requirements. While “not very onerous,” some of the restrictions and requirements “would make it very difficult for a small farm” to undertake agritourism projects; however, since many of these farms tend to bypass the permitting process, this issue has not come up. In Sonoma County, roads are allowed to be widened, but doing so requires taking of property through eminent domain.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

³ Permit Sonoma web site: <https://sonomacounty.ca.gov/PRMD/Regulations/Agricultural-Uses/>

On-site production requirements vary depending on the type of activity:

Farm stands may occur by right if 100% of the products come from the farm; otherwise, a zoning permit is required. This requirement is due to the need to be able to trace products if needed, such as if customers get sick after consuming a product.

For small-scale agricultural processing, at least 70% of the agricultural commodities used in the processing must be grown on-site or on lands owned or leased by the farm operator.

For wineries, there is not a percentage requirement that grapes need to be grown on-site. The terms of use permits may limit how much wine can be made or establish a minimum portion of the property that must be devoted to vineyard uses. County staff indicate that such considerations may be addressed by future updates to the County’s winery requirements.

LODGING

The County distinguishes between Bed & Breakfasts, Farmstays, and Vacation Rentals, and has different requirements for each, in terms of what is allowed and in which agricultural zoning districts each can be located. As shown in the table below from County zoning, each category of lodging has its own requirements pertaining to such considerations as the number of rooms allowed, the number and types of meals that can be served, maximum number of buildings permissible on the site.

	Farmstay	Bed & Breakfast	Vacation Rental
Maximum Rooms	5 with zoning permit	1 with zoning permit, 2-5 with use permit	5 with zoning permit, 6+ with use permit
Occupancy per Room	2 people, excluding children under 3 years of age		
Buildings Allowed	Primary Residence or Guest House		Residence or Guest House
Agricultural Education element	Required	Not applicable	
Meal served – included in price of lodging	Any meal(s)	Breakfast only	Not applicable
Posting requirements for new operations	None	Required for all B&B’s	Required for all Vacation Rentals
Allowed on Williamson Act contracted property	Yes	No	
Special Events	Not allowed without a Special Events permit and then only up to 4 per year.		

Primary Residence: The primary residence of the owner/tenant farmer and any other home on the property that can be designated a primary residence (i.e. property with 20 acre density and owns 45 acres, can have 2 primary residences).

Guest House: maximum of 640 square feet, one half or full bathroom, no kitchen.
 Recommendation: if you do plan to use a second primary residence or a guest house you should research the property at PRMD to make sure the building designations are correct.

C. OTHER CONSIDERATIONS

ADMINISTRATION

- The County has a designated [Agricultural Ombudsman](#) position whose role is “to help agricultural producers navigate the permitting process, and facilitate meetings between different county, state and federal agencies.” A County employee housed at the University of California Agriculture and Natural

Resources, the Agricultural Ombudsman created a website with a variety of agriculture and agritourism resources. She spends much of her time consulting with farmers to help determine the kinds of permits required, frequently for activities to add value to existing agricultural land and activities. She also assists others “who want to make something out of local products, even if they” do not produce the product themselves. Moreover, she periodically serves as a liaison to local and state permitting agencies, such as working directly with the Planning Department to streamline agricultural processing requirements. The Ombudsman’s work is ultimately “driven by whatever the community needs.”

ENFORCEMENT

- For planning permits, enforcement is complaint-driven. The Planning Department will not pursue an enforcement issue on its own unless it is aware of a public safety hazard.

EDUCATION AND COMMUNICATIONS

- The County has numerous resources for information documenting the permitting process, providing FAQs to answer common questions, providing other information relevant to agritourism. The Agricultural Ombudsman plays a lead role in providing information, and also conducts workshops from time to time. In addition, other entities, such as [Sonoma County Farm Trails](#), [Sonoma County Tourism](#), [CAL Ag Tour](#), and the [UC Small Farm Program](#) also engage in education and communications regarding agritourism.

ENVIRONMENTAL CONSIDERATIONS

- Currently existing and proposed wineries are not required to assess the impact of water wells and whether drilling for wells will impact neighbors—a result of the fact that California, unlike other states, does not regulate the use of groundwater.

MARKETING AND PROMOTION

- Agritourism is promoted by the County through [Sonoma County Tourism](#). In addition, the non-profit [Sonoma County Farm Trails](#) conducts extensive marketing and promotion, including production of a countywide Farm Trails map. The [California Agricultural Tourism Directory](#) and the University of California Small Farm Program also help to promote agritourism in the county.

D. LESSONS LEARNED

Lessons learned shared by County staff included the following:

- The County is currently trying to “rein in” winery events due to an overconcentration of wineries and events in areas of the county with large numbers of wineries and narrow roads, which results in significant traffic impacts. A planned re-evaluation of existing winery regulations was delayed due to the impact of recent wildfires and the housing crisis; however, the Board of Supervisors has since directed Permit Sonoma staff to develop regulations addressing agricultural promotional events at wineries and vineyards, such as weddings and concerts, and potential overconcentration in some areas. Residents tend to see the existing conditional use permit process as a formality, as these projects are rarely, if ever, turned down; however, this is not always the case. Most new winery proposals move forward, unless there are compelling reasons to deny it, such as it being too close to existing neighborhoods.
- County staff reports that “wineries are king and have been for many years.” As such, wineries are replacing other traditional agritourism venues, such as nearly all of the Christmas tree farms and some of dairies. Dairies rarely have public visits unless they are also a pumpkin patch.

- From farmers’ perspectives, current permitting requirements are out of scale for agricultural producers, who are often held to the same costs and requirements as wineries. In particular, the cost of permits can be disproportionately high for farmers who want to supplement income with a single seasonal event, such as a pumpkin patch or an on-farm festival. Specific issues include the following:
 - There are no agritourism specific regulations, which means that County staff apply the Special/Cultural Event permit to Agritourism events.
 - The same regulations that are applied for large/areawide events (such as the Iron Man, Grand Fondo) are applied to on-farm/ranch events (for example, renting out the farm for a private party). Unless a farm wants to be an “event center” with regularly-occurring events such as weddings or corporate events, the cost of use permits or special event permits for a small number of events can be prohibitive, costing as much as \$30,000.
 - Agricultural operations that want to rent out space for occasional private parties are “treated like ‘event centers.’” More appropriate requirements might consider the size of the space, place limits on the number of activities, and make a reasonable distinction between property and business owners that want to make a little extra income by renting out their farms and those places that want to upgrade and make private parties part of their regular income stream. Requirements could also “allow for one-offs with no permits or a permit of less than \$1000.
 - For farms/ranches that want to rent their property for special events such as weddings and private parties, doing so requires a Conditional Use Permit, “which is too cumbersome and expensive for small-scale operations to undertake, especially for something that will be supplemental income to help keep the agricultural operation in business. This should be supported with reasonable regulations and fees. A ministerial permit for smaller-scale (definition TBD) agricultural operations would make sense.”
 - In practice, small-scale agricultural operations tend to “fall under the radar” and many do not seek permits for activities such as pumpkin patches, even though they are required. Staff are inclined to “look the other way” when on-farm activities fall under the same category of permits as winery events and other large-scale events.
- Given that the county is both rural and urban, there is a significant amount of NIMBYism that “makes it hard for all but the very diverse and very organic farms.” Local preservation groups fear that the growth of the winery industry is creating a monoculture of crops, and therefore oppose every new winery.
- The County’s General Plan “sets the tone” for what can and cannot happen in agricultural areas. This can create complications when a particular use or activity is not specifically mentioned in the General Plan.“ For example, efforts to change regulations for small-scale ag processing became an “ordeal” because it involved reconciling requirements with the General Plan.
- [Sonoma County Farm Trails](#) is something that “every agricultural community should have” for marketing and promotion.
- Despite the existence of an Agricultural Ombudsman, County departments such as Planning and Agriculture do not always remember that the Ombudsman is there to “help people be more prepared when they come in to the planning department.”

E. SELECTED DEFINITIONS

Special Events/ Cultural Events: Periodic special events which attract a large gathering of people such as parades, concerts, festivals, races, or any large gathering where amplified music, advertisement to the general public, or a fee is charged.

Farm Retail Sales Facility: “... a small-scale retail facility for year-round sales of agricultural products grown or raised on the site or other properties owned or leased by the farm operator, and pre-packaged goods processed from onsite agricultural production, excluding alcoholic products. Examples include dairy and meat products that require refrigeration....”

F. ADDITIONAL RESOURCES

Agriculture Elements of the General Plan

<https://sonomacounty.ca.gov/PRMD/Long-Range-Plans/General-Plan/Agricultural-Resources/>

Agricultural Zoning Ordinance

<https://sonomacounty.ca.gov/PRMD/Regulations/Agricultural-Zoning-Ordinance/>

University of California Agriculture Ombudsman Web Site

<https://ucanr.edu/sites/CESonomaAgOmbuds/>

Permit Sonoma – Agricultural Uses Webpage

<http://sonomacounty.ca.gov/PRMD/Regulations/Agricultural-Uses/>

Sonoma County Farm Trails

<https://www.farmtrails.org/>

G. JURISDICTION CONTACT

- Karen Giovannini
Agriculture Ombudsman
Sonoma County / UC Cooperative Extension

STATE OF MARYLAND

In May 2018, the State of Maryland enacted new agritourism legislation, which establishes a model definition for agritourism. The legislation defines agritourism as follows:

“An activity conducted on a farm that is offered to a member of the general public or to invited guests for the purpose of education, recreation, or active involvement in the farm operation.”

Per the definition, agritourism” includes: (1) farm tours; (2) hayrides (3) corn mazes; (4) seasonal petting farms; (5) farm museums; (6) guest farms; (7) pumpkin patches; (8) “pick your own” or “cut your own” produce; (9) classes related to agricultural products or skills; and (10) picnic and party facilities offered in conjunction with any agritourism activity.

The definition is not a state mandate, but functions as a point of reference for counties developing their own regulations and definitions pertaining to agritourism. As such, it lays the groundwork and provides a starting point for establishing agritourism operations as an allowable use in local zoning. It also clarifies building code requirements for farms participating in agritourism.

In recent years, the State has also passed additional legislation that exempts a growing number of Maryland counties from aspects of the state’s building code requirements for facilities used in conjunction with agritourism activities.

FREDERICK COUNTY, MARYLAND

A. AGRITOURISM CONTEXT

Frederick County is the largest agricultural county in the state of Maryland, with over 1,300 farms in the county, 181,500 acres dedicated to farming, and more than 65 percent of the land zoned for agriculture.⁴ The county's growing agritourism industry, with activities ranging from wineries and breweries (the most of any jurisdiction in Maryland) to pick-your-own orchards, pick-our-own flowers, animal farms, and corn mazes. The county hosts a farm tour event every fall, in which 20 farms participated in 2018.

Current agritourism policy has been in place for 7-8 years and pre-dates recent agritourism legislation on the state level. In late 2018 and early 2019, amendments to craft beverage definitions had been proposed to address craft beverage promotional event requirements and caps in beverage production. Of these, the Farm Based Craft Beverage Promotional Events legislation was passed by the County Council in October 2018 and went into effect December 14, 2018.

Policy Context

The County does not have a formal agricultural reserve, but has an Agricultural Land Preservation Program. The Agricultural Land Preservation office administers a variety of local, state, and federal land preservation programs, including CREP Easements, Critical Farms, an Installment Purchase Program (IPP), a Maryland Agricultural Land Preservation Foundation program (which pays farmers to extinguish their development rights), and participation in the State of Maryland's Rural Legacy program. In 2002, the county adopted a [Rural Roads Program](#) focused on preserving the county's 85-mile network of gravel roads. The program focuses on protecting the "scenic and historic qualities of the roads as a way to support and enhance the agricultural and rural character of the county."

B. ZONING

The County's zoning ordinance defines "Agritourism Enterprise" as:

"Activities conducted on a farm and offered to the public or to invited groups for the purpose of education, recreation, or active involvement in the farm operation. These activities shall be related to agriculture and shall be accessory to the primary agriculture operation on the site. This term shall include farm tours, hayrides, corn mazes, seasonal petting farms, farm museums, guest farm, pumpkin patches, "pick your own" or "cut your own" produce, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above. No use that is otherwise identified in § 1-19-5.310 as permitted with site plan approval or by special exception is permitted as an agritourism enterprise.

Agritourism that meets this definition is allowed by-right in all zoning districts; however, activities need to be related to an agricultural operation occurring on the same site. Outdoor events that fall outside the definition of agritourism are addressed separately under regulations related to "temporary outdoor activities." County staff note that, although agritourism is allowed in all districts, it is logistically restricted by available space: activities

⁴ <http://www.homegrownfrederick.com>

such as pick-your-own flowers, which do not require a lot of land, are occurring in residential districts, while other, more land-intensive activities are limited to agricultural districts.

NEXUS TO AGRICULTURE

As part of the County’s definition of “agritourism enterprise”, activities must be related to an agricultural operation occurring on the same site. The definitions of “Agritourism Enterprise – Farm-Based Craft Beverage Promotional Events,” “Farm Winery,” Farm Brewery,” and “Farm Distillery,” “Roadside Stand (Limited and Commercial)”, and “Agricultural Value Added Processing,” also tie these activities to at least partial agricultural production on the site.

In addition, “Farm-Based Craft Beverage Promotional Events” (described below) are required to serve products primarily grown or produced on the farm.

EVENTS AND ACTIVITIES

“Temporary outdoor activities”—defined to include carnivals, circuses, tent revival meetings, musical festivals, public gatherings, public rallies, dinners, sales, bazaars, and similar activities— require temporary use permits and are subject to additional requirements related to compliance with all safety, health, and environmental standards, the size of the site, buffer zones from adjacent property lines, and “safe and orderly traffic flow.” Up to 12 permits are allowed per year, while the number of visitors is tied to property size.

While the zoning ordinance does not address weddings, County code provides two options for wedding venues as special exceptions in agricultural zones: a Country Inn (which is allowed to host bed and breakfast events and have a restaurant) and historic designation (which does not require a bed and breakfast but must be connected with a historic structure). According to County staff, a lot of wedding operators choose the second option because they do not want to have a B&B, commercial kitchen, and other required facilities. In addition, many choose tents for weddings because tents do not affect the historic part of the property. In response to the shutdown of some wedding events the previous year, the County recently modified its permitting approach, eliminating the previously-available option to conduct events Friday through Sunday with a single permit.

With the December 2018 passage of the Farm-Based Craft Beverage Promotional Event legislation, a separate definition now exists for “Farm-Based Craft Beverage Promotional Events,” which are defined as “[a]ctivities conducted on, and accessory to, the normal and customary agricultural use of the farm, offered to the public or invited groups for the purpose of education, entertainment, and promotion of farm based craft beverage products. Activities may include, but are not limited to, farm based craft beverage festivals and multi-brewery promotional events...” Requiring a one-time Zoning Certificate, these events must serve products primarily grown or produced on the farm and are subject to other restrictions related to the hours of events and amplified music, as well as well the ability to revoke the Zoning Certificate as a result of community complaints.

BUILDINGS AND PARKING

Barns, silos, and other agricultural buildings require a Zoning Certificate. Buildings such as garages are not considered agricultural buildings and, therefore, require building permits.

For processing operations (including craft beverage operations), a Zoning Certificate must be obtained prior to the initiation of the processing operation and/or prior to any building construction related to farm winery, farm brewery, farm distillery, farm distillery tasting room, farm winery tasting room, farm brewery tasting room, or limited farm alcoholic beverages tasting room.”

At the time of this research, the County had changed its tasting room policy in the past year to reduce costs for those establishing tasting rooms. While this process used to require going through the building permit process and creating a site plan, now any tasting room that has a customer service area of less than 1500 square feet (just below the threshold for requiring a sprinkler system) requires only a building permit and not a site plan.

LODGING

Bed and breakfasts are not addressed by the zoning ordinance, but they are allowed in agricultural districts as a special exception. Restrictions include a maximum stay for guests (30 days during a six-month period or 14 consecutive days), limiting meal service to overnight guests, limiting facilities and amenities to use by guests, and setback requirements.

C. OTHER CONSIDERATIONS

ENFORCEMENT

- Enforcement is complaint-driven and enforced by the Zoning Administrator

MARKETING AND PROMOTION

- Marketing and promotion of agritourism includes an annual magazine called Homegrown Frederick and its companion website <http://www.homegrownfrederick.com/>. Participation is free for businesses

D. LESSONS LEARNED

- Overall, County staff report that agritourism has been a “smooth process” and that, overall, there are very few complaints about agritourism businesses. If staff notice something on a farm that should not be happening, will try to address it before it becomes an issue. In general, there are few complaints from the community because they recognize that agritourism events are seasonal events, held mostly on weekends, and mostly for only about 6 weeks or less.
- The biggest concerns in the agricultural zone are weddings and music festivals. Elected officials get a lot of complaints about wedding venues, as some are located too close to neighbors. In some locations, there are weddings four nights a week (Thurs-Sun), which has required adding noise stipulations to permits. When the tasting room legislation came up for adoption, there was a large numbers of people who attended because they thought weddings would be allowed under the legislation. County staff “learned that people don’t want that by-right.” After two wedding venues were shut down, the County changed its permitting policy to eliminate the ability to conduct weddings from Friday to Sunday with a single permit.
- There is no cap on the size of events, but County staff have learned that farmers learn from their own experience if they have an event that is too big. “They are good stewards of the land and they generally want people to come back, so they want to give them a good experience.”
- With craft beverages, people are worried about noise and traffic. One of the wineries had issues 5-6 years ago with these impacts, but they “learned from it and fixed it;” however, people (including elected officials) remain concerned.
- According to County staff, numerous communities are struggling with how to approach wine and beer festivals. There are lots of concerns (e.g., drinking and driving, etc.), but they also bring in a lot of money and offer a great way for farmers to diversify. Event operators are currently supposed to apply for a temporary outdoor event permit, but lots of people do not seek permits.

- Value-added agriculture (creameries, bakeries, jams and jellies, etc.) has become a “huge” segment of the agritourism economy. According to County staff, the government needs to be open to that, and not everyone can afford to process their products in a commercial space.
- There is a desire in the agritourism community to have spring festivals and, generally, more year-round activities. For example, one farm is doing planting parties and potato parties in the spring.
- Although the State of Maryland now has agritourism legislation, Frederick County was “ahead of the game,” which has helped the county to be successful. It has also helped that the County welcomes agritourism and wants farmers to be successful.
- Changes to zoning in last two years have been beneficial. County agriculture and economic development staff report a “great relationship” with those doing permitting and zoning, and advise people to work closely with them. (“We work together to address complaints, but also to assist new businesses. It benefits the process to keep both sides informed.”)
- County staff articulated the need to be open to new agriculture and have the ability to adapt in order to get people out to the farm. Policy cannot be created just for today, and it requires thinking about what is going to be the “next thing.” For example, County staff have been focused on distilleries, wineries, breweries, but the County now also has meaderies and cideries. (“Not everything will fit into a perfect mold.”)

E. SELECTED DEFINITIONS

Agricultural Value Added Processing: Treatment that changes the form of a product grown on a farm in order to increase its market value with a minimum of 51% of the processed product being produced on the farm. For purposes of this use, the term "farm" includes contiguous and noncontiguous parcels within the county in active agricultural production which are owned or leased by the processor

Agritourism Enterprise: Activities conducted on a farm and offered to the public or to invited groups for the purpose of education, recreation, or active involvement in the farm operation. These activities shall be related to agriculture and shall be accessory to the primary agriculture operation on the site. This term shall include farm tours, hayrides, corn mazes, seasonal petting farms, farm museums, guest farm, pumpkin patches, "pick your own" or "cut your own" produce, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above. No use that is otherwise identified in § 1-19-5.310 as permitted with site plan approval or by special exception is permitted as an agritourism enterprise.

Agritourism Enterprise - Farm-Based Craft Beverage Promotional Events: Activities conducted on, and accessory to, the normal and customary agricultural use of the farm, offered to the public or invited groups for the purpose of education, entertainment, and promotion of farm based craft beverage products. Activities may include, but are not limited to, farm based craft beverage festivals and multi-brewery promotional events, conducted in accordance with the conditions contained in the property owner's Maryland Alcohol Manufacturer License, serving products primarily grown or produced on the farm.

Farm Alcoholic Beverages Tasting Room, Limited. A farm brewery, farm distillery or farm winery may have 1 accessory structure for the purpose of tasting and retail sales of alcoholic beverages and spirits that are brewed, distilled, or produced on the farm in accordance with this chapter. The structure within which the tasting room is located shall have no more than 1,500 square feet of customer service area devoted to tasting and retail sales of the farm alcoholic beverages. Calculation of the 1,500 square feet devoted to tasting and retail sales will be based on the floor area devoted to customer service, excluding rest rooms, food preparation area, and storage.

Farm Brewery: An establishment for the manufacture of malt liquors, such as beer and ale, using grains such as barley, wheat, and oats and produced on the farm on which the farm brewery is located. A farm brewery must have a valid class 5 Maryland brewery license, may not brew more than 15,000 barrels of malt beverages per year, and at least a majority of one of the primary grains must be produced on the farm.

Farm Distillery. An establishment for the manufacture of distilled spirits produced on the farm on which the farm distillery is located. A farm distillery must have a valid distillery license issued by the state of Maryland, may not distill more than 100,000 gallons of spirits per year, and at least 1 of the grains/fruits used in the distilled product must be produced on the farm.

Farm Winery: The use of the property for the processing of fruit for the production of wine or juice on a producing vineyard, orchard or similar growing area, or a farm. A farm winery must have a minimum of 10 acres, a valid Class IV Maryland wine license and must grow 1 acre of fruit for every 2,000 gallons of wine or juice produced. For purposes of this use, the term "farm" includes contiguous and noncontiguous parcels within the county in active agricultural production which are owned or leased by the processor.

Roadside Stand, Commercial: A use, which may incorporate a structure, that offers for sale agricultural products, the majority of which are produced by the owner within the county and within the immediate neighborhood of the location of the use. This use does not include seasonal pumpkin patches, "pick your own" or "cut your own" produce or other agritourism enterprise activities conducted on a farm related to agriculture and accessory to the primary agriculture operation on the farm. The holder of a Class 8 farm brewery license under the Annotated Code of Maryland may sell and deliver beer in accordance with the terms and approvals of that license as an accessory use to the commercial roadside stand. Outdoor events or promotional activities permitted under a Class 8 farm brewery license shall require a temporary outdoor activity permit, except in the residential zoning districts wherein temporary use permits shall not be issued.

Roadside Stand, Limited: The use of no more than 1,500 square feet devoted to product sales, which may incorporate a structure, for the sale of agricultural products the majority of which are produced by the owner on site. This use does not include seasonal pumpkin patches, "pick your own" or "cut your own" produce or other agritourism enterprise activities conducted on a farm related to agriculture and accessory to the primary agriculture operation on the farm.

F. ADDITIONAL RESOURCES

County Zoning Ordinance

<https://frederickcountymd.gov/174/Zoning-Ordinance>

Homegrown Frederick (magazine and website)

<http://www.homegrownfrederick.com/>

G. JURISDICTION CONTACT

- Katie Albaugh
Agricultural Business Development Specialist
Frederick County Office of Economic Development

HOWARD COUNTY, MARYLAND

A. AGRITOURISM CONTEXT

Located approximately 50 miles from the District of Columbia and adjacent to Montgomery County, Howard County is home to over 300 farms, a growing number of which are engaged in agritourism. Activities range from youth programs and petting farms to pick-your-own activities, alpaca farms, two horse-rescue operations, and one on-farm microbrewery. Given the small size of the county relative to other Maryland jurisdictions, most farm operations are located in close proximity to one another.

At the time of this research, the County was in the middle of a zoning rewrite through which regulations related to agritourism will be revisited.

Policy Context

Although the county has no formal agricultural preservation zone, the County's Agricultural Land Preservation Program (ALPP) includes three tools for protecting farmland: purchase of agricultural preservation easements by the Howard County Agricultural Land Preservation Program; dedication of agricultural preservation parcels to the Howard County Agricultural Land Preservation Program; and purchase of agricultural preservation easements in Howard County by the Maryland Agricultural Land Preservation Foundation. Using these tools, the County has preserved almost 23,000 acres of farmland in the Rural West of Howard County over the last 35 years.⁵

The County also offers a 75% property tax credit to owners of agricultural land to which an easement has been permanently conveyed or assigned to the County or Maryland Agricultural Land Preservation Foundation land preservation programs.

No formal rural roads preservation programs were identified as part of this research.

B. ZONING

Under the County's zoning ordinance, some agritourism uses are allowed by right, while others require permits for "special farm uses." Uses allowed by right include livestock, grains, and Christmas tree farms, while County staff now recommends that operators obtain a "special farm uses" permit for the following uses (all permitted as accessory uses to farming):

- "Agritourism enterprises"
- Value-Added processing of agricultural products with on-site sales
- Small farm stands (smaller than 300 square feet)
- Large farm stands (larger than 300 square feet)
- Pick-your-own produce operations and cut-your-own Christmas tree or flower operations
- Community-supported agriculture
- Food hubs
- Riding academies and stables

⁵ <https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Conservation-and-Preservation/Agriculture>

The County charges a one-time fee of \$40, which is approved by Planning & Zoning and is used by County staff to keep track of where agritourism operations are located and the types of activities in which they are engaged. The permit also helps County staff know whether an activity is approved, should a complaint arise.

“Agritourism Enterprise” is defined as *“activities conducted on a farm and offered to the public or to invited groups for the purpose of recreation, education or active involvement in the farm operation. These activities must be related to agriculture or natural resources and incidental to the primary operation on the site. This term includes farm tours, farm stays, hay rides, corn mazes, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above, and similar uses.”* These uses must comply with a series of provisions, including:

- the parcel size must be a minimum of 50 acres, unless the parcel is subject to preservation under the County’s Agricultural Preservation Program
- The use supports the agricultural use of the property and will not have significant adverse impacts on neighboring properties.
- Provision of “adequate off-street parking” and screening of parking
- Sight distance requirements at driveway entrances
- Operating hours only between 6:00 AM and 10:00 PM
- Clearly-marked boundaries

Activities may include “festivals or similar events held for the purpose of marketing products grown on the farm or farm.”

Other uses, such as food hubs and pick-your-own activities are subject to similar provisions, while riding facilities have setback requirements and farm stands include square footage requirements.

NEXUS TO AGRICULTURE

Agritourism uses are tied to farming uses in a variety of ways. All “special farm uses” are considered accessory uses to farming and include criteria that the use “will support the agricultural use of the property.” For value-added processing and agritourism, the majority of the farm must be growing or raising products to be able to market agritourism activities or bring in groups. Moreover, agritourism uses may include festivals or similar events held for the purpose of marketing products grown on the farm.

EVENTS AND ACTIVITIES

With permits for special farm uses, agritourism uses “may include festivals or similar events held for the purpose of marketing products grown on the farm or farm-related education or recreation, provided that festivals are limited to no more than 4 per year and no more than 8 days per year.” Some uses, such as petting farms, do not face limits as to the number of visitors allowed on the property at one time. For others, such as on-farm microbreweries or wineries, limitations on the number of people allowed at one time are tied to the size of the parcel.

The county currently has one farm that serves as a wedding venue. While weddings are not allowed on agricultural preservation land, they are allowed on the farm as a conditional use, per the County’s regulations regarding “limited social assemblies” in the RC (Rural Conservation) District. Limited social assemblies may include “picnics, weddings, anniversary/retirement parties, bridal or baby showers, not for profit organization fund raisers, banquets, rehearsal dinners, philanthropic events, or other similar events,” provided that certain criteria are met. These events are limited to 150 attendees, and no more than 25 of these events may be held within a one year period. Other criteria include the presence of a historic structure on the site; restricted hours of operation; a minimum lot size of acres or greater; and a traffic management plan, sight distance analysis, and demonstration of no damage to any shared driveway.

BUILDINGS AND PARKING

In 2018, the State of Maryland added Howard County to the list of counties that exempt agricultural buildings engaged in agritourism from building code requirements regarding the number of people allowed to occupy a building engaged in agritourism.

In addition, the County's "special farm uses" regulations include size limitations and some setback requirements for certain categories of agritourism uses. For example, farm stands "may not exceed 500 square feet, plus an additional 500 square feet for each additional 25 acres of lot area beyond 50 acres, up to a maximum of 3,000 square feet of area" and must have minimum front setbacks of 25 feet. Moreover, outdoor processing operations are required to have a 100-foot front setback.

ROADS AND TRAFFIC

Most event locations that attract large numbers of visitors, such as wineries and breweries, are required to have main road access (e.g., state roads). Anytime there will be more people coming to the farm, they need to be on state roads. Specifically, under the "special farm uses" regulations, most categories of agritourism uses (except for value-added agricultural processing category, pick-your-own, and small farm stands) are required to have "frontage on and direct access to a road classification as an arterial or collector public road." Under certain conditions—such as if access to a main road is not feasible, or if the property owner can demonstrate safety and lack of conflicts with other uses—the use may front on and have direct access to a local road.

ON-SITE PRODUCTION AND "LOCALLY GROWN" REQUIREMENTS

The County's ordinance includes requirements for on-site cultivation and/or products from local farms to varying degrees, depending on the activity. For example:

- For value-added processing, the primary product being processed is grown or produced on the farm where the processing occurs. Necessary secondary ingredients that are not farm-grown or –produced may be obtained from other sources.
- Pick-your-own uses "may also include the sale of pre-picked produce grown on the farm or on other local farms. Items produced through value-added processing of products grown on the farm or on other local farms may also be sold."
- Food hubs "may include the retail sale of crops, produce, flowers, plants, livestock and poultry products and similar items grown or produced on-site or on other local farms. Items produced through value-added processing of products grown on the farm or on other local farms may also be sold."
- Farm stands "may include the retail sale of crops, produce, flowers, plants, livestock and poultry products and similar items grown or produced on-site. Items produced through value-added processing of products grown on the farm may also be sold."
- Class 1A use farm wineries and farm breweries require the planting of at least two acres of grapes or other fruit, and at least two acres of a primary ingredient used in the brewing of malt-based or grain-based beverages upon approval and successfully established within two years of approval.

Further, "food hub" is defined as "a centrally located facility that facilitates the collection, storage, processing, distribution and/or marketing of *locally produced* food products." According to the County's definition, "local" means that a product is produced "within 100 miles of a specific point or property."

LODGING

“Bed and breakfast inns” are permitted by right in two rural zoning districts (RC and RR) on farms that are subject to A purchased or dedicated conservation easements under the County’s Agricultural Land Preservation Program, provided that the building existed at the time the easement was established and the use is managed by persons residing on the same parcel. No public reception or public restaurant facilities are allowed as part of bed and breakfast inns.

C. OTHER CONSIDERATIONS

ADMINISTRATION

- In 2015, the County Executive created an Agricultural Coordinator position, as well as a subcabinet made up of staff from Economic Development, Zoning, the County Executive’s office, Extension, and others to work on agriculture issues, as a way of bringing “everybody to the table so we know what’s going on and utilize our resources better.”
- The County has an Agricultural Ombudsman who runs four programs related to agriculture. The Ombudsman also helps to coordinate between the different agencies that deal with agriculture and has contributed to agritourism legislation. At the time of this research, the County was working on legislation to enable some administrative restructuring, in order to move the programs under the Ombudsman’s oversight to the Office of Community Sustainability. Ultimately, County staff would like to have a focus not only on land preservation, but also on preservation of the agriculture industry itself.
- The Howard County Economic Development Authority, a quasi-governmental organization, has a team dedicated to agriculture and economic development in Howard County. Staff work to market and promote agriculture, help develop business plans, and offer grants for projects or new interests. In prior years, staff have also had input on related zoning regulations as these have been developed.

ENFORCEMENT

- Enforcement is complaint-driven and conducted by the Department of Planning & Zoning.

MARKETING AND PROMOTION

- The County recently launched a website (HoCoFarms.com) to promote farm economic development and help farms market themselves. The County also partners with the County’s Office of Tourism on Harvest Howard County magazine, which promotes farms, and runs four Facebook pages focused on different aspects of agriculture in the county.

D. LESSONS LEARNED

County staff shared the following lessons learned:

- There are new types of operations emerging in other types of counties. As part of its zoning rewrite process, the County is trying to think ahead and anticipate how farmers will try to supplement their incomes in order to survive. One of the reasons for the rezoning is that the code increasingly does not fit current trends in agriculture. There is a recognition that the County needs “to allow farmers to do what they need to do.”
- In some locations in the County, there are farms intermixed with residential communities. Some new residential is coming in near farms, and residents are complaining about trucks and other impacts. They

do not always recognize that farms were there first and have been operation for a long time. While residents sometimes lack an understanding of agriculture, which leads to complaints, the County is trying to address this through programs such as Farm Academy (which provides tours of farms for residents) as well as lectures and adult classes.

- County staff are looking at ways to respond to complaints more quickly, recognizing that if the County responds more quickly, then the public also understands more quickly what is going on, which does not give the complaint time to create more of a problem.
- The County is much smaller than most counties in the State of Maryland, and yet also has a large population, which impacts the way the County approaches agritourism and promotes it. There is also an east-west divide along Route 32, where water and sewer coverage ends. The road serves as a dividing line between the county's rural agricultural area and its urbanizing areas, and residents of both areas sometimes do not visit the other part of the count.

E. SELECTED DEFINITIONS

Agricultural Processing, Primary: Processing on the farm of an agricultural product grown on the farm in the course of preparing it for market. Primary processing is subordinate and incidental to the farm operation and includes the following uses: a. Basic Processing: Processing necessary to store and market farm products. Basic processing does not include treatment that changes the form of the product, but does include treatment such as cutting, drying and packaging. b. Value-added Processing: Treatment that changes the form of a farm product in order to increase its market value, including such processes as canning, milling, grinding, freezing, heating and fermenting.

Agritourism Enterprise: Activities conducted on a farm and offered to the public or to invited groups for the purpose of recreation, education or active involvement in the farm operation. These activities must be related to agriculture or natural resources and incidental to the primary operation on the site. This term includes farm tours, farm stays, hay rides, corn mazes, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above, and similar uses.

Farming: The use of land for agricultural purposes, including: a. Crop production, apiaries, horticulture, orchards, agricultural nurseries, viticulture, silviculture, aquaculture, and animal and poultry husbandry; b. The growing, harvesting and primary processing of agricultural products; c. The breeding, raising, training, boarding and general care of livestock for uses other than food, such as sport or show purposes, as pets or for recreation; d. The operation of agricultural machinery and equipment that is an accessory use to a principal farming function. Agricultural machinery and equipment may be used on farms that are not the farm on which the machinery and equipment is normally stored; e. The construction and maintenance of barns, silos and other similar structures subject to compliance with any applicable bulk regulations; f. The transportation, storage, handling and application of fertilizer, soil amendments, pesticides and manure, subject to all Federal, State and Local laws; g. The temporary, onsite processing of chickens or rabbits on a farm in accordance with the Agriculture Article of the Annotated Code of Maryland; and h. Other uses directly related to, or as an accessory use of, the premises for agricultural purposes including special farm uses permitted under Section 128.0.I. Not included in this definition are those uses subject to Section 131.0 Conditional Use requirements.

Farm Stand: A structure or outdoor area located on a farm and used for the sale of farm products grown or produced on the farm on which the stand is located. Where permitted by these Zoning Regulations, sale of farm products grown or produced off-site may be part of the use.

Food Hub: A centrally located facility that facilitates the collection, storage, processing, distribution and/or marketing of locally produced food products.

Local: Within 100 miles of a specific point or property, as used in the context of farming.

F. ADDITIONAL RESOURCES

Howard County Zoning Ordinance

https://library.municode.com/md/howard_county/codes/zoning?nodeId=HOWARD_CO_ZONING_REGULATIONS_S128.OSUZODIRE

Howard County Agricultural Preservation Webpage

<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Conservation-and-Preservation/Agriculture>

HoCo Farms

<http://hocofarms.com/>

Howard County Economic Development Authority “Farm & Agriculture” Webpage

<http://www.hceda.org/farm-agriculture/>

G. JURISDICTION CONTACTS

- Kathy L. Johnson
Agricultural Development Manager
Howard County Economic Development Authority
- James Zoller
Agricultural Ombudsman
Howard County Office of Community Sustainability

STATE OF NEW YORK

New York State General Municipal Law §247 gives municipalities the authority to develop conservation programs such as Suffolk County's Purchase of Development Rights program. According to Suffolk County staff, localities such as Suffolk County have been requesting modifications to the law to remedy what localities see as oversights and overly vague language. In particular, the County has been advocating for clearer language that makes the ability to permit agricultural support structures on agricultural conservation land more obvious.

Suffolk County staff also noted that the State of New York also has strong right-to-farm law. Through Agricultural Districts, which function like right-to-farm laws, the state can preempt local zoning or ordinances deemed to be too onerous to the business of farming. Counties have the responsibility to enroll a farm in an agricultural district.

Finally, County staff note that New York State farm craft beverage law contains stipulations about the percentage of products that must be produced on a farm. In return for tax advantages and reduced permit fees, a certain percentage of craft beverages must be produced from New York State agricultural operations.

SUFFOLK COUNTY, NEW YORK

A. AGRITOURISM CONTEXT

Located in the central and eastern part of Long Island, east of New York City, Suffolk County is the most populous county in New York State outside of New York City. Although the county's agriculture industry has evolved over time, it also remains one of the most agriculturally productive counties in the state. Despite high land values and significant development pressures, agritourism is a growth industry with an affluent customer base: revenue from agritourism more than doubled (from \$4.2 million to \$10 million) during a five-year period, even though the number of farms and farm acreage has decreased. Agritourism venues in the county range from wineries and breweries with tasting rooms to pick-your-own operations, pumpkin patches, corn mazes, maple syrup farming, and culinary tourism.

Policy Context

Suffolk County does not have zoning control; rather, that power rests with the county's incorporated towns and villages. While Suffolk County can and does establish countywide policy regarding agritourism, towns and villages may set their own policy and implement it through zoning and other tools.

Established in 1974, Suffolk County's Farmland Purchase of Development Rights (PDR) Program, the first PDR program in the nation, was established as a means of preventing the loss of agricultural land to suburban development. Land preserved under the program is protected in perpetuity through development rights easements. Under the program, property owners sell the development rights of their property to a municipality (County or Town) and receive tax benefits for doing so while retaining all other ownership rights to the property. In return, property owners file covenants, similar to conservation easements, that document restrictions on the use of the property, including a commitment to maintain the agricultural or open space use of the property.

In 2010 and 2013, Suffolk County amended Chapter 8 of its code to modify the requirements of the PDR program. The amendments sought to expand economic opportunity by allowing a range of income-generating activities on preserved farmland, including larger farm stands, value-added processing, and certain agritourism activities (including "U-Pick" operations, educational agricultural tours, crop mazes and hayrides). These modifications became the target of a lawsuit objecting to these changes. The legal challenge contended that the County did not have the authority to allow structures of any sort to be built on protected land. In turn, the County argued that support structures have always been integral to the support of agriculture. After a multi-year legal battle with several appeals, the case was ultimately resolved in the County's favor.

Many of the municipalities in Suffolk County have their own PDR programs that mirror the county's program in approach, although the requirements and uses allowed on preserved land vary from community to community. As the character and specific issues faced vary from municipality to municipality, so do their approaches to agricultural zoning. Some towns also have their own community preservation funds to buy farmland, but some are on more solid financial footing than others with varying budgets for purchasing land for agricultural or open space conservation. For example, the Town of Southampton, a beach destination with high-priced vacation homes, has more resources to buy farmland than Riverhead, which relies more on agriculture for revenue.

To capture these variations and distinct dynamics, this profile of Suffolk County also includes examples of policies and zoning from three of the towns with the most active agritourism economies: the Town of Riverhead, the Town of Southold, and the Town of Southampton.

B. ZONING AND EASEMENTS

The use of agricultural land for agritourism depends on several factors: County code and policies; the zoning and policies of individual towns, and the specific provisions included as part of easement covenants. Easements are negotiated on a property-by-property basis. Some towns, such as Southold, Southampton, and East Hampton, use a basic easement document that is similar, but the specific language about agriculture and agritourism is different in each easement.

Depending on the town, some activities related to agritourism may be allowed by right, while others may be negotiated as part of an easement covenant. In the Town of Southold, for example, certain activities, such as corn mazes and pick-your-own operations may be allowed by-right, but other activities can be negotiated. Inclusion of event facilities can become more contentious.

Typically, all commercial activities except for agriculture are excluded from the easement area that is reserved for agriculture. As such, farm stands are sometimes allowed in the easement area, while tents and other structures for events are typically not allowed, which has been a point of controversy for farmers who want to host events but cannot put up a tent. The approach for wineries also varies, but one common approach is that tasting rooms and shops for wine sales are excluded from the restricted area and then regulated under the Town's zoning code.

Some easements, particularly older easements from before the growth of agritourism, do not address agritourism activities at all.

SUFFOLK COUNTY CODE

Under Suffolk County's amended regulations for the County's PDR program, "agricultural tourism" is defined as *"promot[ing] agricultural education and giv[ing] the public the opportunity to experience agricultural activities first-hand. Agricultural tourism can enhance the long-term economic viability of agricultural production by providing an additional source of on-the-farm revenue. Agricultural tourism must be accessory to the primary purpose of agricultural production. Catered events shall not be considered agricultural tourism."*

The code further specifies the agricultural tourism activities that are allowed by right on agricultural lands "in conjunction with an active farming operation" and as "components of agricultural production." These include: "U-Pick" operations (which are limited to produce grown on the farm operation), crop mazes (which must be made from a "harvestable commodity such as corn stalks or sunflowers"), hayrides, and "agricultural educational tours, such as vineyard tours." Other provisions include:

- "Only sampling of products grown or processed on the farming operation is allowed on an agricultural educational tour."
- Agricultural tourism activities that "require the installation of a temporary structure or the modification within the footprint of an existing structure" are subject to the permitting process.
- Agricultural tourism structures must be temporary in nature and must be associated with allowable agricultural tourism activities.

Activities and uses that fall outside these parameters are subject to the review of an appointed Farmland Committee, which is responsible for granting permits. The 20-member Committee includes nine members appointed by the Suffolk County Executive, along with one designee from each town in the county. The Committee is also responsible for approving applications for special event permits.

TOWN POLICIES

Towns can and do set their own zoning definitions and regulations regarding agritourism, and each town's approach reflects its own priorities and values as well as what is grown in particular areas and the nature of the impacts associated with related agritourism activities. Policies also depend on the extent to which individual towns rely economically on the agriculture industry.

Example: Town of Riverhead

The Town of Riverhead, located on the north fork of Long Island, is the most reliant economically on agriculture and has the most farms. At the same time, the Town has limited funds available for farmland preservation and therefore rely on the County to preserve much of the town's farmland. As a result, the Town has been among the most receptive to different models of agriculture, including agritourism.

The Town's Comprehensive Plan includes promoting the growth of the wine industry and agritourism as a stated goal. The Town's zoning ordinance includes an Agriculture Protection Zoning Use District (APZ) with a stated intent that includes not only preservation of rural character and agriculture but also promotion of agritourism. Within this district, retail sales of homegrown products are permitted on parcels 7 acres or greater, subject to site approval. The intent of the separate Rural Corridor (RLC) Zoning Use District "is to allow a very limited range of roadside shops and services that are compatible with the agricultural and rural setting along major arterial roads." In this district only, farm stands and wine tasting rooms are permitted accessory uses. The zoning ordinance also includes a mechanism for the Planning Commission to expedite reviews of (e.g., waive site plan requirements for) direct marketing uses such as farm stands and pick-your-own operations to "enable local farmers and growers to market their agricultural products directly to consumers and, in turn, bolster the local economy."

Example: Town of Southold

The Town of Southold on the North Fork, which currently has numerous wineries and pumpkin farms, includes the second-greatest amount of farmland in the county. According to the *Suffolk County Agriculture & Farmland Protection Plan*, the Town "stands above the rest in terms of their effort of support and protection of the agricultural industry" and is the only town with its own Farm and Farmland Protection Strategy. At the same time, its policies and regulations, or its proposed changes to regulations, are sometimes more restrictive than other towns; in recent years, driven in large part by traffic impacts, the Town has either attempted to or threatened to reduce protections for agritourism. For example, the Town has been more actively enforcing restrictions on food trucks at wineries under the argument that they are not agricultural in nature and are not serving produce grown on-site. Moreover, a recent attempt to strengthen on-site cultivation and acreage requirements for wineries was defeated due to opposition from farmers.

Example: Town of Southampton

Located on the South Fork in a region known for apple-picking, the Town of Southampton includes land that is far more expensive than other locations in the county due the town's role as a beach destination in the Hamptons and the presence of summer and vacation homes. The Town has an active agricultural land preservation program, which is driven by a desire to maintain the its quality of life. The Town also has sizable budget to preserve farmland through its Community Preservation Fund, due to earmarked funds from a 2% real estate transfer tax, but still relies on the County to preserve a lot of its farmland.

The Town's zoning ordinance allows wineries by special permit only in "country residential" zoning districts. Permits are also required to construct and operate temporary farm stands for the sale of farm products, subject to

size requirements and crop acreage requirements. No permit is required for a single roadside stand that meets certain conditions.

NEXUS TO AGRICULTURE

Per Suffolk County’s definition, “agricultural tourism must be accessory to the primary purpose of agricultural production” and must occur “in conjunction with an active farming operation” and as “components of agricultural production.” Zoning codes from the towns surveyed include similar stipulations about the need for agritourism uses and activities to be accessory to primary agricultural uses.

EVENTS AND ACTIVITIES

Events must be approved first by Suffolk County Farmland Committee and then appealed to individual towns. Both the County and the towns surveyed have code provisions regarding “special events.” Under County code, weddings and other catered events held on a one-time basis are permitted. Any events involving catering require special event permits, which are limited to a maximum of one special event per year. Events cannot exceed two days in length or adversely impact agriculture. In general, special events are not prohibited unless they will negatively impact the farm or the farm’s natural resources.

Town ordinances include similar provisions. Of these, the Town of Southold’s specifically notes that the following constitute special events on land used for agricultural production:

- “the sale or service of food products composed primarily of ingredients produced on site”; or
- with a winery or farm winery license, “the sale or service of food items which customarily complement wine tastings and that are ordinarily consumed while standing or walking and without the need for utensils.”

BUILDINGS AND PARKING

As described previously, certain structures are allowed on preserved agricultural land under the County’s code. The code also limits the cumulative floor area of a farm stand and/or processing facility to 1000 square feet, and additional display areas for farm stands to 1,500 square feet.

As one example of Town zoning provisions regarding buildings, the Town of Southold limits farm stands to 3,000 square feet in area, in addition to other crop cultivation requirements. The Town of Southampton limits farm stands to 240 square feet, plus additional crop cultivation requirements, while no permit is required for a single roadside stand that sells crops grown within the town and has a display area of less than 40 feet in area.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

Suffolk County defines “locally grown” as “a product grown in the County of Kings, Nassau, Queens or Suffolk, in the State of New York.” Its definitions of “U-Pick” operations and processing include the stipulation that produce comes from the farm where the operation is taking place, while the requirements for farm stands state that produce must be either grown on premises or locally grown.

Some town zoning ordinances contain additional town-specific requirements regarding on-site production and the origin of products. For example, the Town of Southold permits the installation and operation of farm stands if they are part of a bona fide farming operation and “meet a minimum threshold of 60% gross dollar sales generated from agricultural products grown by the stand operator in the Town of Southold.” The Town’s ordinance also requires that wine from wineries should be produced from “primarily Long Island grapes.” According to news reports, a recent attempt to tighten winery restrictions (e.g., requiring 80% to be grown on premises or on other

land owned by the winery, and 10 acres of set aside for growing grapes) was withdrawn due to opposition from farmers.⁶

The Town of Riverhead’s ordinance defines “regionally grown” as “grown on a farm located within the State of New York and/or within a radius of 250 miles of the farm. This relates to the Town’s definition of “roadside stand,” which includes the requirement that roadside stands may include “*regionally produced agricultural products and enhanced agricultural products, provided that the regionally produced agricultural products and enhanced agricultural products shall not exceed 40% of the products offered for sale.*” “Enhanced agricultural products” is defined as “[a]gricultural products which are processed beyond cutting, drying, freezing, or packaging. The agricultural products have added ingredients not produced on the farm and may be cooked, cultured, canned or bottled with more than 51% of the ingredients containing agricultural products produced on the farm or regionally grown.”

C. OTHER CONSIDERATIONS

MARKETING AND PROMOTION

- The County recently created an agritourism map and branding effort called “[Choose LI](#)” as a way of motivating people to buy local food. This effort mapped every farm stand, farmers market, cidery, brewery, distillery, and vineyard as well as restaurants selling local oysters. Complementary programs include the Long Island Farm Bureau’s “Grown on Long Island” brand the New York State Agriculture & Markets’ “Pride of New York” campaign.

D. LESSONS LEARNED

County and Town staff offered the following lessons learned:

- Traffic is cited as a top impact related to agritourism throughout the county. It is particularly an issue on the North Fork during pumpkin picking and apple picking season (September through Halloween). In addition to traffic gridlock, residents “feel locked into their homes during the weekends.” Traffic was cited as an issue that needs to be addressed in the next decade or two because roads cannot handle the population as it has grown, but so far has been “a hard nut to crack.” Staff cited one example of how traffic is being addressed: the example of a South Fork pick-your-own operation that was required by the town to rebuild its parking lot to accommodate more cars.
- Wineries are also a concern, particularly in the Town of Southold where there have been numerous accidents from too much drinking. Staff note the rural character in Southold and the lack of traffic lights on the two main roads as reasons the area is particularly dangerous.
- The County has been very aggressive about promoting and defending the County’s agriculture lease program. Following the lawsuit over the PDR program, it hired outside counsel and has put a lot of energy into stabilizing the PDR program as it relates to potential lawsuits.
- County staff note that the County has been proactive about responding to new challenges, but also in laying out a plan of action for promoting and supporting the business of agriculture through policy mechanisms.

⁶ <https://www.lilanduseandzoning.com/2018/02/12/sour-grapes-at-southold-town-board-meeting-proposed-regulations-aimed-at-wineries-goes-back-to-the-drawing-board/>

- Regarding easement drafting, flexibility is very important. For example, pick-your-own did not used to be as popular as it is now. There is a need to focus on ability of the farmer to continue farming and take advantage of as many possible income streams as possible, consistent with local regulations.

E. SELECTED DEFINITIONS

SUFFOLK COUNTY

Agricultural Tourism: "U-Pick" activities, harvestable crop mazes, hayrides, and agricultural educational tours conducted on-farm to promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding, awareness and enjoyment of farming and farm life.

Agriculture-Related Products: Clothing and souvenir items that promote the farm or locally grown produce.

Development Right: As authorized by § 247 of the New York State General Municipal Law, as may be amended, the permanent legal interest in the use of the subject property, the permanent legal right to permit and require the use of the subject property for agricultural production and the permanent legal right to limit, prohibit and restrict the use of the subject property to agricultural production, except where specified in this chapter.

Farm Stand: A structure for retail sales of agricultural products grown on the premises and processed agricultural products, such as cheese, jam and wine, derived from agricultural products grown on the premises. Retail sales also may include locally grown agricultural products grown off the premises, processed agricultural products derived from agricultural products locally grown off the premises, and agriculture-related products subject to the limitations specified herein.

Locally Grown: A product grown in the County of Kings, Nassau, Queens or Suffolk, in the State of New York.

Special Event: Any occasion, wedding, catered event on activity conducted on agricultural land, with or without an admission fee, and held on a one-time basis. Only special events consisting of agricultural education or the sale, marketing, production, harvesting or use of agricultural products, as determined by the Committee, shall be permitted.

TOWN OF RIVERHEAD

Enhanced agricultural products: Agricultural products which are processed beyond cutting, drying, freezing, or packaging. The agricultural products have added ingredients not produced on the farm and may be cooked, cultured, canned or bottled with more than 51% of the ingredients containing agricultural products produced on the farm or regionally grown.

Farm Direct Marketing: The sale of agrifood products directly to the consumer. It is market-focused relationship marketing. Producers know their target market and sell products that meet the specific needs of their consumers. A fundamental component of farm direct marketing is the trust relationship that develops between producers/processors and consumers. Successful farm direct marketers assume the accountability and rewards of consistently supplying quality agricultural products directly to the consumer through a variety of marketing channels.

Farm Stand: Any temporary or permanent structure owned or operated by the farmer or grower for the sale and display of on-farm produced agriculture products, including but not limited to fruits, vegetables, flowers, nursery products, eggs, and dairy products. In addition to on-farm produced agriculture products, a farm stand may include

the sale of regionally produced agricultural products and enhanced agricultural products, provided that the regionally produced agricultural products and enhanced agricultural products shall not exceed 40% of the products offered for sale. A farm stand includes roadside stands and U-Pick operations where the customer comes to purchase agricultural products but shall not include buildings or structures used for processing operations, except for instance processing, i.e., bagging or cutting and minimally processed without any additional ingredients, retail food service establishments, retail food stores or food warehouses. A farm stand may include sale of decorative containers, pots, tins and such other nonagricultural products directly related to presentation and packing for sale of the agricultural products, and such items shall not be deemed to constitute the 40% of regionally grown or enhanced agricultural products.

Processing: The washing, grading, and packaging of on-farm and regionally grown agricultural products.

Regionally Grown: Grown on a farm located within the State of New York and/or within a radius of 250 miles of the farm.

Roadside Stand: A temporary structure for sale of on-farm produced agriculture products, including but not limited to fruits, vegetables, flowers, nursery products, eggs, and dairy products. In addition to on-farm produced agriculture products, a roadside stand may include the sale of regionally produced agricultural products and enhanced agricultural products, provided that the regionally produced agricultural products and enhanced agricultural products shall not exceed 40% of the products offered for sale.

U-Pick: Operations where the customer comes to the farm to pick the fruits, vegetables or horticulture for ultimate purchase by the customer.

F. ADDITIONAL RESOURCES

Suffolk County Code – Chapter 8: Development of Agricultural Land

<https://www.suffolkcountyny.gov/Portals/0/formsdocs/planning/OpenSpaceFarmland/Farmland/2019Chapter8.pdf?ver=2019-01-10-105928-960>

Suffolk County Farmland Preservation / Purchase of Development Rights Program

<https://www.suffolkcountyny.gov/Departments/Economic-Development-and-Planning/Planning-and-Environment/Open-Space-and-Farmland/Farmland-Preservation>

Suffolk County Agriculture and Farmland Preservation Plan (2015)

https://www.suffolkcountyny.gov/Portals/0/formsdocs/planning/OpenSpaceFarmland/Farmland/AFPP_FINAL_TXT_MAPS_ADA_12182015r.pdf

Town of Riverhead Zoning Ordinance

<https://ecode360.com/29712367>

Town of Southampton Zoning Ordinance

<https://ecode360.com/8700216>

Town of Southold Zoning Ordinance

<https://ecode360.com/5161767>

Choose LI Map and Website

<https://chooseli.org/>

G. JURISDICTION CONTACTS

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- Lisa Kombrink, Esq.
 - Manager, Town of Southampton Community Preservation Fund
 - Counsel, Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP
 - Former Outside Counsel to Suffolk County Purchase of Development Rights Program

STATE OF OREGON

The Oregon Legislative Assembly passed the Oregon Land Use Act in 1973, requiring all cities and counties to adopt comprehensive plans that met mandatory standards set by the state. Oregon Statutes now include regulations for the following activities, as they relate to agritourism, focused primarily on preserving agricultural land through so-called “Exclusive Farm Use (EFU)” districts. The following activities are defined and regulated in Oregon statutes.

- Farm use (ORS 215.203)
- Mass gatherings (ORS 433.735(1), ORS 433.750, ORS 433.755 and ORS 433.763(1))
- Farm stands (ORS 215.283 (1)(o))
- Wineries, land use and events (ORS 215.452 and ORS 215.453)
- Guest ranches (ORS 215.296 (1)(2) and ORS 321.805)

In addition, in 2011, the Legislature passed Senate Bill 960, which established a process by which agritourism and other commercial events or activities that are related to and supportive of agriculture may be approved in an area zoned for farm use.

Oregon counties may either implement State requirements as written, implement the statute in their own manner, or choose not to implement it. However, in the case of the Clackamas County profile that follows, Oregon regulations and definitions are frequently referenced, or adopted directly into, County code.⁷

In addition, Oregon’s statewide planning program established as a goal the implementation of urban growth boundaries to protect farmland and natural resources. This approach is reflected in the Portland Metro Urban Growth Boundary, which abuts Clackamas County.

⁷ For additional information about Oregon agritourism policies and regulations, see the Oregon Agritourism Handbook at <https://industry.traveloregon.com/opportunities/marketing-co-ops-toolkits/toolkits/welcome-oregon-agritourism-handbook/> or reference the relevant sections of the Oregon Revised Statutes at https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx

CLACKAMAS COUNTY, OREGON

A. AGRITOURISM CONTEXT

Clackamas County is located in the City of Portland, OR metropolitan area on the edge of the Portland Metro Urban Growth Boundary. For some locations within the county, driving time from Downtown Portland is as little as 30 minutes. Agritourism in the county encompasses a wide range of activities, including flower farms, creameries, pick-your-own operations, farm-to-table activities, breweries, wineries/vineyard, and animal farms. Agritourism is promoted and jointly marketed through a coordinated network of Farm Loops that connect agritourism venues. A noted leader in agritourism and one of the counties closest to the City of Portland and adjacent to the Urban Growth Boundary, Clackamas County experiences both development pressures and the growing demand for agritourism and “farm-to-table” activities among the metropolitan population particularly acutely.

In 2012, the Clackamas County Tourism and Cultural Affairs Department published a countywide Agritourism Master Plan, which defines a “basic framework of agritourism” and identifies strategies for planning, organizing, and managing agritourism activities.”

Policy Context

The County’s regulations and requirements are heavily dictated by State of Oregon Statutes, which include strong statewide planning measures to protect farmland as part of the Portland Metro Urban Growth Boundary. Following state requirements, the County has a designated Exclusive Farm Use District as part of its zoning ordinance. State regulations are adopted into and implemented by the County’s own ordinance, which includes frequent referenced to Oregon regulations and definitions.

B. ZONING

Agritourism is a permitted commercial use in the Exclusive Farm Use zone, as long as it is connected to agriculture. No formal definition is called out in the County ordinance or in State Statutes; however, the County’s ordinance defines agritourism as follows in the context of commercial events and activities: *“Agri-tourism”, means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing onsite farm operation and promotes the practice of agriculture. Agritourism events shall be “incidental and subordinate” to existing farm use on the tract. Agritourism events shall not include any mass gatherings or other outdoor gatherings.”*

A range of agritourism uses are allowed with a Type II land use permit, which entails an administrative review process. Allowed uses under Type II permits include: Agri-tourism single event or Agri-tourism for up to 6 events or activities; bed and breakfasts; and various types of wineries that are determined by the number of events they hold per calendar year. More-intensive activities, typically those with a greater number of events, are allowed with a Conditional Use Decision.

NEXUS TO AGRICULTURE

Following State of Oregon statewide planning requirements, the County uses an income threshold, known as the “25% rule,” as the primary means of ensuring a connection to agriculture. For a range of agritourism uses and activities, 25% of the activity’s income can be incidental, or not related to the farm use. There are other allowances by the state for wineries, agritourism events, and other activities that are outside the essential practice of agriculture provided that these activities constitute no more than 25% of income. For example, wineries may conduct associated activities such as a wine club, merchandise, etc. concerts, gatherings, but all of these activities are limited to the 25% of the income from the winery. Similarly, at farm stands, the annual sale of the incidental items and fees from promotional activity may not make up more than 25% of total sales of the farm stand.

The EFU regulations also state that agritourism activities must be “incidental and subordinate” to an existing farm use on the tract. “Incidental and subordinate” means that the “event or activity is strictly secondary and ancillary to on-site commercial farm uses or the commercial agricultural enterprises in the area in terms of income generated, area occupied, and off-site impacts.”

EVENTS AND ACTIVITIES

EFU District regulations include separate requirements for two types of events: “agritourism events” and “outdoor mass gatherings.” According to the ordinance, and per Oregon law, agritourism cannot be permitted as mass gatherings or other outdoor gatherings. Rather “Agri-tourism” refers to commercial events or activities that are “logically, physically and/or economically connected to and supports an existing onsite farm operation and promotes the practice of agriculture.”

State of Oregon agritourism provisions permit commercial activities that would otherwise be prohibited in Exclusive Farm Zones, as long as they are tied to a farm use. There are additional provisions for Commercial Activities in Conjunction with Farm Use, which require a conditional use permit and can allow for substantially more than what the agritourism provisions offer (i.e., limited retail use, breweries, weddings), none of which fit well within the agritourism approval criteria.

Up to 18 events per year that fit the definition of “agri-tourism” in the ordinance are allowed with a Type II permit. These events are also subject to the 25% income threshold for non-farm uses. Additional agritourism events, not to exceed 18 events on a minimum of 80 acres, are allowed with Conditional Use Decision.

BUILDINGS AND PARKING

Under State of Oregon regulations, some buildings used for agricultural, forest or equine uses can be exempt from the building code. The property must be zoned for farm or forest use, as required by State Statute, in order to qualify for an Agriculture Exemption. Under the exception, buildings are prohibited from being used by, or open to, the public and limited to a maximum of 10 people in the building at any one time, except for areas with plant-growing operations.

Under the Ag Exemption, the building cannot be used by, or open to, the public. The property owner is limited to only 10 people in the building at any one time, except in areas containing the plant growing operations. Per Oregon law, the ordinance defines “outdoor mass gathering” as a “gathering of 3,000 or fewer persons that are not anticipated to continue for more than 120 hours in any three-month period.” Agri-tourism and other commercial events or activities may not be permitted as mass gatherings. Events that meet this definition are allowed without land use approval. Any outdoor gathering of more than 3,000 persons that is anticipated to

continue for more than 120 hours in any three-month planning period is subject to review by the Planning Commission under the provisions of Oregon statutes.

The County's ordinance handles weddings as a "home occupation to host events." A prior Land Use Board of Appeals interpretation held that, in order to hold weddings on a resource-zoned property, the operator can have no more than 5 employees (a minister, photographer, caterer, property owner, etc.). In practice, this interpretation makes it very difficult to do weddings within the EFU District.

Restaurants are not allowed in EFU zone, but wineries can serve food with some limitations. Businesses serving alcohol are required to serve food based on Oregon Liquor Control Commission requirements, while food service is subject to additional health requirements.

Processing facilities are limited to 10,000 square feet of floor area, exclusive of the floor area designated for preparation, storage, or other farm use.

Farm stand structures must not include "structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings, or public entertainment."

ROADS AND TRAFFIC

Research did not yield specific information on requirements related to roads and traffic, other than the aforementioned limits on the numbers of persons attending events.

ON-SITE PRODUCTION AND "LOCALLY GROWN" REQUIREMENTS

While the County's ordinance does not contain a definition of "locally grown" or equivalent terminology, income from incidental or non-farm products and activities cannot exceed 25% of total income, per state agritourism requirements.

In addition, per the County ordinance, processing facilities must be located on a farm that provides at least one-quarter of the farm crops processed at the facility.

LODGING

Per Oregon regulations, the EFU District regulations include a provision that enables wineries to include bed and breakfast facilities on the same tract of the winery and in association with the winery. Two meals per day may be served at the bed and breakfast or at the winery.

C. OTHER CONSIDERATIONS

- The county is included in the [Oregon Farm Loop](#) program, managed by the [Oregon Agritourism Partnership](#), a nonprofit organization. In addition, the [County's Tourism and Cultural Affairs Department](#) actively markets farms and wineries.

D. LESSONS LEARNED

County staff shared the following lessons learned:

- County staff feel that, overall, "the code works pretty well" and finds a balance between farming and commercial activity while still imposing certain limits.

- According to County staff, one problem that occurs is that events lack predictability: they can “come up at the last minute” because a land use permit is not required for less than 3000 people.
- County staff report that the “25% rule” can be difficult and frustrating for some agritourism operators; however, it allows for a broad variety of uses, including new uses and innovations. This requirement “holds the line” to prevent activities in the EFU District from exceeding “the tipping point to just being a commercial use in a rural area.”
- By categorizing weddings as home occupations to host events, the EFU regulations currently make it very difficult to hold a wedding, due to interpretations that limit the number of employees on the site.
- Clarity is important, but it is also important for agritourism regulations to leave room for new ideas.
- County staff raised the possibility that additional agritourism activities are occurring beyond those they are aware of. This is due to both the extent to which events are allowable without land use approval under the ordinance, but also the fact that some operators may not be seeking permits.

E. SELECTED DEFINITIONS

Commercial Farm: A farm unit with all of the following characteristics: 1. The land is used for the primary purpose of obtaining a profit in money from farm use; 2. The net income derived from farm products is significant; and 3. Products from the farm unit contribute substantially to the agricultural economy, to agricultural processors, and to farm markets.

Farm Stand: A structure located on a part of the farm operation owned by the farm operator that is designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and the farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings, or public entertainment.

Farm Use (per ORS 215.203): Farm use means the current employment of land primarily for obtaining a monetary profit by raising, harvesting, and selling crops; feeding, breeding, managing and selling livestock, poultry, fur-bearing animals, and honeybees; dairying; or any other agricultural or horticultural use. Farm use also includes the preparation, storage, and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. The definition includes land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; land planted in orchards or other perennials prior to maturity; any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land classified for farm use; dry or water covered wasteland in or adjacent to land in farm-use; or land under dwellings or buildings supporting farm practices. Farm use also includes the stabling or training of equines (horses, mules, etc.) along with riding lessons and training clinics.

F. ADDITIONAL RESOURCES

Clackamas County Zoning Ordinance: Exclusive Farm Use District

<https://dochub.clackamas.us/documents/drupal/40a556e9-0afb-488f-a799-67eeb228c7a4>

Oregon Revised Statutes, Chapter 215 (see especially ORS 215.213 and ORS 215.283)

https://www.oregonlegislature.gov/bills_laws/ors/ors215.html

Oregon Farm Loop program

www.oregonfarmloop.com

Clackamas County Tourism and Cultural Affairs Department

<https://www.mthoodterritory.com/farms-wineries>

Agritourism Master Plan for Clackamas County (2012)

mthoodterritory.objects.liquidweb.services/files/agplan.pdf

Oregon Agritourism Handbook (for information on State of Oregon agritourism law)

<https://industry.traveloregon.com/opportunities/marketing-co-ops-toolkits/toolkits/welcome-oregon-agritourism-handbook/>

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COMMONWEALTH OF VIRGINIA

The Commonwealth of Virginia is a “Dillon’s Rule” state, meaning that local jurisdictions’ activities are limited to those which are permitted by state statute or authorized in the jurisdiction’s charter as granted by the state general assembly. As a result, local regulation of agritourism in Virginia must fall within the parameters allowed by the state. Virginia Code includes definitions related to agritourism as well as requirements regarding what localities can and cannot regulate. The Code of Virginia defines agritourism as *“any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity”* (Code of Virginia § 3.2-6400).

Virginia Code § 15.2-2288.6, passed in July 2014, limits the extent to which local governments may regulate agritourism activities. Specifically, the law states that local governments cannot regulate agritourism activities (as defined by Virginia Code), the sale of agricultural and horticultural products or related items, the preparation of foods that otherwise comply with state law, and other “usual and customary” activities at agricultural operations, unless these activities have a “substantial impact on health, safety, or public welfare.” The law also prohibits localities from requiring a special exception, administrative permit not required by state law, or special use permit for any of the aforementioned activities, unless there is a “substantial impact on the health, safety, or general welfare of the public.”

Commonwealth law still allows some leeway for local governments to interpret Virginia Code, particularly with regard to what constitutes a “substantial impact” on public health, safety, and welfare. As such, local jurisdictions vary in their interpretation and implementation of Commonwealth requirements, including the types of activities they allow by right and the types of requirements imposed in order to prevent “substantial impact.” The approaches of three jurisdictions—Albemarle County, Loudon County, and Rockingham County—are surveyed here.

ALBEMARLE COUNTY, VIRGINIA

A. AGRITOURISM CONTEXT

Albemarle County is located 2 hours, 30 minutes from Washington, DC and includes the City of Charlottesville. As much as 95% of Albemarle County is a rural area, as designated by the County’s comprehensive plan. By policy, the rural area boundary is considered firm, and only properties located within designated development areas receive water and sewer service, unless there’s a health or safety issue for extending water and sewer into rural areas. Given the need for Planning Board approval to modify the jurisdictional area of water and sewer service, this requirement is used by the County as a growth management tool. However, pockets of residential and commercial uses, the result of legacy zoning, exist in some locations within the rural area.

Agritourism activities in the county range from pick-your-own operations and cheesemaking to numerous wineries, breweries, and distilleries. As of 2017, the county had 32 farm wineries, three cideries, two farm breweries and three limited distilleries.⁸ The County promotes four “agritourism travel trails” linking agritourism venues throughout the county.

Policy Context

The County has an Acquisition of Conservation Easements program through which landowners voluntarily sell a conservation easement to a public agency to be held in trust for perpetuity. In turn, the agency will pay landowner a sum that reflects the land’s value as protected open space. In addition, the County’s Agricultural and Forestal Districts are a voluntary program of “rural conservation areas reserved for the production of agricultural products, timber, and the maintenance of open space land as an important economic and environmental resource. In practice similar to temporary easements, landowners or groups of landowners initiate Districts as a mutual undertaking with local governments. Property owners agree not to convert their farm, forestland and other open space lands to more intense commercial, industrial or residential uses during the term of the District (typically 8-10 years). In return, the county and Commonwealth agree not to take actions or make infrastructure investments that will place increased pressure on landowners to convert land in the district to more intense land uses during the term of the District.

B. ZONING

Current County policy and regulations regarding agritourism were most recently evaluated and revised by the County in 2014 and 2017. The 2014 revisions were motivated by the need to interpret and implement the requirements of [Virginia Code § 15.2-2288.6](#), which was adopted and signed into law in July 2014. In particular, the County sought to interpret what constitutes a “substantial impact” under the Virginia law. Subsequent revisions in 2017 sought to clarify the requirements that farm wineries, breweries, and distilleries must meet in order to host weddings, after questions arose regarding which activities are considered by right.

NEXUS TO AGRICULTURE

The County is devoted to the bona fide production of crops. Producers must show that they are engaged in good faith in agricultural production and not just to enable their lot to host events and activities. To this end, the County created criteria to assess whether agriculture is a primary use to address the concern that people would engage in

⁸ <https://www.cvilletomorrow.org/articles/county-supervisors-approve-new-regulations-for>

“just enough” agriculture to allow for events. The County looks at real estate records, income, and receipts; visits properties; looks at aerial photography to verify agricultural production.

EVENTS AND ACTIVITIES

County code includes two sets of agritourism-related regulations related to on-farm events, one that applies to agricultural operations and another that applies specifically to licensed farm wineries, farm breweries, and farm distilleries.

Agricultural Operations

In order to be eligible to host events or activities at an agricultural operation, properties must qualify as an agricultural operation and agriculture must be a primary use of the property. The County’s zoning ordinance defines “agricultural operation” as *“any operation devoted to the bona fide production of crops, or animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity. This term includes aquaculture and plant nurseries.”*

Permitted activities at agricultural operations include tastings, farm-to-table dinners, agricultural festivals, auctions or livestock shows, events that promote the sale of agricultural or silvicultural products, fundraisers, charity events, or other events that are “usual and customary” at Virginia agricultural operations. Agritourism activities may include, but are not limited to, farm tours, tours of an individual agricultural operation, hayrides, heirloom plant and animal exhibits, crop mazes, and educational programs, workshops, or demonstrations related to agriculture or silviculture. Weddings are not considered “usual and customary” at agricultural operations and are subject special events regulations in the zoning ordinance (Section 5.1.43).

The ordinance includes a tiered approach that distinguishes those activities that can occur by right (no permit required) from those requiring either a zoning clearance (requiring administrative approval by County staff) or a special use permit (requiring Board of Supervisors approval) based on criteria related to the type of activity, the number of vehicle trips generated, number of attendees, site size, and the square footage of structures for farm sales. Specific requirements are summarized in the table below from County zoning.

No Permit Required	Zoning Clearance	Special Use Permit
Harvest-your-own activities	Outdoor amplified music	Structures for farm sales over 4,000 sf
Agritourism, events or retail sales generating 50 or fewer vehicle trips* per day and occurring on sites 21 or more acres in size Up to 4 farm tours per year with 200 or fewer attendees at any time Up to 4 educational programs, workshops, or demonstrations related to agriculture or silviculture per year with 200 or fewer attendees at any time	Agritourism, events or retail sales generating either over 50 vehicle trips* per day or occurring on sites under 21 acres in size Over 4 farm tours per year and farm tours with over 200 attendees at any time Over 4 educational programs, workshops or demonstrations related to agriculture or silviculture with 200 or fewer attendees at any time	Events or activities (including educational programs, workshops or demonstrations related to agriculture or silviculture) with over 200 attendees at any time Over 24 events of any size/ year
Structures for farm sales 4,000 sf or less		

* Note: A vehicle coming to and leaving a site counts as 2 vehicle trips.

On-site farm sales that generate more than 50 vehicle trips per day require a zoning clearance. Moreover, if a farm structure sales area exceeds 4,000 square feet in size, a special use permit is required

Farm Wineries, Breweries, and Distilleries

Activities allowed by right at farm wineries, breweries, and distilleries include growing, harvesting and production related to winemaking; wine tastings, the direct sale of wine, wine-related items & incidental gifts (e.g., cork screws, wine glasses, t-shirts, hats); wine storage, wholesaling and shipping; exhibits or museums related to wine or the farm winery; hayrides; winery and vineyard tours; picnics; preparation and sale of finger foods, soups or appetizers; and private gatherings held by the owner where no wine is sold or marketed.

Activities that are explicitly prohibited at farm wineries include restaurants and helicopter rides. However, while restaurants are prohibited, the preparation and sale of finger foods, soups or appetizers is permitted. In addition, outdoor amplified music is prohibited from 10 pm – 7 am on Sunday through Thursday and from 11 pm – 7 am on Friday and Saturday. No outdoor amplified music may exceed 60 dBA during the day and 55 dBA at night.

Events attended by under 200 persons may occur without a special use permit, while those attended by more than 200 persons require a special use permit approved by the Board of Supervisors. In addition, wineries, breweries, and distilleries must meet the follow requirements:

- A minimum of 5 acres of agricultural product planted on-site must be used in beverage production
- There must be on-site facilities for fermenting or distilling.
- For farm wineries and farm distilleries, there must be on-site facilities for bottling (portable botting equipment is acceptable)
- A tasting room with regular hours that is open to the public (hours by appointment only may satisfy the event eligibility requirement with a special exception)

The ordinance includes a tiered approach that distinguishes those activities that can occur by right (no permit required) from those requiring either a zoning clearance (requiring administrative approval by County staff) or a special use permit (requiring Board of Supervisors approval) based on criteria related to the type of activity, the number of vehicle trips generated, number of attendees, site size, and the square footage of structures for farm sales. Specific requirements are summarized in the table below from County zoning.

By Right (No Permit Required)	Zoning Clearance	Special Use Permit
<ol style="list-style-type: none"> 1. Growing, harvesting and production related to the making of wine, beer, or distilled spirits 2. Tasting of wine, beer, or distilled spirits 3. Direct sale of spirits, related items and incidental gifts (ex. bottle openers, glasses, t-shirts, etc.) 4. Storage, wholesaling & shipping in accordance with ABC regulations 	<ul style="list-style-type: none"> • For farm wineries, farm breweries & farm distilleries established after December 9, 2015, events or activities generating either over 50 vehicle trips* per day or occurring on sites under 21 acres in size • Outdoor amplified music 	<ul style="list-style-type: none"> • Events or activities with over 200 attendees at any time • For events associated with multiple ABC licenses, events with a cumulative attendance of more than 200

Per the ordinance, events at farm wineries, farm breweries and farm distilleries subject to the above requirements include the following: wine, beer or distilled spirits fairs, festivals, or receptions where wine, beer or distilled spirits are sold or served, club meetings and activities, tasting educational seminars, tasting luncheons, business meetings, and corporate luncheons with a focus on selling wine, beer or distilled spirits; gatherings with the purpose of promoting sales to the trade; winemaker, brewmaster, or distiller dinners where wine, beer or distilled spirits are paired with food; agritourism promotions; fundraisers and charity events; or other events not expressly authorized that are agritourism uses or are sales related uses, which are determined to be “usual and customary” uses at wineries or breweries or distilleries.

For special events and festivals, one additional parking space per employee (including staff, caterers, musicians, and vendors) is required. Additional parking for special events “may be provided in a well-drained, suitably graded area adjacent to the required parking area.”

When events occur, the County has a neighbor notice system through which neighbors are provided with contact information individuals they may contact if there are issues or questions related to event impacts, such as sound.

BUILDINGS AND PARKING

The County requires a building permit for all new buildings. In addition, the County requires minimum front, side, and rear setbacks for structures, parking areas, tents, and portable toilets and one parking space is required for every 2.5 customers. Minimum setback requirements may be modified by the Board of Supervisors with written permission abutting property owners if it is determined that there is no harm to the public health, safety or welfare, and no detriment to the abutting lot. The ordinance also includes limitations on the number and size of signs for a range of sign types as well as setback requirements for each type of sign.

No permit is required for structures for farm sales 4,000 sf or less, but a special use permit required for structures for farm sales over 4,000 sf.

ROADS AND TRAFFIC

For most types of events, 50 or fewer visitor vehicle trips per day (VTPD) is a key trigger; any event that exceeds this threshold requires a zoning clearance. For events of 200 or more persons, a special use permit is required regardless of how many VTPD are expected.

The County’s zoning clearance review process includes review by the Virginia Department of Transportation to ensure compliance with state requirements.

Traffic on rural rustic roads, including the many unpaved roads in the county, is restricted by the 200-person threshold. If an event under 200 persons is located on a public road, then the County would not deny a zoning clearance. The County has more ability to deny a zoning clearance on substandard private roads, but there are a lot of by-right uses that can occur without needing a certain road.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

The County defines local agricultural products as “*agricultural products grown or produced in Albemarle County or its abutting localities.*”

For farm wineries and breweries, a minimum of five (5) acres of fruits, grains, or other agricultural products must be planted on-site, or on any abutting lot under the same ownership, at least one growing season each calendar year and must be used in the production of the winery or brewery’s beverages.

The County’s definitions of farm sales, farm stands, and farmers’ markets all include provisions regarding on-site agricultural production and/or local agricultural products. Farm sales require that the vendor is “*engaged in production agriculture on the farm on which the farm sales use is located.*” Farm stands and farmer’s markets must sell local agricultural products, and the vendor selling the products must be “*engaged in production agriculture in Albemarle County, but not on the lot on which the [farm stand or farmer’s market] is located.*”

LODGING

Bed and breakfasts are allowed by right for parcels under 21 acres in size, but restaurants are prohibited as a use that is accessory to a bed and breakfast use. The County is more generous in rural areas regarding AirBNB-type uses, as County staff note that they sometimes hear that rural property owners want to be able to diversify uses and income sources on the farm.

ON-SITE PROCESSING

Limited processing of products grown or raised on the farm—for example, jams, pickles, and honey, or the slaughter of chickens raised on the farm—is allowed by right. However, processing of agricultural products grown off-farm falls can trigger a special use permit within the Rural Areas zoning district. As examples of such uses, the County cites uses such as sawmills, slaughterhouses or commercial packing plants.

C. OTHER CONSIDERATIONS

ADMINISTRATION

- Most agritourism-related planning, regulation, and enforcement occur under the Department of Community Development, which includes multiple divisions. Enforcement and code compliance officers are housed within the Zoning Division. The Planning Division handles special use permits and works with the County’s Agricultural and Forestal programs, which are voluntary programs that provide the equivalent of temporary easements (described further in part C above).

REVIEW PROCESSES

- The County has two primary review processes—one administrative and one legislative—that are utilized for agritourism-related projects.
 - The County’s zoning clearance requirement, as referenced in the summary of regulatory requirements above, is an administrative review process with a \$54 application fee and typically a 2-3 week turnaround time. The zoning clearance review process serves as a means of educating the property owner about County standards and verifying compliance with ordinance requirements. Provided that requirements are met, staff does not have the discretion to deny a zoning clearance.
 - A special use permit is a legislative review process that considers both the impacts on adjacent properties as well as the cumulative effects of multiple uses. Special use permits must be approved by the Board of Supervisors and t usually include conditions of approval. The cost of a special use permit is approximately \$2,500 and it typically takes a minimum of 6 months to go through the review process.

ENFORCEMENT

- Enforcement is conducted by the Department of Community Development, which includes Planning and Zoning. County staff describe enforcement as “reactive” in nature in that it occurs by complaint only, including via the County’s zoning complaint line.

EDUCATION AND COMMUNICATIONS

- The County’s FAQs documents (see “Additional Resources” below) summarizing regulatory and administrative requirements for the general public and potential applicants stand out, among the jurisdictions surveyed, as particularly detailed and comprehensive.

MARKETING AND PROMOTION

- A page within the County’s website details suggested “[travel trails](#)” linking agritourism venues along trail routes.

D. LESSONS LEARNED

County staff offered the following lessons learned:

- Overall, the County’s regulatory requirements for agritourism are still relatively new. Having laid out the refined requirements in the ordinance is a “good thing,” but the County is still assessing for itself how the policies and requirements are working. County staff spend a lot of time walking property owners through the requirements, particularly with wineries and breweries.
- License date is very important, as some applicants are exempt from certain requirements based on their licensing date. Virginia ABC notifies the County whenever there’s a new license or a license change, which prompts the County to contact property owners if they haven’t contacted the County already. Even with the FAQ documents, there is sometimes still confusion about the requirements and to which entities they apply—for example, County staff cited the example of a winery adding a brewery, which triggered some new requirements related to sound management and zoning clearance, while the property owner thought it was exempt from requirements.
- There is a certain amount of “NIMBYism” that cannot be solved through the County’s regulations through the County’s regulations and review process. For example, the County has only approved a few zoning clearances for Agricultural Operations events, at the time of this research.
- The County has considered hiring a rural economic development specialist to supplement existing staff, but the status of this idea was uncertain at the time of this research.

E. SELECTED DEFINITIONS

Agritourism: Any activity carried out at a farm winery, farm brewery, or an agricultural operation, that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions, regardless of whether or not the participant paid to participate in the activity. These rural activities also include, but are not limited to, farm tours, tours of an individual agricultural operation, hayrides, heirloom plant and animal exhibits, crop mazes, and educational programs, workshops, or demonstrations related to agriculture or silviculture. (Added 5-5-10; Amended 11-12-14)

Agricultural operation: Any operation devoted to the bona fide production of crops, or animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity. This term includes aquaculture and plant nurseries.

Agricultural operation event: An event conducted at, and subordinate to, an agricultural operation for up to three (3) consecutive days comprised of: (i) agritourism-related events such as tastings not conducted in the daily course of agritourism, farm sales, or the sale of agricultural products or food products; farm-to-table dinners; agricultural festivals; and auctions or livestock shows pertaining to livestock, animals, or other agricultural products not grown or raised at that agricultural operation; (ii) events that promote the sale of agricultural or silvicultural products; (iii) events that promote the sale of food products; (iv) events that are usual and customary at Virginia agricultural operations; and (v) fundraisers and charity events.

Agriculture: An agricultural operation, the keeping of livestock or poultry, or both, regardless of whether the keeping of livestock or poultry qualifies as an agricultural operation. The term includes accessory processing facilities for agricultural products grown or raised solely on the farm on which the agriculture is located, such as fruit packing plants and dairies. The term does not include any processing facilities permitted only by special use permit.

Devoted to the bona fide production of crops, animals, or fowl: As used in the definition of “agricultural operation,” any lot on which the production of one or more agricultural products is a primary use (“agricultural production”) and the agricultural production is engaged in good faith and not merely to enable the lot to be eligible to host events and activities at an agricultural operation as provided in sections 5.1.58, 10.2.1(30), 10.2.2(56), 11.3.1(29), and 11.3.2(10). In determining whether the agricultural production is a primary use and engaged in good faith, the following factors may be considered: (i) whether the lot is subject to use value assessment because it is real estate devoted agriculture, horticulture, or silviculture; (ii) the acreage in agricultural production; (iii) the proportion of the lot’s acreage in agricultural production; (iv) the crops, animals, or fowl being produced; (v) the acreage of the lot and of the site; (vi) the owner’s federal tax forms including Form 1040F (Farm Expense and Income), Form 4385 (Farm Rental Income and Expenses), Form 1040E (Cash Rent for Agricultural Land), Form 1040C (Business Profit and Loss), or Form 1120 (Corporate Partnership); (vii) receipts showing gross sales over the most recent three-year period or evidence of the value of agricultural products that would have been sold but for a natural disaster; (viii) the proportion of the owner’s total income derived from agricultural production on the site; (ix) evidence of participation in a federal farm subsidy program; (x) evidence of operating under a conservation farm management plan prepared by a professional; (xi) the proportion of capital investment in the site devoted to the production of agricultural products, operating, and labor expenses; (xii) Albemarle County-level United States Department of Agriculture Census of Agriculture data; and (xiii) any other relevant factors.

Farm: The term “farm” means one or more parcels of land, whether such parcels are abutting or not, operated under the same management and whose primary use is agriculture. (Added 12-13-06) **Farm brewery:** An establishment located on one or more lots in Albemarle County licensed as a limited brewery under Virginia Code § 4.1-208.

Farm brewery event: An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.57(c)(5), conducted at a farm brewery on one or more days, where the purpose is agritourism or to promote beer sales, and which may be, but is not limited to, beer festivals; receptions where

beer is sold or served; beer club meetings and activities; beer tasting educational seminars; beer tasting luncheons, business meetings, and corporate luncheons with a focus on selling beer; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; brewmasters’ dinners where beer is paired with food; agritourism promotions; and fundraisers and charity events.

Farm distillery: An establishment located on one or more lots in Albemarle County to which a limited distiller’s license is issued under Virginia Code § 4.1-206. (Added 12-9-15)

Farm distillery event: An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.59(c)(5), conducted at a farm distillery on one or more days, where the purpose is agritourism or to promote the sale of distilled spirits, and which may be, but is not limited to, distilled spirits festivals; receptions where distilled spirits are sold or served; distilled spirits club meetings and activities; distilled spirits tasting educational seminars; distilled spirits tasting luncheons, business meetings, and corporate luncheons with a focus on selling distilled spirits; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; distillers’ dinners where distilled spirits are paired with food; agritourism promotions; and fundraisers and charity events.

Farm sales: The sale of agricultural products, value-added products and accessory merchandise on a farm, either outdoors or within a temporary or permanent structure, where the vendor selling the products and merchandise is engaged in production agriculture on the farm on which the farm sales use is located.

Farm stand: The sale of local agricultural products and value-added products, either outdoors or within a temporary or permanent structure, where the vendor selling the products is engaged in production agriculture in Albemarle County, but not on the lot on which the farm stand is located.

Farm tour: An event organized by two or more agricultural operations or by a third party, to which the public is invited to visit two or more agricultural operations, and which may include educational programs, workshops, or demonstrations related to agriculture or silviculture.

Farm winery: An establishment located on one or more lots in Albemarle County licensed as a farm winery under Virginia Code § 4.1-207.

Farm winery event: An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.25(c)(5), conducted at a farm winery on one or more days where the purpose is agritourism or to promote wine sales, and which may be, but is not limited to, wine fairs; receptions where wine is sold or served; wine club meetings and activities; wine tasting educational seminars; wine tasting luncheons, business meetings, and corporate luncheons with a focus on selling wines; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; winemakers’ dinners where wine is paired with food; agritourism promotions; and fundraisers and charity events.

Value-added products: Raw agricultural products that have been altered to enhance their value through baking, bottling, canning, carving, churning, cleaning, drying, freezing, weaving, or other similar processes.

F. ADDITIONAL RESOURCES

Albemarle County Code

<http://www.albemarle.org/department.asp?department=ctyatty&relpage=2127>

Agricultural Operations FAQs

Farm Wineries, Breweries, and Distilleries FAQs

http://www.albemarle.org/upload/images/forms_center/departments/Community_Development/forms/Zoning_Applications/Farm_Winery_Brewery_&_Distillery_FAQs.pdf

Zoning Clearance Application

http://www.albemarle.org/upload/images/forms_center/departments/Community_Development/forms/Zoning_Applications/Zoning_Clearance.pdf

Albemarle County – Agritourism Travel Trails

<https://www.albemarle.org/department.asp?department=visitors&relpage=19046>

G. JURISDICTION CONTACT

- Rebecca Ragsdale
Principal Planner
Albemarle County Community Development Department

LOUDOUN COUNTY, VIRGINIA

A. AGRITOURISM CONTEXT

Located in Northern Virginia 25 miles from the District of Columbia, Loudoun County has close to 1,400 farms. Of these farms, approximately 13 percent participate in agritourism activities.⁹ Agritourism operations range from pick-your-own, livestock farms, and Christmas tree farms to craft beverages and cheesemaking.

Policy Context

The County preserves agricultural land both temporarily and permanently through three programs. Under the Agricultural and Forestal District Program, landowners may voluntarily protect land of 200 contiguous acres or more for 4-10 years, with the option to renew, in exchange for tax benefits and protection from eminent domain and certain restrictions on the use of the land. The County's conservation easement stewardship program permanently protects land from development through conservation easements. Finally, the County's Land Use Assessment program defers real estate taxes on properties that meet agricultural, horticultural, forestry, or open space use criteria.

B. ZONING

As in the case of other Virginia jurisdictions, Loudoun County must follow and interpret the provisions of Virginia Code § 15.2-2288.6, including the Commonwealth of Virginia's definition of agritourism. County zoning currently does not define "agritourism," but includes three related definitions for "agritainment," "farm-based tourism," and "agri-education." Almost every zoning district allows agricultural uses, and approximately half of these allow agritourism.

The zoning ordinance allows and provides standards for three categories of rural uses, including:

- Agriculture
- Agriculture Support and Services Directly Related to On-going Agriculture, Horticulture and Animal Husbandry Activity, On-Site (includes agri-education, pick-your-own, certain events, and farmers markets)
- Agriculture Support and Services Not Directly Associated with On-Site Agricultural Activity

The code provides separate standards for these use types as well as for "farm-based tourism" and commercial wineries. Standards address considerations such as site size, parking, hours of operation, buffers, and access, as well as building standards such as minimum lot areas, maximum structure size, and setbacks.

NEXUS TO AGRICULTURE

Most agritourism uses fall under the County's definition of "Agriculture Support and Services Directly Associated with On-going Agricultural Activity, On-Site," which is defined broadly to include *"uses that provide support and services to agricultural, horticultural and animal husbandry activities, which are limited to and that operate in conjunction with and on the site of on-going agricultural, horticultural or animal husbandry uses"* Under this definition, these uses include: agricultural processing; agri-education; commercial wineries; "direct market businesses for the sale of products produced on-site, including but not limited to PYO (pick-your-own);" farm-based tourism events; farm markets; wayside stands; and a range of similar uses.

⁹ <https://wtop.com/business-finance/2017/04/loudoun-countys-quiet-revenue-giant-agritourism/>

The zoning ordinance also includes a separate definition for “agritainment,” which is also considered to be directly associated with agriculture. The definition includes “[e]vents and activities such as corn mazes, hay rides and petting zoos, that allow for recreation, entertainment and tourism in conjunction with agriculture support and services directly associated with on-going agricultural activity on-site.”

EVENTS AND ACTIVITIES

The County sees events (such as weddings) as usual and customary at wineries and breweries. Therefore, there is no limit for events at wineries and breweries. Farms other than wineries and breweries are limited to 10 special events per year. The ordinance also draws a distinction between marketing events to sell a farm’s product and special events, which the County defines as leasing space out to a third party. County staff used the example of a strawberry farm holding a large strawberry festival: “If there are 3000 people there, and it’s the farm’s own event to market and sell their own product, it’s just a marketing campaign and not a special event. If they have a wedding, that’s a special event.”

Events that fall under the definitions of “Agriculture Support and Services Directly Associated with On-going Agricultural Activity” and “Farm-Based Tourism” are subject to limits on the number of visitors on any single day and the number of vehicles allowed on-site at any one time. For events considered ““Agriculture Support and Services Directly Associated with On-going Agricultural Activity,” the numbers of visitors and vehicles increase with lot area size:

- Lots between 5 and 25 acres may have no more than 200 daily visitors and no more than 100 vehicles allowed on site at any one time;
- Lots between 25 and 50 acres may have 200-400 visitors and no more than 200 vehicles allowed on site; and
- Lots between 50 and 100 acres may have up to 600 visitors and no more than 300 vehicles allowed on site at any one time, except 4 additional visitors and 2 additional vehicles allowed per acre in excess of 100 acres.

Activities that fall under the definition of “Farm-Based Tourism” are subject to similar limits, but slightly higher thresholds of visitors (300, 600, and 800 visitors, respectively) and vehicles (150, 300, and 450, respectively).

Events considered “special events” require a special events permit. Special events are defined as “*temporary commercial or festive activity or promotion at a specific location that is open to the public and is planned or reasonably expected to attract large assemblies of persons. Special events include, but are not limited to, carnivals, festivals, circuses, music fairs or concerts, tent revivals, art shows, crafts shows, rodeos, corn mazes, civil war reenactments, equestrian shows, firework displays and events, or similar events open to the public.*” The definition further states that “[s]pecial event” *does not include temporary or seasonal retail sales of goods, products, or services, such as temporary sales of Christmas trees, farm produce, fireworks, and other similar seasonal goods.*” Applications for special event permits are reviewed on a case-by-case basis to determine if there is a need to mitigate impacts.

BUILDINGS AND PARKING

No performance standards for agricultural buildings are required, other than setbacks. The County interprets Virginia Code—which states that agricultural structures are exempt from the uniform building code and considers wineries, breweries, and distilleries to be agricultural uses—to mean that craft beverage uses are also exempt from the building code. County staff report that there is more of a “gray area” for other agritourism businesses

that are not called out specifically in Virginia Code (for example, agricultural structures that temporarily serve as retail locations), and whether these uses are subject to building code requirements and building permits.

The zoning ordinance includes maximum square footage requirements, based on total lot area, for a range of buildings that serve agritourism uses. Buildings used for farm-based tourism are subject to three tiers of requirements, depending on lot size and up to a maximum of 10,500 square feet. Other specific building types are treated as a percentage of aggregate square footage. Wine Tasting Rooms and Accessory Food Sales are limited to 49 percent of the total gross floor area of all structures at the commercial winery. Craft Beverage Manufacturing are limited to the lesser of (i) 49 percent of the total gross floor area or (ii) 5,000 square feet. Moreover, the retail sales areas of Farm may not exceed, in the aggregate, 10,000 square feet of floor area or a Floor Area Ratio of .02, whichever is greater.

Finally, the zoning ordinance includes exceptions for buildings located within a historic district or those that are listed or eligible for historic designation. Such buildings are “exempt from the minimum lot area and Level I lot area and setback from lot lines requirements, provided that any expansion or enlargement of such structure shall not exceed 15% of the total floor area.”

The minimum amount of parking required is determined on a case-by-case basis and is dependent on the type of operations proposed.

ROADS AND TRAFFIC

The County regulates traffic impacts based on the size of the parcel, rather than on road characteristics. The greater the acreage of a site, the more people a site can accommodate. There are no limits for craft beverages; in the case of farm breweries, for example, a minimum of 10 acres is required, but there are no limits on the number of people.

If a parcel is accessible from state roads, access points may need to be improved to accommodate customer traffic. Such instances will require permit approval from VDOT.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

For Farm Markets, a minimum of 25% of the products offered for sale “must be derived directly from agricultural, horticultural, aquacultural, or animal husbandry products produced on site or on other property in Loudoun County owned or leased by the operator of the Farm Market.”

At wayside stands, the principal sales items sold must be “farm and garden products produced principally on-site” (with on-site meaning all locations, including separate parcels, used by the owner or tenant for farming (agriculture, horticulture or animal husbandry).

Breweries and distilleries may include tasting rooms as accessory uses as long as beer or distilled spirits are manufactured on-site; there are no additional requirements for on-site cultivation of grains.

Two categories of wineries are addressed in County code. “Virginia Farm Wineries” must be (1) “located on a farm with a producing vineyard, orchard or similar growing area and with facilities for fermenting and bottling wine on the; or (2) located in the Commonwealth with a producing vineyard, orchard or similar growing area or agreements for purchasing grapes or fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises. Wineries that cannot meet this definition are categorized as “commercial wineries.”

LODGING

Bed and Breakfast Homestay and Bed and Breakfast Inn are both permitted uses in four agricultural zones (AR-1, AR-2, AR-3, AR-10). A recent zoning amendment, completed per the request of bed and breakfast operators, increased the number of allowable events at bed and breakfasts located on a farms to 20 events per year from 10 events per yet, due to bed and breakfasts' stated need for more events to supplement income.

C. OTHER CONSIDERATIONS

- The County does not have a formal agricultural ombudsman position, but County staff report that a team of agricultural development specialists within Loudoun Virginia Economic Development serve a similar role.
- All enforcement of zoning regulations is complaint-driven.
- To market and promote agritourism, the County's economic development department maintains a "Loudoun Farms" website highlighting the county's farms and agricultural businesses. Other promotional activities include a spring and fall farm tour, a "Christmas in Loudoun Valley" brochure, and marketing via social media. Given the County's focus on agritourism for economic development, the primary message of Visit Loudoun, the County's tourism marketing arm, is also focused on agritourism.

D. LESSONS LEARNED

County staff shared the following lessons learned:

- The County is making tweaks to the zoning ordinance, and County staff express the hope that there will also major changes to some definitions of agritourism—moving away from current definitions and toward the Commonwealth of Virginia definition.
- About five years ago, County formed a committee called the Zoning Ordinance Action Group. This group was charged with developing a more business-friendly zoning. As part of its mandate, the County wanted the committee to look at uses that were a special exception – which usually go through legislative processes—and explore ways to make them more streamlined and by-right with performance standards. County staff cite the example of equestrian facilities, which were once subject to a lot of different definitions. A once-cumbersome process is streamlined now. The bed and breakfast special events addition to the code happened during that time as well.
- In the past, staff has found that creating "quick facts"-type documents about certain regulatory requirements can be very helpful and can project a more business-friendly attitude. Too often, people "miss a step" when they go to the counter, so staff also encourage people to call and ask questions about the process.
- The County has a core group of "habitual objectors" – 5 or 6 people who consistently are vocal about any agriculture enterprise that brings traffic to the roads and complain about traffic and noise, whether or not the complaints are justified or not. County staff have heard more concern about agritourism as the vocal people continue objecting, and elected officials become increasingly tired of receiving complaints. As a result, staff have become increasingly sensitive to complaints, but also cite the need to be able to separate those who have legitimate concerns from those "who are just upset." The next level of education involves helping habitual objectors understand agritourism better; for example, "that farm breweries help to support peach orchards, hydroponic strawberry operations, etc." There is a need to "tell a story of a symbiotic relationships."

- County staff cite the need for more upfront education of residents to increase their understanding of both agriculture and the need for preservation of agriculture. For example, some jurisdictions elsewhere require people to sign an affidavit when they move into a community that is agriculturally-based, acknowledging the potential impacts (sights, sounds, smells) that come with living near agricultural operations; however, such an approach has been met with resistance from real estate agents.

E. SELECTED DEFINITIONS

Agriculture Support and Services Directly Associated with On-going Agricultural Activity, On-Site: A Use Category that includes uses that provide support and services to agricultural, horticultural and animal husbandry activities, which are limited to and that operate in conjunction with and on the site of on-going agricultural, horticultural or animal husbandry uses. These uses include: agricultural; agri-education; animal care businesses; commercial wineries; custom operators (haymaking, brush hogging, crop storage, hauling, fencing, barn construction); direct market businesses for the sale of products produced on-site, including but not limited to PYO (pick-your-own); equestrian event facilities; horse trails or networks; farm co-ops; farm based tourism events; farm markets; farm machinery repair; feedlot (for on-going, on-site, animal husbandry activities); nurseries, commercial; pet farms; products combining recreation with consumption of agricultural products; portable sawmills; small business uses; stables; stables, private; wayside stands; wetlands mitigation banks; and similar uses.

Agriculture Support and Services Not Directly Associated with On-Site Agricultural Activity: A Use Category that includes uses and activities that provide support and services to agricultural, horticultural and animal husbandry activities, either on the site of the agricultural, horticultural or animal husbandry activity, or off-site. These uses include: agricultural research facility; animal care businesses; central farm distribution hub for agricultural products; equestrian event facilities; horse trails or networks; farm machinery repair; farm machinery sales, rental and service; feed and farm supply centers; nurseries, commercial; stables, livery; stable, private; and similar uses.

Agritainment: Events and activities such as corn mazes, hay rides and petting zoos, that allow for recreation, entertainment and tourism in conjunction with agriculture support and services directly associated with on-going agricultural activity on-site.

Craft Beverage Manufacturing: A small-scale brewery manufacturing no more than 15,000 barrels of beer per calendar year licensed in accordance with Section 4.1-208 of the Code of Virginia, as amended, or a small-scale distillery manufacturing no more than 36,000 gallons of distilled spirits, licensed in accordance with Section 4.1-206 of the Code of Virginia, as amended. Accessory uses shall include tasting rooms at which the consumption of beer or distilled spirits manufactured on-site occurs, accessory food sales occur, and beer and/or distilled spirits manufactured on-site are sold.

Farm Based Tourism: Tourism events which focus on visitation of farms, including organized farm tours and participatory farm vacations.

Special Event: A temporary commercial or festive activity or promotion at a specific location that is open to the public and is planned or reasonably expected to attract large assemblies of persons. Special events include, but are not limited to, carnivals, festivals, circuses, music fairs or concerts, tent revivals, art shows, crafts shows, rodeos, corn mazes, civil war reenactments, equestrian shows, firework displays and events, or similar events open to the public. A private party held at a Banquet/Event Facility

(including Hotel, Conference Center, Restaurant, Rural Resort, or similar facility), Bed and Breakfast Homestay, Bed and Breakfast Inn, or Country Inn shall not be deemed a special event. A private party which is held at a location other than the foregoing or held on property not occupied by the host, shall be deemed a special event. "Special event" does not include temporary or seasonal retail sales of goods, products, or services, such as temporary sales of Christmas trees, farm produce, fireworks, and other similar seasonal goods.

Wayside Stand: Any structure or land used for the sale, by the owner or his family or tenant, of agricultural or horticultural produce, livestock or merchandise principally produced on said farm, but may include produce grown on other farms and accessory products, and which is clearly a secondary use of the premises and does not change the character thereof.

Winery, Commercial: An establishment with facilities for making and bottling wine for sale on site or through wholesale or retail outlets. A commercial winery is a winery that does not meet the definition of a Virginia Farm Winery. Uses at a commercial winery may also include the growing of fresh fruits or agricultural products for the production of wine. Accessory uses shall include wine tasting rooms at which wine tasting occurs, accessory food sales related to wine tasting occurs, and wines produced onsite are sold. Any winery licensee may manufacture and sell cider in accordance with this definition and Section 4.1-213 of the Code of Virginia.

Winery, Virginia Farm: An establishment: (1) located on a farm with a producing vineyard, orchard or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume; or (2) located in the Commonwealth with a producing vineyard, orchard or similar growing area or agreements for purchasing grapes or fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this definition, the term owner or lessee shall include a cooperative formed by an association of individuals for the purposes of manufacturing wine. In the event such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative, as long as such land is located in the Commonwealth. Accessory uses at a Virginia Farm Winery may include: commercial wineries, and wine tasting rooms at which wine tasting occurs, accessory food sales related to wine tasting occurs, and wines produced on-site are sold. A farm winery license shall be designated either as a Class A or Class B farm winery in accordance with Section 4.1-219 of the Code of Virginia. Any farm winery licensee may manufacture and sell cider in accordance with this definition and Section 4.1-213 of the Code of Virginia.

F. ADDITIONAL RESOURCES

Revised 1993 Zoning Ordinance

<https://www.loudoun.gov/DocumentCenter/View/99645/Revised-1993-Zoning-Ordinance?bidId=#page=965>

Loudon Farms Website

<https://loudounfarms.org/>

G. JURISDICTION CONTACT

- Kellie Hinkle
Agricultural Development Officer
Loudoun County, Virginia Economic Development

ROCKINGHAM COUNTY, VIRGINIA

A. AGRITOURISM CONTEXT

Located in the greater Shenandoah Valley region of Virginia, approximately 130 miles from both Washington, DC and Richmond, VA, Rockingham County leads all Virginia Counties in farm receipts.¹⁰ It is home to a growing agritourism economy which includes numerous wineries, a recently-expanded cidery, a growing creamery, and a range of other agricultural operations. Along with five other counties and five cities, Rockingham County participates in the [Fields of Gold Farm Trail](#), a regional agritourism program designed to market and promote the Shenandoah Valley's agritourism sites and activities.

Policy Context

The County does not have a formal permanent agricultural reserve in place. Primary tools for agricultural land preservation include (1) an Agricultural and Forestal Districts program, in which landowners may voluntarily protect contiguous land for up to 10 years, with the option to renew, in exchange for tax benefits and protection from eminent domain and certain restrictions on the use of the land and (2) a land use assessment program that defers real estate taxes on properties that meet agricultural, forestry, or open space use criteria.

B. ZONING

As with other VA jurisdictions, agritourism policy is driven by state requirements and local interpretations of these requirements. Current County policy regarding agritourism is informed by a 2017 Board of Supervisors resolution, which sought to interpret and implement the requirements of [Virginia Code § 15.2-2288.6](#), the statewide on-farm activity law that was adopted in July 2014. Included in the County's zoning ordinance as an appendix, the resolution offers the County's detailed interpretation of numerous terms and principles used in the Virginia legislation, from "agricultural operation" and "bona fide production" to "incidental" and "substantial impact." Because this Board resolution is so central to current County agritourism policy and is the first point of reference for County staff when considering proposed projects, the full text of the resolution is included at the end of this jurisdiction profile as an appendix.

In addition to the Board resolution, the County's ordinance also specifically addresses agritourism, which is defined as "*[a]ny activity carried out on a farm that allows members of the general public, regardless of fee charged, for recreational, entertainment, or educational purposes, to view or enjoy farming or farm wineries; historical, cultural, or harvest-your-own activities; value-added agricultural activity; or natural activities and attractions.*"

Agritourism is permitted in the County's A-1 (Prime Agricultural) and A-2 (General Agricultural) zoning districts "in order to supplement farm income." It is also permitted in the County's RV (Rural Village) district, which includes more residential and retail uses.

Additional supplemental standards in the ordinance include caps on annual production of beer for craft breweries located in agricultural zoning districts (15,000 barrels per year, as compared to 250,000 per year in other zoning districts); limitations on the amount and origin of agricultural products and "companion products" allowed to be

¹⁰ Virginia Farm Bureau Agriculture Facts <https://www.vafb.com/membership-at-work/agriculture/agriculture-facts>

sold at farm markets; and restrictions on restaurants in agricultural districts (allowed with special use permit where associated with a winery, brewery, or other ABC Board-licensed establishment).

NEXUS TO AGRICULTURE

The zoning ordinance specifies that all on-farm activities “shall be accessory to a bona fide agricultural operation.” The 2017 Board of Supervisors resolution expands at length on this requirement by clarifying the County’s interpretation of the terms “agricultural operation,” “bona fide production,” and “incidental to the agricultural operation” as they are used in Virginia Code § 15.2-2288.6. For the detailed interpretations, refer to sections 7, 8 and 10 of the 2017 Board resolution, which is included as an appendix to this profile.

EVENTS AND ACTIVITIES

Event centers are considered permitted uses as long as they are located on a property that includes a bona fide agricultural operation and are accessory to agricultural uses and follow limitations on the hours of operation (6:00 AM to 11:00 PM; until 1:00 AM if held indoors after 11:00 PM). In addition, all applicable local, state, and federal regulations must be met, including, but not limited to, the Uniform Statewide Building Code and Fire Code.

Event centers that do not demonstrate connection to an operating farm are required to obtain a special use permit.

BUILDINGS AND PARKING

County staff note that, despite some interpretations of Virginia law that agritourism uses are exempt from the Uniform Statewide Building Code and Fire Code, the County expects all applicable building, fire, and safety codes to be met to ensure health, safety, and welfare. The code includes specific supplemental area and site development standards for certain agricultural structures, including meat processing facilities and agriculture-related businesses, but otherwise does not provide specific building standards for most agritourism uses. Most supporting agritourism structures are allowed by right as long as the property owner can demonstrate that they are accessory to bona fide agricultural operations.

The code includes parking standards for farm markets and notes that parking standards for farm winery uses will be determined at the site plan level.

ROADS AND TRAFFIC

Traffic and vehicular access considerations are within the purview of the Virginia Department of Transportation (VDOT) and must meet VDOT requirements. For operations that are not hosting events at a defined time, VDOT will focus more closely on entrances to properties than the roads themselves.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

The County has a “51 percent rule” for farm wineries, farm distilleries, and farm cider mills in that 51% of “the fresh fruits or agricultural products used by the owner to manufacture the [wine/distilled product/cider] shall be grown or produced on the farm or land in Virginia leased by the licensee, and meeting all regulations of the state alcoholic beverage control board.”

For farm markets, the County requires that 25% of the products sold must be agricultural products produced within Rockingham County. In addition, sales of “companion products” are limited to 10% of the total area devoted to sales.

LODGING

Bed and breakfasts are allowed in Agricultural and Rural Village districts as a special use and subject to supplemental standards, including: residence of the owner or manager on the site, a limit of not more than five guest bedrooms, and serving breakfast for overnight guests only.

C. OTHER CONSIDERATIONS

ADMINISTRATION AND ENFORCEMENT

- County staff note that the County’s approach to regulating agritourism is often “case by case” and depends on specific circumstances. Zoning staff will typically share a copy of the Board’s resolution prior to meeting with people. They will then verify that the applicant has current farming operations that meet the Board resolution’s guidance regarding demonstrating a connection to bona fide agricultural operations.

MARKETING AND PROMOTION

- The County markets and promotes agritourism jointly with ten other counties and cities through [Fields of Gold](#) Farm Trail program in the Shenandoah Valley, which also includes the counties of Augusta, Bath, Highland, Rockbridge, and Shenandoah, and the cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro. The County also maintains a listing of agritourism venues on its website.

D. LESSONS LEARNED

County staff offered the following lessons learned:

- Overall, staff feel that the County’s approach to agritourism has worked well for both staff and the public since Board of Supervisors’ 2017 resolution on the 2014 Virginia Code provisions. Previously, it was more common that applicants who are connected to bona fide agricultural operations would approach staff seeking approval for uses, activities, and events that are not allowed within agricultural zones. Now, the Board resolution serves as the first piece of information staff shares with potential applicants before holding meetings with them.
- With regard to making expectations clear to the public, County staff advise that it helps to be proactive about how the County will treat the code (local and state) and to “put it out there” [the County’s expectations] as County staff have done with the Board resolution.
- County staff feel that agritourism is “pretty much generally accepted” in the county and do not report major issues with complaints and impacts.
- The County has benefited from having a zoning team and an economic development team that work very closely together. They have found that it is important that parties working on the business side and the regulatory side know and understand what each other is doing so that they are not giving mixed messages.

E. SELECTED DEFINITIONS

Also refer to Appendix for the Board of Supervisors’ interpretations of key terms from Virginia Code.

Agriculture: Land used exclusively for purposes including aquaculture, horticulture, floriculture, viticulture, viniculture, silviculture, livestock and poultry husbandry, and other farming, with necessary accessory uses such as

packing, treating, or storing the produce, provided that the operation of the accessory use is clearly incidental to the agricultural activity.

Agritourism: Any activity carried out on a farm that allows members of the general public, regardless of fee charged, for recreational, entertainment, or educational purposes, to view or enjoy farming or farm wineries historical, cultural, or harvest-your-own activities; value-added agricultural activity; or natural activities and attractions.

Event center: A building and land, which may include on-site kitchen/catering facilities, where indoor and outdoor activities such as weddings, receptions, banquets, and other such gatherings are held by appointment.

Farm: One (1) or more areas of land, totaling at least six (6) acres and qualifying for land use valuation, used for the production, cultivation, growing, harvesting, or processing of agricultural products.

Farm brewery: A facility for the brewing and production of beer located on a farm and meeting all regulations of the state alcoholic beverage control board for a limited brewery.

Farm building: A building or structure not used for residential purposes, located on a property where farming operations take place, utilized for either the storage, handling, production, display, sampling, or sale of agricultural products produced on the farm; the sheltering or raising of farm animals; the maintenance and storage of farm equipment used on the farm; or storage or use of supplies and materials used on the farm.

Farm cider mill: A facility for the extraction of juice from fruit, the processing of the juice into fruit cider and the bottling of the fruit cider, but not including distilling. At least fifty-one (51) percent of the fresh fruits or agricultural products used by the owner to manufacture the cider shall be grown or produced on the farm or land in Virginia leased by the licensee, and meeting all regulations of the state alcoholic beverage control board.

Farm distillery: A facility for the distillation of alcohol and/or spirits where upon at least fifty-one (51) percent of the fresh fruits or agricultural products used by the owner to manufacture the distilled product shall be grown or produced on the farm or land in Virginia leased by the licensee, and meeting all regulations of the state alcoholic beverage control board.

Farm market: A market held in an open area or in a structure, where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and craft items, and food and beverages. Items shall not include those generally associated with thrift stores.

Farm winery: A winery was defined by the state alcoholic beverage control board where upon at least fifty-one (51) percent of the fresh fruits or agricultural products used by the owner to manufacture the wine shall be grown or produced on the farm or land in Virginia leased by the licensee, and meeting all regulations of the state alcoholic beverage control board

On-Farm activities: Any activity detailed in section 15.2-2288.6 of the Code of Virginia, carried out on and accessory to an agricultural operation.

Produce stand: Any structure or land used for the sale of agricultural or horticultural products, produced by the owner or his family, grown by the owner or tenant of the property and sold on the property.

F. ADDITIONAL RESOURCES

Rockingham County Zoning Ordinance

https://library.municode.com/va/rockingham_county/codes/code_of_ordinances?nodeId=CH17ZO

2017 Board Of Supervisors of Rockingham County, Virginia, Resolution Regarding The Interpretation Of Virginia Code Section 15.2-2288.6 (Appendix A to Zoning Ordinance – *also see Appendix for full text*)

https://library.municode.com/va/rockingham_county/codes/code_of_ordinances?nodeId=CH17ZO_APXA

Fields of Gold Farm Trail

<https://www.fieldsofgold.org/>

G. JURISDICTION CONTACTS

- Diana Stultz
Zoning Administrator
Rockingham County

 - Joshua Gooden
Economic Development & Tourism Coordinator
Rockingham County
-

APPENDIX: 2017 BOARD OF SUPERVISORS RESOLUTION

https://library.municode.com/va/rockingham_county/codes/code_of_ordinances?nodeId=CH17ZO_APXA

BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA,
RESOLUTION REGARDING THE INTERPRETATION OF
VIRGINIA CODE SECTION 15.2-2288.6

IN THAT the 2014 General Assembly of Virginia enacted, and the Governor signed into law, Section 15.2-2288.6 (the Statute), a provision that highlights, underscores and protects certain rights of owners of *agricultural operations* engaged in the *bona fide* , cultivation and harvesting of agricultural products, and

IN THAT the rights of owners of *bona fide agricultural operations* include the right to conduct on-site agritourism activities, the sale of certain specified products *incidental* to the *agricultural operation* , the preparation, processing or sale of certain specified food products, and activities that are *usual and customary* on *agricultural operations* , and

IN THAT the Board of Supervisors of Rockingham County has been and continues to be in wholehearted support of the goals and objectives enunciated in the Statute, and

IN THAT the Board of Supervisors recognizes that, as with any new statutory initiative, some guidance regarding the interpretation of several key words and phrases in the Statute may be in order to assist owners of land in Rockingham County and the Rockingham County staff with the implementation thereof,

The BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA, resolves as set forth in the following paragraphs:

1. The Board of Supervisors is wholeheartedly in favor of the mutually supportive and compatible objectives of maintaining the rural and agricultural nature of agriculturally zoned districts, and facilitating the efforts of owners of *bona fide agricultural operations* in striving to make their farms successful and prosperous. Successful and prosperous farms are essential to maintaining rural lands.
2. The Board of Supervisors recognizes that the owners of *bona fide agricultural operations* need to explore creative alternative income generators that are *incidental* to, arise out of, and enhance, their traditional farming operations.
3. The Board of Supervisors also recognizes that the creative alternative income generators on *agricultural operations* must not be permitted to *significantly impact* the agricultural and rural character of the area, other agricultural operations, or creative alternatives for supplemental income generation on other agricultural operations.
4. The Board of Supervisors further recognizes its duty to protect County taxpayers from being inequitably burdened in the provision of infrastructure and services.
5. In light of the foregoing but now focusing more specifically on the interpretation of the new legislation, the Board first notes that the Statute applies only to *agricultural operations*. Land uses on a parcel located in an agricultural district that is not being used for an *agricultural operation* are regulated by the County's Zoning Ordinance just as they were prior to the adoption of the Statute.
6. Secondly, the Board notes that, should an owner of an *agricultural operation* conduct, or desire to conduct, one of the activities discussed in the Statute, that has, or will have, a *substantial impact* on the health, safety or general welfare of the public, which includes neighboring properties, then such activity also is regulated by the County's Zoning Ordinance as it was prior to the adoption of the Statute.
7. The term *agricultural operation* is understood by the Board of Supervisors to mean any operation devoted to the *bona fide production* of crops, or animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products, and the production or harvest of products from silviculture activity. *Agricultural operations* can only occur on a parcel located in one of the designated agricultural districts, or a parcel with a legal continuing pre-existing non-conforming agricultural use. Though often used in the singular, the phrase *agricultural operation* shall include an operation that has more than one qualifying activity. For example, land that is used in part for the production of crops, in part as pasture and in part for hay production, shall be considered an *agricultural operation*, including for the consideration of whether the operation satisfies the definition of *bona fide production*. This understanding of *agricultural operation* is principally derived from Section 3.2-300 of the Code of Virginia (1950).
8. The term *bona fide production* is understood by the Board of Supervisors to mean:
 - A. the *agricultural operation* is the primary use on the land. Factors such as the proportion of capital investment, operating expenses, labor, acreage, and similar considerations, allocated to agricultural activities, shall be taken into account when determining whether the *agricultural operation* is the primary land use, or to the contrary, is a secondary or incidental use. No specific proportion shall be considered conclusively dispositive of whether the *agricultural operation* is the primary land use. Rather, the analysis shall be a total facts and circumstances analysis. However, an agricultural operation may never be deemed the primary use on the land if a reasonable person could conclude that the *agricultural operation* exists for the purpose of establishing eligibility for exemption from local regulation under the Statute, and;
 - B. the agricultural operation is managed in good faith as a business activity, and;
 - C. the agricultural operation qualifies for land use taxation treatment, whether or not land use taxation treatment is applied for in any given calendar year.

9. The term *agritourism activity* is understood by the Board of Supervisors to mean any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an *agritourism activity* whether or not the participant paid to participate in the activity. The words "farm" and "ranch" shall be construed in a manner wholly consistent with the definition of *agricultural operation*. Both are understood to mean one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products. This understanding of *agritourism activity* and the words "farm" and "ranch" is principally derived from Section 3.2-6400 of the Code of Virginia (1950).
10. The term *incidental* is understood by the Board of Supervisors to mean an event or activity that happens or occurs as a minor part of, or subordinate to, or as a result of, a primary event or activity; or as subordinate to, in conjunction with, or in addition to, the primary or regular activity, but is not the main activity; or is of secondary importance to, a minor accompaniment to, or naturally appertaining to, the main activity. For example, when the Statute provides that the sale of agricultural or agriculture-related products *incidental to the agricultural operation* may occur, it shall be interpreted to mean that the agricultural or agriculture-related products sold on a particular *agricultural operation* shall be a minor part of, or subordinate to, or a result of, that *agricultural operation*, or shall be subordinate to, or in conjunction with, the *agricultural operation*, but not the main activity on that property; or it shall be in addition to, naturally appertaining to, or a minor accompaniment to that particular *agricultural operation*. The sale of agricultural or agriculture-related products *incidental to an agricultural operation* shall not be construed to mean that products which might be considered agricultural in nature, but were produced somewhere other than as a part of the *agricultural operation* in question, may be sold from the property used for that *agricultural operation*.

Notwithstanding the foregoing, this definition of *incidental* shall not be construed to prevent the sale of a finished product that began as an agriculture-related product on the *agricultural operation* in question, was sent off the *agricultural operation* for further processing, and was then brought back onto the *agricultural operation* for sale. Examples of acceptable activities include: meat animals produced on the farm in question but taken off-farm for slaughter, butchering, packaging and further processing such as making into sausage, then brought back onto the farm for sale or; fruits and vegetables produced on the farm in question but taken off-farm to be included in a finished product such as salsa or other condiments, then brought back onto the farm for sale. These examples are in no way to be construed as all inclusive.

Additionally notwithstanding the foregoing, nothing in this definition of *incidental* shall be construed to prevent Rockingham County farmers from working together in the marketing of their products. For instance, if neighboring *agricultural operations* find it more beneficial to sell agricultural or agriculture-related products produced on several neighboring *agricultural operations* from the location of one *agricultural operation*, rather than establishing multiple similar points of sale, such activity shall not be prevented by this definition.

Finally, also notwithstanding the foregoing, the sale of any products, from any source, that are complementary to agriculture-related products *incidental to the agricultural operation*, are not necessarily forbidden so long as the sale of such products constitutes a *de minimis* portion of the sales overall.

11. The term *substantial impact* is understood by the Board of Supervisors to mean that a land use begun or proposed after July 1, 2014, in an agricultural district, or on land that is in agricultural use because of legal pre-existing non-conforming use rights, is of such a nature as to change the character of the area in the vicinity of the new land use from that of a rural and agricultural area, to one that more resembles a business, commercial or industrial area, as those terms are generally understood. Factors to be considered when determining whether a substantial impact will, or has, occurred include, but are not limited to, sight distance and traffic loading on publicly maintained roads, or privately maintained roads that are shared by others; adequate sewage

disposal and drinking water; artificial light emanating from the property in a manner not typical in agricultural or rural areas; volume and nature of sounds emanating from the property not typical in agricultural or rural areas; impact on the view of traditionally rural and agricultural landscapes seen by the public, including but not limited to, the type of structures utilized or to be utilized by the new land use. For example, a use or proposed use that would generate a need for a large parking area often filled with non-farm vehicles could constitute a *substantial impact* on an existing or future agritourism activity located on a nearby parcel, which agritourism activity is or will be partially dependent upon a view of traditionally rural and agricultural landscapes. Similarly, a new or proposed use that would cause sounds to emanate off property which are not usual and *customary* in *bona fide agricultural operations* are likely to be construed as having a substantial impact on the public at large. Sounds caused by farm equipment, farm machinery, animals, or other usual and customary activity on a *bona fide production, agricultural operation* shall never be construed as having a *substantial impact*.

12. The term *usual and customary* is understood by the Board of Supervisors to mean those activities or events permitted of right in the A-1 or the A-2 zoning district, as applicable.
13. The Board of Supervisors directs staff to develop a procedure whereby the zoning administrator can, with the involvement and participation of the property owner, determine whether a particular activity is exempt from regulation under Virginia Code Section 15.2-2288.6 because (1) the property owner is engaged in an *agricultural operation*, (2) with *bona fide production*, (3) the activity is or will be conducted in a manner that avoids having a *substantial impact* on other properties in the vicinity or the public generally, and (4) that any sale of appropriate products as contemplated by the statute are *incidental* to the *agricultural operation* in question, all as set forth in Virginia Code Section 15.2-2288.6, as interpreted by this Resolution.

STATE OF WASHINGTON

As one of its goals, the State of Washington’s Growth Management Act (GMA) directs local jurisdictions to designate and conserve farmland. According to jurisdiction staff, the GMA includes some definitions pertaining to agriculture that local jurisdictions must follow and that some, such as Thurston County, have interpreted as guidance for encouraging agritourism. The GMA also includes some limitations regarding the amount of land generally, and arable land specifically, that can be used for uses accessory to agriculture, in order to prevent the conversion of agricultural land to other uses.

In addition, county land conservation incentive programs are mandated by the Washington State Legislature through the GMA.

THURSTON COUNTY, WASHINGTON

A. AGRITOURISM CONTEXT

Thurston County is located under 90 minutes from the City of Seattle and 55 minutes from the City of Tacoma. Agritourism activities in the county range from activities such as pick-your-own, horseback riding, honey tasting, and cheesemaking to a growing number of wineries, breweries, and distilleries. These agritourism destinations are promoted, marketed, and coordinated through a 60-mile scenic route called the Bountiful Byway, which is managed by the Olympia-Tumwater-Lacey Visitors and Conventions Bureau through an MOU with the County. Agritourism venues can become members of the Bountiful Byway and receive marketing support.

In 2012, the County established an Agritourism Overlay District (AOD) in specific portions of Thurston County, with the stated purpose of strengthening the agricultural economy and promoting local agriculture. The idea for an Overlay District emerged from monthly meetings of a longstanding Agritourism Committee and was spearheaded by one County Commissioner who embraced the idea. On the Commissioner's urging, the AOD focused on the southern half of the county, which is the most rural and most in need of economic development. As such, the AOD was envisioned as a mechanism for creating jobs and more economic opportunities for farmers while enabling farmers to keep farming rather than selling and subdividing their land.

One intent of the AOD was to include as many different types of rural experiences as possible. Therefore, the County tried to make the ordinance as broad as possible—not only about agriculture but also geotourism, culinary tourism, and other uses accessory to agriculture. Another main goal—promised by the County Commissioner and frequently stated to the public—was to reduce regulations and barriers to agritourism wherever possible.

The AOD includes few areas with public water and sewer service, which is limited to a few urban growth areas within the AOD boundaries.

Policy Context

Thurston County offers four land conservation incentive programs that enable preservation of existing or potential agricultural land:

- Conservation Futures: A land trust or qualifying organization buys property or development rights from Thurston County landowners with funds provided by Thurston County government.
- Open Space Tax Program: Owners of certain types of high-quality habitat or open space properties may apply to Thurston County government for a reduction of their County property taxes.
- Transfer / Purchase of Development Rights: Owners of certain types of agricultural lands can transfer or sell development rights to Thurston County government without selling the entire property.
- Voluntary Stewardship Program: A citizen-led planning effort to make conservation incentive programs a viable alternative for ag land owners seeking relief from land-use and development regulations.

These programs are mandated by the Washington State Growth Management Act as part of statewide efforts to reduce urban sprawl, minimize development, maintain open spaces, and protect natural resources. Funding for these programs comes from the Washington State legislature or from County property taxes. Separately, the Thurston Conservation District, a non-regulatory agency, promotes non-regulatory and voluntary stewardship among private landowners in Thurston County.

No formal local programs or requirements to preserve rural or rustic roads were identified as part of this research.

B. ZONING

The AOD functions as an umbrella zoning district that encompasses approximately 10 rural zoning districts. Within its boundaries, the County aims to make agritourism more streamlined and reduce barriers to entry. Before the adoption of the AOD, the County's code did not address agritourism. After an initial 18-month trial period following adoption in 2011, the County expanded the boundaries by approximately 10% to include certain properties on the edges of the AOD that wanted to be included. No additional changes to the AOD have occurred since 2012.

The code defines "Agritourism" as *"an enterprise generally located at a working farm, ranch, or other agricultural operation or facility, which is conducted for the enjoyment and education of visitors, guests or clients, and that generates income for the owner/operator."* It further states that Agritourism *"is also the act of visiting a working farm/ranch or any agricultural or horticultural operation for the purposes of enjoyment, education or active involvement in the activities of the farm/ranch or agricultural operation that also adds to the economic viability of the agricultural operation. Agriculture or agricultural production must be the primary use of the land except as otherwise provided..."*

The AOD includes three tiers of agritourism uses, ranging from by-right uses to other uses requiring either administrative or Hearing Examiner review and approval. Uses allowed by right within the AOD and with no minimum lot size include:

- Roadside farm stands up to 700 square feet.
- Accessory commercial or retail sales of products with structures up to 700 square feet, in which 75% of the product is grown or produced in the Pacific Northwest.
- Farmers Markets with no permanent structures.
- Seasonal uses related to crop harvest, such as you pick fruits and vegetables, pumpkin patches, corn mazes and hay rides.
- Short term events up to 10 days per year involving fewer than 100 individuals daily, such as weddings and similar gatherings, wine, beer and/or harvest festivals, and art exhibits.
- Cottage food operations in a residence that produce and sell jam, jelly, preserves, fruit butters and other nonhazardous foods.
- Direct sale of agricultural products grown or produced on site in most of rural Thurston County.
- Farm tours, clinics, classes, seminars.
- Other low intensity agritourism activities where no structure is involved, such as fee fishing, animal feeding, petting zoo, crop art installations, and an archery range.

Additional uses requiring staff approval include the following:

- Farm stands up to 2,000 square feet in most of rural Thurston County.
- Country Inns up to 4,500 square feet.
- Agricultural home stays with up to eight guest units.
- On-going group camping, reunions, corporate events, nature tourism, eco-tourism and culinary tourism.
- Wineries, Breweries, Cider Mills and Distilleries up to 8,000 square feet.
- Farmers Markets involving permanent structures.
- Accessory commercial or retail sales with structures between 701 – 6,000 square feet, in which 75% of the product is grown or produced in the Pacific Northwest.

- Short term events up to 21 days per year, such as weddings and similar gatherings, wine, beer and/or harvest festivals, and art exhibits.

A final tier of agritourism uses requiring Hearing Examiner review and approval include

- Farm stands up to 3,000 square feet in most of rural Thurston County.
- Country Inns between 4,500 – 8,000 square feet.
- Wineries, Breweries, Cider Mills and Distilleries between 8,001 – 20,000 square feet
- Accessory commercial or retail sales in structures over 6,000 square feet, in which 75% of the product is grown or produced in the Pacific Northwest.
- Short term events over 21 days per year, such as weddings and similar gatherings, wine, beer and/or harvest festivals, and art exhibits.

NEXUS TO AGRICULTURE

Per the County’s definition of agritourism, agriculture or agricultural production “must be the primary use of the land except as otherwise provided...” However, as described below under “On-Site Production And “Locally Grown” Requirements,” the sale of some products may be supplemented by other products grown regionally.

EVENTS AND ACTIVITIES

Short-term agritourism events are subject to a series of standards detailed in the AOD, including the requirement that agriculture must be the primary use of the property, “with the exception of sites with an approved winery, brewery, distillery, country inn, or approved agritourism operation. To regulate events, the County limits the number of days per year that events may occur, the number of consecutive days an event may occur, and the amount of time between events. Short-term events up to 10 days per year and involving fewer than 100 individuals daily are allowed by right. Such events may include “weddings and similar gatherings;” wine, beer or harvest festivals, and art exhibits. When occurring between 10 and 21 days per year, the same categories of short-term events require staff review and approval. When events occur over 21 days per year, these short-term events require Hearing Examiner review and approval.

All short-term events are limited to no more than three consecutive days and a minimum of ten days between events, unless otherwise approved.

Events lasting more than two days or having an expected daily attendance over 200 people require notification of all adjacent neighborhoods in writing, five days prior to the event.

BUILDINGS AND PARKING

Agricultural buildings which meet the following structure requirements are exempt from structural review and building code inspections:

- Single story structure;
- Does not exceed 775 square feet in size;
- Overhangs do not extend farther than twenty-four (24) inches past exterior walls or supports;
- Unheated and without toilet facilities; • Set back at least thirty feet (30) from all property lines, but in no case less than the setbacks prescribed in the Thurston County Zoning Code.
- Set back thirty-three (33) feet from other buildings.

- For structures housing animals, the setback shall be fifty (50) feet from the front property boundary and thirty-five (35) feet from the side and rear property boundaries.
- Not used for human habitation.
- Is not be a place used by the public.
- Is not be a place of employment where agricultural products are processed, treated, or packaged, or where processing equipment is stored;

Other agricultural structures require either staff approval or Hearing Examiner review, depending on the size of the structure. For example:

- Accessory commercial retail and sales can have structures of up to 700 square feet by right; up to 6000 square feet with staff approval; and up to 20,000 square feet with Hearing Examiner approval.
- Roadside farm stands up to 700 square feet are allowed by right; up to 2,000 square feet with staff approval; and up to 3,000 square feet with Hearing Examiner approval.
- Country inns up to 4,500 square feet require staff approval, while those up to 8000 square feet require Hearing Examiner approval.

Wineries, breweries, cideries, and distilleries can be up to 8,000 feet with staff approval and up to 20,000 square feet with Hearing Examiner approval.

ROADS AND TRAFFIC

County staff report traffic and parking impacts that are mostly related to unpermitted activities that are creating traffic issues for neighbors, parking in inappropriate places, and related impacts. Traffic standards are somewhat more flexible in the AOD than in other rural areas of the county. In the AOD, agritourism activities may operate off a gravel road as well as requirements on how far off of a collector certain activities may occur; these requirements are less stringent than those for other rural areas within the county. New country inns must be located on a paved road and within one-half-mile from a county arterial or collector road, at a minimum.

ON-SITE PRODUCTION AND “LOCALLY GROWN” REQUIREMENTS

On-site products for sale may be supplemented by those produced regionally. At least 75% of products must be grown or produced in Pacific Northwest, which is defined as the states of Washington, Oregon and Idaho. The County’s winery definition states that a winery must utilize “fruit and berries grown in the Pacific Northwest in the production of wine.” The Washington State Growth Management Act imposes additional acreage requirements on winery uses.

LODGING

Two categories of lodging are allowed within the AOD, with size thresholds determining the need for staff or Hearing Examiner approval. Country inns—which may include both a restaurant, lounge, and/or temporary overnight accommodations—are permitted within certain zoning districts within Agritourism Overlay District, with a minimum lot size of 10 acres, maximum building heights of 35 feet, setback requirements, parking standards, and a minimum distance from other country inns. In addition, agricultural homestays—farms or farm houses with eight or fewer guestrooms—must be located on and be a part of a farm that produces agricultural products as a primary source of income. These lodgings may serve light meals or snacks to registered guests.

At wineries, breweries, cider mills, and distilleries, on-site bed and breakfast services, with guest rooms for temporary occupancy (up to 30 days maximum per stay) are permitted up to three units (facilities under 8000 square feet) or eight guest rooms (facilities greater than 8000 square feet).

C. OTHER CONSIDERATIONS

EDUCATION AND COMMUNICATION

- The County has an appointed Agritourism Advisory Committee that advises the Board of County Commissioners on agritourism issues and helps to market agritourism. The committee is generally where people go to start when they want to establish an agritourism operation. It also helps people to figure out such considerations as whether they are located within the AOD and whether they might be part of the Bountiful Byway.

ENFORCEMENT

- Enforcement occurs by complaint only. All enforcement and permitting is managed by the County's the Community Planning and Economic Development Department.

MARKETING AND PROMOTION

- The County has an MOU with the local visitors and conventions bureau, which allowed the bureau to run the [Bountiful Byways](#) program on the County's behalf. County staff report that, since the County has very little funding for marketing and promotion, this arrangement has been a great benefit to the County. There is a nominal fee for joining the program, but members receive substantial support, including creation of website, and marketing assistance through ads and events.

D. LESSONS LEARNED

County staff offered the following lessons learned:

- One of the main selling points of the AOD, which County staff kept reiterating, was that the County was not going to increase regulations. Focusing on reducing regulations and process helped defuse situations when objectors would try to block the initiative or criticize the idea. Although there was some political opposition initially, the focus on streamlining regulations and process "takes the wind out of the arguments."
- County staff tried to make the AOD as easy to navigate as possible; for example, by pointing out any exempt uses at the top, so people didn't feel like they had to ask.
- There have been some compliance issues related to wineries that have expanded what they were doing previously—for example, holding more activities such as parties and other gatherings—and sometimes doing so without all of the necessary permits. Compliance issues are usually related to fire, building, health codes, including overcapacity buildings during events. There have also been compliance issues related to incompatibility between existing water systems and the need to have a sprinkler system for events.
- County staff report that, even though the AOD was supposed to be easy to use, the permitting process is not always clear. If County staff were to revise the AOD ordinance, they would make this process more clear by spelling out the process for particular uses (e.g., "here is the permit process for this type of use, and at this scale or size.") While clearer for wineries and breweries, the ordinance is "a little vague" regarding requirements for other uses."
- The county has not seen a lot of new wineries open since the AOD was established. A few new breweries opened as a result of the Bountiful Byway. The County also did not "realize how many [wineries and breweries] we already had before we started doing the research" for the AOD.
- County staff report that the AOD ended up being "quite a bit larger than any of us expected."

- The County has no plans to revisit the code again at this point, due to numerous other priorities.

E. SELECTED DEFINITIONS

Agricultural home stay: A farm or farm house that has eight or fewer guestrooms. The agricultural home stay must be located on and be a part of a farm that produces agricultural products as a primary source of income. Meals and light foods or snacks may be served to registered guests of an agricultural home stay at any time.

Agritourism: An enterprise generally located at a working farm, ranch, or other agricultural operation or facility, which is conducted for the enjoyment and education of visitors, guests or clients, and that generates income for the owner/operator. Agritourism is also the act of visiting a working farm/ranch or any agricultural or horticultural operation for the purposes of enjoyment, education or active involvement in the activities of the farm/ranch or agricultural operation that also adds to the economic viability of the agricultural operation. Agriculture or agricultural production must be the primary use of the land except as otherwise provided, pursuant to the standards and criteria established by Chapter 20.08G, Agritourism Overlay District (AOD). Uses permitted by that chapter are generally defined as agritourism uses within the AOD.

Agritourism Overlay District (AOD): An overlay zoning district covering an area defined by the official Thurston County Zoning Map, which incorporates the standards of the underlying zoning district. The main goal of the AOD is to support local agriculture and provide alternatives to the conversion of farm land through sustainable rural economic development and empowering farmers to attempt new, entrepreneurial endeavors which augment, support and highlight local agriculture. Uses permitted within the AOD include, but are not limited to agricultural home stays, farm kitchens and bakeries, educational and interpretive seminars, you pick operations (Christmas trees, pumpkin patches, berry picking etc.), day tours, cooking and food preservation classes, elder hostels, petting zoos, horseback riding, zip lines/aerial rope slide courses, photography, nature watching, temporary gatherings, farm weddings and festivals, country inns, small scale wineries, craft distilleries and micro-breweries. Non-listed agritourism uses within the AOD are subject to the standards of Chapter 20.08G TCC, unless such uses are specifically exempt from Thurston County review and approval.

Country Inn: A restaurant and/or temporary overnight accommodations to be located in a R 1/20, R 1/10, RR-1/5, RRR 1/5, RL 1/2, RL 2/1, or RL 1/1 zone or agritourism overlay districts and which may include a lounge not to exceed twenty-five percent of restaurant area and facilities for banquets, meeting space, weddings, and similar parties and activities.

Craft Distillery: A small scale facility which manufactures distilled alcohol for human consumption, limited to a maximum of twenty thousand (20,000) square feet in size.

Culinary Tourism: Experiencing the food of the country, region or area (cuisine as an expression of culture); experiencing what is unique and memorable and not necessarily pretentious and exclusive. Wine and beer tourism are regarded as subsets of culinary tourism. Culinary tourism can be a primary element of agritourism, geotourism and rural tourism where the focus is on locally grown produce and local specialty foods.

Farm: A tract of land cultivated for the purpose of agricultural production devoted to the raising of crops and/or domestic animals and where the farmer or farm family participates in the day-to-day labor and management of the farm, and owns or leases its productive assets.

Geo-tourism: Best practice tourism that sustains or enhances the geographical character of a place, culture, environment, heritage and well-being of its residents and often includes many elements of nature tourism and ecotourism.

Microbrewery: A small scale brewery, including craft breweries and nanobreweries limited to twenty thousand square feet in size.

Winery (small scale): A small scale winery limited to twenty-thousand square feet in size, which utilizes fruit and berries grown in the Pacific Northwest in the production of wine.

F. ADDITIONAL RESOURCES

Thurston County Zoning Ordinance: Agritourism Overlay District

https://library.municode.com/wa/thurston_county/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.08GAGOV_DIAO

Agritourism Overlay District FAQ Document

<https://www.co.thurston.wa.us/permitting/agriculture/docs/AOD-Handout.pdf>

Thurston Bountiful Byway

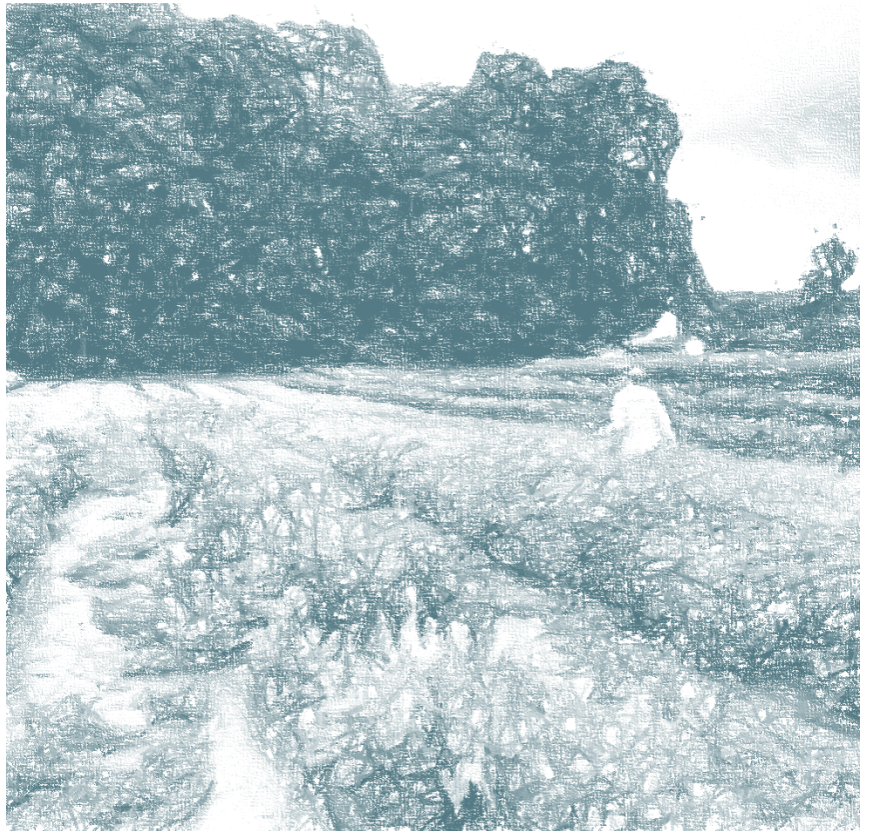
<https://www.experienceolympia.com/thurston-bountiful-byway/>

G. JURISDICTION CONTACT

- Scott McCormick, MES, Associate Planner
Thurston County Community Planning and Economic Development

6/14/2019

MONTGOMERY COUNTY AGRITOURISM STUDY CODE ASSESSMENT



Prepared by EPR, PC

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BACKGROUND

Montgomery County has a long history of preserving its rural landscape, and recognizing the importance of its agricultural uses, historic sites and unique open spaces. Since the creation of the Agricultural Reserve in 1980, Montgomery County has been a national leader in the development of innovative land conservation policies. The County's vision of directing growth and development into the appropriate areas with public services while preserving the County's rural areas has led to the protection of over 93,000 acres in the Agricultural Reserve. Preservation and enhancement of these rural areas and enhancement of the agricultural economy have consistently been major County goals.

At the same time, the agricultural economy nationwide is undergoing significant changes, and this is especially pronounced in urban/rural counties such as Montgomery County, where the access to markets, sophisticated "locavore" consumers, and a growing interest in food sourcing and production result in more intense uses of farmland that allow landowners more diverse economic options. The growth in agritourism, farm-to-table activities, wineries and breweries, culinary tourism and rural-themed event venues creates new opportunities and challenges for the County. While this new diversification of the rural economy offers the opportunity to enhance the economic potential of its agricultural land, it also poses the challenge of how to regulate these activities while protecting the core agricultural, natural and scenic assets of these lands as well as the residential communities that surround them. These issues are the focus of the current proposed Feasibility Study.

PROJECT SCOPE & PURPOSE

The purpose of this task is twofold:

1. To consider the potential for agricultural economic and cultural development through appropriate land uses and economic development activities in the rural areas of the County while, at the same time, assessing the feasibility of revisions and enhancements to the County's code and regulatory framework to allow for activities of the emerging rural economy while ensuring the protection and preservation of farmland, historic sites and open space; and
2. To inform the study of agritourism by understanding how other jurisdictions, locally and nationally, are responding to and managing the activities of the changing agricultural economy.

In association with the ongoing development of the County's Agritourism Study and its associated Advisory Committee, this research effort has engaged professional consulting expertise to assess feasible options for a comprehensive, countywide approach to land use and zoning strategies for agricultural economic and cultural development. This Code Assessment is the product of one portion of the consulting effort for this project and was conducted by EPR,PC.

GUIDING PRINCIPLES

The Montgomery County Agritourism Study Advisory Committee (ASAC) of interested stakeholders has been meeting monthly to discuss agritourism issues, challenges and opportunities. The County's Planning Department staff has provided relevant data and background research to the committee. Prior to starting the comparative review and code evaluation, the consultant team attended the ASAC meeting on June 20, 2018. At that meeting, the committee discussed areas of agreement and summary principles for the study that could guide the consultant's work. A list of basic principles and areas of agreement resulting from the committee deliberations as summarized by the chair (Jane Seigler) at the June 20th meeting is summarized below:

Focus on impacts more than types of activities

The committee felt that it was more important to focus on the impacts of the activities or events more so than the type or nature of the event or activity. Moreover, the committee felt that the distinction between a one-time event such as a wedding or festival, versus an ongoing activity such as a winery or market stand was not as relevant as the specific impacts of each.

Nexus to agriculture

The committee also felt that it was important that permitted activities in the Ag Reserve should have a nexus to agriculture. Activities that might be profitable or low impact but had no relationship to farming should not be encouraged in the Ag Reserve.

Strengthen the current review process

The committee supported the current approval process for agritourism uses, which includes informal coordination between the County DPS and the Office of Agriculture. The process should be formalized to some degree through interdepartmental memoranda or agreements and the Office of Agriculture should be afforded more resources to support participation in this process.

In addition, there were many additional points discussed by the committee over the past few months but the areas of consensus that emerged are those listed above. The group also formally agreed to recommend that the County NOT adopt the definition of agritourism enacted in HB 252 from the 2018 Maryland General Assembly session.

PART 1. CODE ASSESSMENT

AGRITOURISM IN THE COUNTY CODE

The Montgomery County Code is a complex legal instrument that regulates many types of uses and activities to protect the health, safety and welfare of its residents and businesses. The overall focus of agriculture and especially agritourism-related regulations is spread throughout many different sections of the Code, with the majority of them located in Chapter 59, the Zoning Ordinance. Additional code provisions that may regulate certain aspects of farming and agritourism can be found in the Subdivision Ordinance, Building Code and other code sections and there is no simple way to understand how agritourism is regulated in Montgomery County since provisions are dispersed in multiple disparate code sections.

The following Assessment is organized into four parts. Part 1 of this document is the assessment of the county code and is organized according to the major divisions in the county code, such as zoning, subdivision, building, etc. The structure follows the organization of the code itself, i.e. by Article and Section. The relevant code section is listed verbatim from the code and then is discussed in terms of two aspects:

- **Issues:** a summary of how the code section affects the practice of farming and agritourism, events or uses, and highlighting if the code section has been an issue in discussions with the ASAC or in staff experience in zoning reviews.
- **Opportunities:** highlighting potential opportunities for refining the code provisions, adding new standards or modifying based on best practices from the research of other communities in the nation.

Part 2 is a summary of the State and Local Alcohol Production Regulations. Part 3 is an assessment of Zoning Text Amendment no. 18-03 adopted in 2018. Part 4 builds on the Opportunities sections of the assessment of the county code in Part 1 to develop a set of Options to Consider to help support farming and agritourism.

A. ZONING ORDINANCE ASSESSMENT

ARTICLE 59-1. GENERAL ZONING ORDINANCE PROVISIONS

SECTION 1.4.2. SPECIFIC TERMS AND PHRASES DEFINED

Agriculture: The business, science, and art of cultivating and managing the soil; composting, growing, harvesting, and selling crops, and the products of forestry, horticulture, and hydroponics; breeding, raising, managing, or selling livestock, including horses, poultry, fish, game, and fur-bearing animals; dairying, beekeeping, and similar activities; and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product.

ISSUES:

The ASAC has generally supported the current definition of Agriculture in the Ordinance. Note that there is no definition of agritourism per se in the county code. Instead, it is generally addressed under the definition of “Accessory agricultural education and tourism activities” within the definition of Farming. The code defines farming and agriculture essentially the same, whereas farming is a specific use in the Use Table, Division 3.2. Agricultural Uses, and agriculture is simply a term referenced in the Definitions, Division 1.4. Defined Terms.

OPPORTUNITIES:

There is an opportunity to more clearly define agritourism in Division 1.4. Defined Terms. This can serve as a standard definition that can be referenced in the Use Table and under the definition of permitted farming uses. A number of jurisdictions across the nation have created sophisticated definitions of agritourism, some aspects of which may be appropriate for Montgomery County.

ARTICLE 59-3. USES AND USE STANDARDS

SECTION 3.1.4. TEMPORARY USES

B. BENEFIT PERFORMANCE

A benefit performance, under Chapter 30 (Section 30-4), is permitted in any zone, including on property regulated by a conditional use, without requiring a modification of the conditional use plan. Unless the benefit performance is conducted on property that is occupied by a private club operating in compliance with this Chapter, a religious institution, a fire department, a public school, or a nationally chartered service or veterans organization not organized for gain or profit of any individual member of such groups, it must satisfy the following standards:

- 1. In any Residential, EOF, or NR zone, a benefit performance is a maximum of 15 days.*
- 2. The benefit performance must be a minimum of 600 feet from any dwelling, measured from the perimeter of the performance area as listed in the license application, unless a minimum of 75% of the occupants of the dwellings within the 600 feet measurement consent to the performance in writing.*

ISSUES:

This section permits benefit performances in any district, including the AR district. In fact, there appears to be no restriction on the time of the performance if it is in the AR district. It is unclear whether this provision has ever been an issue with landowners in the AR district, but there are very few performance standards associated with this provision and it is possible that large or lengthy benefit performances could present concerns of traffic, noise or other complaints from adjacent landowners.

OPPORTUNITIES:

There is an opportunity to include performance standards for benefit performances, related to traffic noise, duration and lighting that could serve to mitigate potential concerns and impacts on adjacent properties.

SECTION 3.1.5. TRANSFERABLE DEVELOPMENT RIGHTS

- A. The following uses are prohibited if the lot or parcel on which the use is located is in the AR zone and is encumbered by a recorded Transfer of Development Rights easement:
 - b. Bed and Breakfast (if not accessory to Farming)**
- B. However, any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed.*

ISSUES:

No known issues

OPPORTUNITIES:

No opportunities identified

SECTION 3.1.6. USE TABLE

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

ISSUES:

Issues will be identified under each relevant use that appears in the table under the AR district – note that for the uses listed below, P means Permitted, L means Limited and C means Conditional.

OPPORTUNITIES:

Opportunities will be identified under each relevant use

AGRICULTURAL AUCTION FACILITY -C

A. Defined

Agricultural Auction Facility means any structure and land where farm-related merchandise is sold to a bidder.

B. Use Standards

Where an Agricultural Auction Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- 1. The minimum lot area is 5 acres.*
- 2. The minimum setback of the auction facility (whether enclosed within a building or not) and the parking area is 50 feet from any lot line where the subject lot abuts property in residential use.*
- 3. The Hearing Examiner may specify the types of goods to be auctioned.*
- 4. Evening and weekend operations may be permitted under the limits established by the Hearing Examiner.*
- 5. Where the subject lot abuts property in residential use, the noise level at the lot line must satisfy Chapter 31B.*
- 6. The agricultural exemption of State law (Section 31B-14(c)) is not applicable.*
- 7. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.*
- 8. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

ISSUES:

An Agricultural Auction Facility is a conditional use in the AR District. There are performance standards under the conditional use that address potential impacts on adjacent land and residential uses. No known issues have been raised with this use.

OPPORTUNITIES:

No opportunities identified

AGRICULTURAL PROCESSING -C

A. Defined

Agricultural Processing means any operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the products of forestry. Agricultural Processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include Slaughterhouse (see Section 3.2.8, Slaughterhouse).

B. Use Standards

Where Agricultural Processing is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- 1. The minimum lot area is 10 acres.*
- 2. The minimum setback for an Agricultural Processing structure from any lot line is 75 feet.*
- 3. The lot must front on and have access to a road built to primary residential road or higher standards unless processing materials are produced on-site.*
- 4. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required*

ISSUES:

It should be noted that the definition of Agriculture as mentioned above under Article 59-1. includes agricultural processing, which is somewhat redundant but not identical with how agricultural processing is described under 3.2.2 as a use and could be confusing from a regulatory standpoint.

Agricultural Processing can be a very general term for a wide variety of value-added processing activities that occur as part of the agricultural economy. It is an area that is particularly important for the evolving rural economy in many places around the country because it enhances farmers' ability to earn a return on their operations beyond the simple commodity value of their crops. Value added processing industries can vary widely and range from food processing to crafts to compost. New uses are constantly being developed and this can be a very fluid issue in developing regulations and standards to address the evolving uses. Use Standard 3 would seem to preclude this use on Rustic Roads unless processing materials are produced on site. In other words, this use can not occur on a Rustic Road if materials grown on the farm are trucked to an off-site processing location.

OPPORTUNITIES:

The definitions of agricultural processing in Article 59-1 and Section 3.2.2 could be compared and refined to eliminate any redundancies. By eliminating any overlap between the two definitions, it should make the review process clearer for agricultural processing uses in the AR zone.

While it is impossible to predict all the possible and emerging new uses in agricultural processing, there is an opportunity to tighten the definition of this dynamic use by strengthening the relationship to farming and the farm economy in the definition portion. Also, there is an opportunity to clarify Use Standard 3 so that it is more performance-based. Standards could be developed that addressed the amount of vehicular traffic generated by

the use rather than whether the processing is done on-site or not. This would more accurately address potential impacts of the scale of the use regardless of where processing is done.

COMMUNITY GARDEN -L

ISSUES:

No known issues

OPPORTUNITIES:

No opportunities identified

EQUESTRIAN FACILITY – L/C

A. Defined

Equestrian Facility means any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills. Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.

B. Use Standards

1. *Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:*

a. *The minimum gross acreage per horse is as follows:*

i. *for 1-2 horses, 2 acres;*

ii. *for 3-10 horses, one acre per horse; and*

iii. *for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.*

b. *In the RNC zone, a maximum of 5 horses is allowed.*

c. *Any Equestrian Facility that keeps or boards more than 10 horses must meet all nutrient management, water quality, and soil conservation standards of the County and State. A nutrient management plan prepared by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to DPS, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The landowner must obtain all plans within one year after starting operations.*

d. *Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an abutting property.*

e. *Amplified sound must satisfy Chapter 31B.*

f. *Any outdoor arena lighting must direct light downward using full cutoff fixtures; producing any glare or direct light onto nearby properties is prohibited. Illumination is prohibited after 10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on Sunday through Thursday.*

g. Equestrian events are restricted as follows:

Site Requirements	Hours of Operation		Number of Participants and Spectators			
	Su-Th	Fr-Sa	Event	Informal Event	Minor Event	Major Event
			0-25	26-50	51-150	151-300
Up to 17.9 acres	6am-9pm	6am-10pm	Unlimited on any day	None	None	None
18 - 24.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	None	None
25 - 74.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	None
75+ acres and direct access to a roadway with an arterial or higher classification	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	Maximum of 3 per year lasting up to 3 consecutive days each

h. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators, per day. The applicant must specify the nature of the event, the anticipated attendance of spectators and participants, the number of days the event will take place, the hours during which the event will take place, the area to be used for parking, any traffic control measures intended to be put in place, and any other information determined by DPS to be relevant to the issuance of the permit. A fee for issuance of the permit may be set by DPS.

i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. An Equestrian Facility conditional use approval must be renewed every 5 years. Before the conditional use is renewed the Hearing Examiner must evaluate the effectiveness of the terms and conditions of the original approval.

2. Where an Equestrian Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under all applicable limited use standards, Section 7.3.1, Conditional Use, and the following standards:

a. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.

b. In the AR, R, RC, and RNC zones:

i. The Equestrian Facility must not adversely affect abutting land uses or the surrounding road network.

ii. In evaluating the compatibility of an Equestrian Facility on the surrounding land uses, the Hearing Examiner must consider that the impact of an agricultural use on surrounding land uses in an Agricultural or Rural Residential zone does not necessarily need to be controlled as stringently as the impact in a Residential zone.

c. In the RE-2, RE-2C, RE-1, and R-200 zones:

i. Any Equestrian Facility on less than 5 acres must establish through a pasture maintenance plan, feeding plan, and any other documentation the Hearing Examiner requires, that the site contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the site.

ii. The Hearing Examiner may limit or regulate more stringently than limited use standards the following:

(a) the number of horses that may be kept or boarded;

(b) the number of horses that may be rented out for recreational riding or instruction;

(c) the number and type of equestrian events that may be held in a one-year period; and

(d) the hours of operation of any equestrian event or activity.

iii. The facility operator must satisfy the state requirements for nutrient management concerning animal waste.

ISSUES:

The use standards for equestrian uses are among the most detailed in the AR zone. Use standards for Limited Use include extensive standards for both ongoing operations and for events. While these kinds of standards for number and size of event are often challenging to administer from a staff perspective, they provide protection for surrounding lands against the most obvious impacts resulting from excessive frequency and size of events. While the use standards in general are strong, some issues were identified as potential opportunities for enhancement, particularly relating to roadway classifications, lighting and unclear language in the conditional use standards, as summarized below.

OPPORTUNITIES:

Under the limited use standards, the table for events lists events of 151-300 people as being restricted to roadways with an arterial or higher classification. There is an opportunity for this standard to adopt different performance standards that address the amount of vehicular traffic generated by the use rather than the roadway classification.

The lighting requirements under 1.f. above could be eliminated if the county had comprehensive lighting standards elsewhere in the Code. Many localities have adopted “dark sky” standards for lighting in rural and suburban areas to preserve rural character and protect wildlife.

The language under 2.b. above is unnecessarily vague for use in a zoning code and references wording such as “*must not adversely affect abutting land uses or the surrounding road network.*” This language could be revised to focus on specific measurable impacts to allow staff less leeway in subjective interpretation of the standards.

FARM SUPPLY, MACHINERY SALES, STORAGE, AND SERVICE – C

A. *Defined*

Farm Supply or Machinery Sales, Storage, and Service means the sales, storage, or service of farm supply materials and machinery used in farming for agricultural purposes or similar equipment service such as lawn care equipment repair. Farm Supply or Machinery Sales, Storage, and Service does not include sales, storage, or service of vehicles and other machinery not associated with farming.

B. *Use Standards*

1. *Where Farm Supply or Machinery Sales, Storage, and Service is allowed as a limited use, it must satisfy the following standards:*

a. If the subject lot abuts property in the AR zone, this use is limited to farm building supply and services that construct, stabilize, and repair farm accessory buildings, structures, and fences.

b. If the following standards are satisfied, the use is allowed:

i. the minimum lot area is 2.0 acres;

ii. it abuts or is located perpendicularly across a right-of-way from property in an Industrial zone;

iii. the impervious area of the site does not exceed any impervious area recommendation for the site in the master plan; and

iv. the subject lot does not abut property in the AR zone.

2. *Where Farm Supply or Machinery Sales, Storage, and Service is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

a. The minimum lot area is 5 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory.

b. The minimum setback from any lot line for parking, buildings, or inventory storage is 75 feet, except that the minimum setback from the street may be reduced to 50 feet if the Hearing Examiner finds that:

- i. the confronting property is in an Agricultural or Rural Residential zone; and
- ii. the smaller setback would be compatible with surrounding uses.

c. The Hearing Examiner may reduce the required number of parking spaces to a minimum of 2 spaces for every 1,000 square feet of gross floor area, excluding storage area, if it finds that the reduction can be made without adverse impact on abutting uses.

ISSUES:

No issues with these types of uses were identified and the use standards have several features that serve to protect the surrounding areas from adverse impacts of these uses. Use standard 1.b.ii limits the locations for this use to areas next to industrially zoned land, as a limited use, which considerably restricts where this use could be established without going to a conditional use approach.

OPPORTUNITIES:

No opportunities identified

FARMING – P

Defined

Farming means the practice of agriculture on a property, and any associated buildings. Agriculture means the business, science, and art of cultivating and managing the soil; composting, growing, harvesting, and selling crops, and the products of forestry, horticulture, and hydroponics; breeding, raising, managing, or selling livestock, including horses, poultry, fish, game, and fur-bearing animals; dairying, beekeeping, and similar activities; and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product. Farming includes the following accessory uses:

- A. *Accessory agricultural processing and storage of products grown or raised on-site or on property owned, rented, or controlled by the farmer. Accessory agricultural processing includes a milk plant, grain elevator, on-farm animal slaughtering, and mulch or compost production and manufacturing.*
- B. *The sale of products of agriculture and agricultural processing, if products are produced on-site or on property owned, rented, or controlled by the farmer.*
- C. *The sale of horticultural products grown off-site, but kept on the farm temporarily on a maximum of 2 acres or 20% of the site, whichever is less.*
- D. *The delivery and installation of horticultural products grown on the farm.*
- E. *The production and manufacturing of mulch or compost where up to 20% of the materials used in accessory processing can come from off-site sources.*
- F. *Accessory agricultural education and tourism activities conducted as a part of a farm's regular operations, with emphasis on hands-on experiences and events that foster increased knowledge of agriculture, including cultivation methods, animal care, water conservation, Maryland's farming history, the importance of eating healthy, and locally grown foods. Allowed activities include corn mazes, hay rides, and educational tours, classes, and workshops. The maximum footprint for any structure and the*

total footprint of all structures primarily used for education or tourism is limited to 10% of the total footprint square footage of all structures on the site used for agriculture. The property must have DPS approved sanitation facilities for this accessory use.

ISSUES:

The definition of farming also references agriculture, and agricultural processing, which are defined in Article 59-1. under the definitions section. There are also a series of important definitions of the accessory uses to farming, many of which deal with agritourism issues. For example, accessory use B. restricts the sale of products to those grown on property owned, rented or controlled by the farmer. However, accessory use C. allows the sale of off-site horticultural products if they are kept on the farm temporarily. In this case, it seems that off-site products can clearly be sold on a farm, although the definition of ‘temporarily’ should be clarified. In addition, there is potential redundancy with the definition of “Farm Market, On-site” below.

Finally, accessory use F. addresses agritourism specifically. It stipulates two important standards for accessory agritourism uses – that they have a nexus to agriculture, history and the farm’s regular activities, and that they have a limited footprint for structures devoted to their use. However, with new farming practices, the need for farm structures is declining and the limitation of agritourism structures to only 10% of the total agricultural structures on the property may result in allowable footprints that are too small practically to allow these uses. Conversely, this standard may encourage the building of unneeded agricultural structures on a farm, solely to increase the baseline of agricultural structures under roof that would then increase the allowable footprints of agritourism structures.

OPPORTUNITIES:

There are some opportunities to refine the definitions under this use:

- The definitions of farming and agricultural processing in this section could be compared with those in Article 59-1 and refined to eliminate any redundancies. By eliminating any overlap between the two definitions, it should make the review process clearer for agricultural processing uses in the AR zone.
- The definition of “temporary” storage of off-site horticultural products (accessory use C) could be clarified.
- There is an opportunity to tighten up on the provisions in accessory use C by limiting the type or quantity of goods grown off-site that are sold on a farm in exchange for eliminating the provision that these are “temporarily” stored on the farm. This would eliminate the need to define and monitor temporary storage as well as reduce the redundancy with the definition of Farm Market-On Site under Accessory Agricultural Uses.
- Further, there is an opportunity to loosen the standard for percent of total agricultural structures that may be devoted to agritourism in order to better align with the modern agritourism economy and needs for support structures.

WINERY – L/C¹

A. Defined

¹ Note – this section was written before ZTA 18-03 was adopted on October 2nd, 2018. It has been left in its original state, but it should be noted that it applies to language and standards that have now been superseded by ZTA 18-03. An assessment of ZTA 18-03 is included in this report in Part 3.

Winery means any structure and land for processing grapes or other fruit into wine for sale on-site or through wholesale or retail outlets where a minimum of 5 acres of grapes or other fruit must be grown on the same parcel or lot as the processing facility.

B. Use Standards

1. *Where a Winery is allowed as a limited use, it must satisfy the following standards:*

a. *In the AR zone:*

i. *A maximum of 9 days of events that require an entrance ticket or a cover charge is allowed each calendar year. Additional events require conditional use approval by the Hearing Examiner under Section 7.3.1.*

ii. *The maximum lighting level at any lot line is 0.1 footcandle.*

b. *In the R and RC zone, a maximum of 2 special events such as a wedding, festival, or other similar event are allowed each calendar year. Additional events require conditional use approval by the Hearing Examiner under Section 7.3.1.*

2. *Where a Winery is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

a. *The minimum lot area is 10 acres.*

b. *The minimum setback for any structure from any lot line is 75 feet, except that the minimum front setback may be reduced to 50 feet if the Hearing Examiner finds the reduced setback is compatible with abutting and confronting agricultural uses.*

c. *The lot must front on and have access to a road built to primary residential or higher standards.*

ISSUES:

The 5-acre minimum requirement for on-site cultivation serves to maintain the link between growing and selling on the same property. Some other localities have used other standards to maintain this principle, such as a percentage of the land area used for cultivation.

The restriction on events in the use standards is based on frequency of events and not on scale or impacts. It is also notable that the limitation on the number of special events applies only to the R and RC zones but not to the AR zone.

OPPORTUNITIES:

Several opportunities were identified for enhancing the use standards to maintain a link with on-site growing while addressing impacts through performance standards. These include:

- Using a “percent of land area under cultivation in grapes or other fruit” standard rather than an absolute minimum of 5 acres (although the 5-acre minimum could still be included in addition).
- Using a “sliding scale” matrix for linking the size of the property to the size of the event as is done for equestrian facilities.

- Including standards for special events (“wedding, festival, or other similar event”) in the AR zone as is currently done in the R and RC zones.
- Under conditional use standards, adopt different roadway standards that addressed the amount of vehicular traffic generated by the use rather than the roadway classification.

ACCESSORY AGRICULTURAL USES / FARM MARKET, ON-SITE - L

1. Defined

Farm Market, On-site means the display and retail sale of agricultural products produced on the farm where the farm market is located, or agricultural products produced on another farm under the control of the owner or operator of that farm market. A limited portion of the sales may include agricultural products produced on another farm. A Farm Market, On-site may include farm food products certified as non-potentially hazardous by the Department of Health and Human Services.

2. Use Standards

Where a Farm Market, On-site is allowed as a limited use, it must satisfy the following standards:

a. In the AR, R, RC, RNC, RE-2, RE-2C, RE-1, and R-200 zones:

- i. The minimum setback for the sale and display area is 25 feet from the paved edge of the roadway.*
- ii. Firewood sold at a Farm Market, On-site must be cut and split on the farm where the wood is harvested.*
- iii. A maximum of 25% of the Farm Market, On-site display and sales area may be used for agricultural products not produced on a farm under the control of the owner or operator of the Farm Market, On-site. In the event of crop failure due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the Farm Market, On-site DPS may, upon the recommendation of the Department of Economic Development and the Montgomery County Agricultural Advisory Committee and, for a limited period of time, permit more than 25% of the Farm Market, On-site display and sales area to be used for agricultural products not produced on a farm under the control of the owner or operator of the Farm Market, On-site.*

b. In the R-90, R-60, R-40, TLD, TMD, THD, R-30, R-20, R-10, CRN, CRT, CR, GR, NR, LSC, EOF, IL, and IM zones:

- i. All of the agricultural products for display and retail sale must be produced on-site.*
- ii. The minimum setback for the sale and display area is 25 feet from any lot line where the subject lot abuts property in a Residential zone.*

ISSUES:

The Use Standard limitation (a.iii.) of a maximum of 25% of the display and sales area being devoted to off-site grown products is a type of standard that helps reinforce the connection to locally grown products. It also discourages farmers markets from becoming large retail outlets for farm-related products that are commercially

produced elsewhere. In addition, the allowance for flexibility in cases of crop failure provides some relief to economically distressed farmers.

OPPORTUNITIES:

There is an opportunity to provide more flexibility for the 25% maximum display area standard in cases where the products are grown within a certain radius of the farm (50 mile or 100 mile) or where the products are grown elsewhere in the county or just in the Ag Reserve. In these cases, potentially more than 25% of the display area could be used for these types of locally grown products that would help reinforce a “buy local” brand for the county. This flexibility could be incorporated as a new set of standards for Conditional uses, for example.

TEMPORARY AGRICULTURAL USES/SEASONAL OUTDOOR SALES - L

1. Defined

Seasonal Outdoor Sales means the temporary sales of seasonal farm products offered annually for a limited period of time, such as the sale of pumpkins and evergreen trees.

2. Use Standards

Where Seasonal Outdoor Sales is allowed as a limited use, it must satisfy the following standards:

- a. A temporary use permit from DPS is required. Temporary use permit duration is a maximum of 45 days. A maximum of 2 temporary permits can be issued per site annually.*
- b. A plan must be submitted by the applicant demonstrating adequate vehicular circulation, parking, and queuing.*
- c. Any obstruction that adversely affects visibility at an intersection or to any Seasonal Outdoor Sales driveway is prohibited.*
- d. Evergreen trees may only be sold beginning the first Saturday following Thanksgiving Day through December 24th, and are exempt from Section 3.2.12.B.2.b and Section 3.2.12.B.2.e.ii.*
- e. In the Agricultural, Rural Residential, Residential, LSC, and EOF zones:*
 - i. The property must be vacant or used for nonresidential purposes.*
 - ii. Except where Seasonal Outdoor Sales occur on the site of a Religious Assembly use, the site must front on and have access to a road built to primary residential or higher standards.*

ISSUES:

This use is clearly defined as applying only to temporary seasonal outdoor sales and does not overlap with other farmers market-type uses defined above. The use of permitting as a tool is an effective way to address these types of temporary uses. Although they require additional staff time, they can also be an effective regulatory tool for recurring event-type uses that are done for-profit (weddings, reunions, etc.). Use Standard b. that requires transportation and parking plans is also an effective way to address short-term impacts for these types of uses, although it is unknown what impact this has on staff review capacities.

Use standard e.i. may be confusing in the AR zone since it is unclear if “nonresidential” applies to a farm use.

OPPORTUNITIES:

Although no opportunities are recommended for refinements to these standards, the provisions under this use for temporary permits and required transportation/parking plans may be considered for application in other use categories where there are concerns about the traffic impacts from temporary large-scale events.

Use Standard e.ii. precludes properties fronting on Rustic Roads from this use. An opportunity exists to reconsider this exclusion based on road classification and base it instead on a performance standard for traffic impacts.

RESIDENTIAL

ACCESSORY RESIDENTIAL USES/FARM LABOR HOUSING UNIT - L

E. Farm Labor Housing Unit

1. Defined

Farm Labor Housing Unit means a dwelling unit accessory to the farm and under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm Labor Housing Unit includes mobile homes. A Farm Labor Housing Unit is not restricted by the definition of household or dwelling unit, and may share a well or septic system or both.

2. Use Standards

Where a Farm Labor Housing Unit is allowed as a limited use, it must satisfy the following standards:

- a. In the Agricultural and Rural Residential zones, it is excluded from any density calculations if it remains accessory to a farm. If the property associated with a Farm Labor Housing Unit is subsequently subdivided so that it is no longer accessory to the farm as defined in Section 59.3.7.4.B, the Farm Labor Housing Unit is included in the density calculations.*
- b. The maximum number of tenants in a single dwelling is limited by well and septic capacity.*
- c. In the RE-2C zone, only one Farm Labor Housing Unit is allowed and it must be a mobile home.*
- d. In the Agricultural, Rural Residential, RE-2, and RE-1 zones, a Farm Labor Housing Unit in existence before June 1, 1958 may be rented to a tenant other than an agricultural worker, if the dwelling meets all applicable health and safety regulations. In the event a Farm Labor Housing Unit in existence before June 1, 1958 is rebuilt, the rebuilt unit may be rented to a tenant other than an agricultural worker. The rebuilt dwelling may not exceed the floor area of the pre-existing dwelling.*
- e. In the RE-2, RE-1, and R-200 zones, only one mobile home is allowed.*
- f. The owner must record a covenant against the property to which the Farm Labor Housing Unit is accessory, with restrictions that satisfy Section 3.3.3.E. The covenant must be in a form approved by the County Attorney's Office, the County's Office of Agriculture, and the Planning*

Board. The owner must record the covenant before the Department of Permit Services approves a building permit for the unit.

ISSUES:

No issues with these types of uses were identified.

OPPORTUNITIES:

No opportunities identified

COMMERCIAL

RETAIL SALES & SERVICE/RURAL COUNTRY MARKET – C

1. Defined

Rural Country Market means the display and retail sale in a rural or residential area of agricultural products and farm food products certified as non-potentially hazardous by the Department of Health and Human Services. A Rural Country Market includes the display and sale of non-edible farm products only if the products are grown and processed on farms in the State of Maryland. Rural Country Market does not include the sale or storage of bread, cheese, or other foodstuffs produced in a commercial kitchen, or an eating and drinking establishments (see Section 3.5.3, Eating and Drinking).

2. Use Standards

Where a Rural Country Market is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- a. The minimum tract area is 2 acres.*
- b. The maximum height is 20 feet, unless located in an existing building.*
- c. The minimum setback from the street and from any side or rear lot line is 50 feet, except that the minimum setback from the street may be reduced to 25 feet if the Hearing Examiner finds that the smaller setback would be compatible with surrounding uses. The Hearing Examiner may approve the use of an existing structure that does not meet these requirements if the Hearing Examiner finds that the use is suitable and compatible with the surrounding area.*

ISSUES:

The primary difference between this use and the Farm Market, On-site use (under Agricultural uses, above) is that there is no requirement under this use for the products to be grown on property owned or controlled by the farmer. Both uses allow the sale of food items that are non-potentially hazardous.

It is notable that a “locally grown” requirement is also included under the standards for this use, that non-edible products must be grown within the State of Maryland. This is potentially confusing in light of the new definition of “regionally grown” and the reference to “local products” both referenced in the new ZTA 18-03.

Also, this use precludes the sale of foodstuffs produced in commercial kitchens or eating establishments. These types of sales are conditionally permitted in AR zones under Section 3.5.3, Country Inns, which are not permitted in the AR zone.

OPPORTUNITIES:

There is an opportunity to clearly define “locally grown” more comprehensively in Article 59.1; Division 1.4; Defined Terms, so that it is clear when used here, as well as in the new provisions of ZTA 18-03.

LODGING /BED AND BREAKFAST – L

A. *Defined, In General*

Lodging means a building used for the short-term overnight accommodation of paying guests.

1. *Defined*

Bed and Breakfast means a detached house with rooms for rent and where breakfast is customarily served to guests.

2. *Use Standards*

a. Where a Bed and Breakfast is allowed as a limited use, it must satisfy the following standards:

i. A Bed and Breakfast is prohibited in a dwelling unit that also provides guest rooms for roomers, or in a Farm Labor Housing Unit, or on a site that includes an Accessory Apartment.

ii. The display of a sign must include the official house number.

iii. Breakfast is the only meal that may be served and only to overnight guests, except as provided in Subsection 59.3.5.6.B.2.a.x.

iv. A guest must only remain in a Bed and Breakfast for a maximum of 14 days in any one visit.

v. A record of all overnight visitors must be maintained.

vi. The Bed and Breakfast must be registered with DPS.

vii. In the Agricultural, Rural Residential, and Residential zones, the minimum lot area is the greater of 9,000 square feet or the minimum lot area for a detached house building type in the zone.

viii. In the Agricultural, Rural Residential, and Residential zones, on a lot of less than 2 acres, a maximum of 3 bedrooms may be designated as guest rooms for which compensation is charged.

ix. Except as provided in Subsection 59.3.5.6.B.2.a.x, a Bed and Breakfast must be in an owner-occupied house with no more than 5 guest rooms.

x. In the Agricultural and Rural Residential zones, a Bed and Breakfast located in any detached house or accessory building designated as historic on the Master Plan for Historic Preservation:

- (a) *may have no more than 10 guest rooms on any site;*
 - (b) *may serve overnight guests any meal; and*
 - (c) *must be occupied by either an owner or an owner-authorized manager.*
- xi. *Parking must be located behind the front building line.*
 - xii. *In the AR zone, this use may be prohibited if not accessory to Farming under Section 3.1.5, Transferable Development Rights.*
- b. *Where a Bed and Breakfast is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:*
- i. *The Hearing Examiner may deny a petition for a Bed and Breakfast with frontage on and access to a road built to less than primary residential standards if it finds that road access will be unsafe and inadequate for the anticipated traffic to be generated or the level of traffic would have an adverse impact on neighboring residences.*
 - ii. *If there is inadequate space for parking behind the front building line, the Hearing Examiner may approve an alternative placement for parking.*
 - iii. *Screening under Division 6.5 is not required.*
 - iv. *To avoid an adverse neighborhood impact and assure that the residential use remains predominant, the Hearing Examiner may limit the number of transient visitors who may be accommodated at one time or the number of visits in any 30-day period.*

ISSUES:

In general, the Use Standards for Bed and Breakfasts are oriented towards limiting the size of these establishments and requiring owner-occupancy, which is consistent with a rural context. However, under section B.2.a.x, , above, it would be helpful to clarify the definition of “accessory to a farm use.”

OPPORTUNITIES:

No opportunities identified, other than to clarify the definition of “accessory to a farm use” As noted above.

TEMPORARY COMMERCIAL USES/TRANSITORY USE – L

1. Defined

Transitory Use means a use on private property or the public right-of-way conducted from a vehicle or from a movable structure that remains in the same location for less than 24 hours. Transitory Use includes a food service truck.

2. Use Standards

Where a Transitory Use is allowed as a limited use, it must satisfy the following standards:

- a. *A Transitory Use must be registered under Chapter 47.*
- b. *A Transitory Use may be located in the public right-of-way where it satisfies Chapter 47.*
- c. *A Transitory Use may be allowed on private property only if it would be allowed as a permanent use in the applicable zone under Section 3.1.6.*
- d. *A Transitory Use is prohibited on any portion of the open space required by the zone in which the property is located.*

ISSUES:

No known issues were identified.

OPPORTUNITIES:

No opportunities identified.

MISCELLANEOUS

SOLAR COLLECTION SYSTEM – L

A. Defined

Solar Collection System means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices.

B. Use Standards

Where a Solar Collection System is allowed as a limited use, it must satisfy the following standards:

- 1. In the Agricultural, Rural Residential, Residential, Commercial/Residential, and Employment zones a Solar Collection System must be an accessory use as defined in Section 3.1.3.*
- 2. Written authorization from the local utility company must be provided for a Solar Collection System that will be connected to the utility grid.*
- 3. Removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit for the installation or operation of a Solar Collection System is prohibited.*
- 4. Solar panels may encroach into a setback as allowed under Section 4.1.7.B.5.c and may exceed the maximum height as allowed under Section 4.1.7.C.3.b.*
- 5. The following standards apply to a freestanding Solar Collection System:*
 - a. In the Agricultural, Rural Residential, Residential, Commercial/ Residential, and Employment zones, it is allowed only as an accessory use where the system produces a maximum of 120% of on-site energy consumption and must satisfy the same development standards as an accessory structure; however it may be located in the side yard of a property in a Rural Residential or Residential Detached zone if the main*

building is set back a minimum of 70 feet from the side lot line and the Solar Collection System is setback a minimum of 50 feet from a side lot line and the height of the Solar Collection System is a maximum of 20 feet.

b. In the Residential Multi-Unit, Commercial/Residential, Employment, and Industrial zones, a Solar Collection System installed above a parking lot or other paved surface does not count towards the maximum coverage.

c. Signs are prohibited, except for a flush-mounted sign identifying the manufacturer of the system.

d. The Solar Collection System must be removed within 12 months of the date when the use is discontinued or abandoned by the system owner or operator, or upon termination of the useful life of the system. The Solar Collection System will be presumed to be discontinued or abandoned if no electricity is generated by the system for a period of 12 continuous months.

ISSUES:

Solar collection uses are a growing and much-discussed feature of rural land use throughout the nation. State and local model ordinances for addressing this use abound and can be used as examples of policy approaches to address and mitigate the impacts from solar collection. One key feature of Montgomery County's ordinance is the requirement for solar collection uses to be accessory uses as defined in Section 3.1.3. The ordinance in effect limits any large-scale energy generation from solar collection by limiting it to an accessory use "where the system produces a maximum of 120% of on-site energy consumption." It is also useful to note that the definition groups together solar collection for heating and cooling that may be done for the individual home with any solar collection that may be for energy generation.

OPPORTUNITIES:

Solar collection systems are generally divided into those used primarily for residential on-site energy generation and larger, utility-scale, for-profit, energy generation facilities. While it is clear that Montgomery County's code does not envision large utility-scale solar facilities in the Agricultural Reserve, there may be an opportunity for slightly more permissive regulatory approaches to solar collection while safeguarding the rural landscape from adverse impacts.

Some of the typical impact areas of concern for solar generating facilities include the loss of productive farmland, stormwater and runoff impacts, and impacts on community character, aesthetics and property values. Examples from ordinances around the nation show ways to deal with all these impacts to protect surrounding properties and the rural landscape as a whole. However, it is recommended that solar installations still be limited in site area, for example, to no more than 5-10 acres, and that they be controlled through conditional use processes to mitigate any adverse impacts.

ACCESSORY STRUCTURES- L

Accessory Structure

1. Defined

Accessory Structure means a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land. An Accessory Structure is not attached by any part of a common wall or common roof to the principal building.

2. Use Standards

Where an Accessory Structure is allowed as a limited use, it must satisfy the following standards:

- a. In Agricultural and Rural Residential zones, the maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building. Buildings for an agricultural use are exempt from this size restriction.*
- b. In Residential Detached zones, the maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building or 600 square feet, whichever is greater. Buildings for an agricultural use are exempt from this size restriction.*

ISSUES:

Accessory structure provisions are sometimes an important issue for agritourism. The requirement for accessory structures to be limited to a certain proportion of the footprint of the main structure on a site is a common provision. However, a key provision in the Use Standards for Accessory Structures is that buildings or an agricultural use are exempt from this provision. However, the definition for Agriculture (under Section 1.4.2) states that, "Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product." Since this definition could allow for some typical agritourism-related uses such as value-added processing, it is important to recognize that there would not be a restriction for size of footprints of structures that fall under this category.

OPPORTUNITIES:

No opportunities identified, other than to clarify the definition of agritourism, as noted in page 4 of this document.

DIVISION 4.2. AGRICULTURAL ZONE

SECTION 4.2.1. AGRICULTURAL RESERVE ZONE (AR)

ISSUES:

Article 59-4 in the Code deals with development standards for Euclidean Zones. Section 4.2.1 addresses development standards in the AR Zone. There are no issues specific to Agritourism that were identified in this section, other than the general reinforcement in the Intent Statement that Agriculture is the preferred use in the AR zone.

OPPORTUNITIES:

No opportunities identified, other than relative to the definition of agritourism, as noted in page 4 of this document. If this definition is clarified or modified, it would need to be reflected in the Intent Statement of this Section.

B. SUBDIVISION ORDINANCE ASSESSMENT

CHAPTER 50. SUBDIVISION OF LAND; ARTICLE 1. IN GENERAL

SECTION 3.3. EXEMPTIONS TO THE REQUIREMENTS OF THIS CHAPTER

B. Recordation of a plat before issuance of a building permit is not required for:

4. Property for Single-Unit Living:

a. An unplatted parcel or a part of a previously platted lot, proposed for single-unit living, which has not changed in size or shape since June 1, 1958, if a description and location of the property and proposed structure are submitted to the Planning Department, before issuance of a building permit, sufficient to:

i. locate the property on the tax maps of Montgomery County;

ii. show that the approval of the building permit application would not result in obstructing the future opening, extension, or widening of any necessary road, or otherwise jeopardize any planned public facility;

iii. show that the property and use comply with the zoning ordinance, and show the setbacks and any other information needed to check compliance with regulations, including provisions for water and sanitary service, and establishment of a building restriction line along any existing or proposed road sufficient to provide for future expansion or opening of such road to its ultimate width; and

iv. show that the approval of the permit would not adversely affect the General Plan.

b. An unplatted parcel or a part of a previously platted lot used for reconstruction of an existing detached house under Chapter 59, Section 7.7.1.

c. An unplatted parcel created by combining the entirety of two or more contiguous parcels that qualified for an exemption under Subsection (a).

ISSUES:

County staff has requested that this provision be reviewed. This provision in the Subdivision Ordinance allows “single unit living” to be built (or rebuilt) on certain types of unplatted parcels without requiring the recordation of a plat. Not requiring plat recordation also obviates the need for filing a Preliminary Plan application, with all the required drawings, supporting information and Planning Board approval that are required as part of a Preliminary Plan. However, Section 50.6 of the Code that defines the procedures for an “ADMINISTRATIVE SUBDIVISION PLAN” also allows provisions for subdivision of up to 5 lots for detached houses in the AR zone if certain provisions are met, such as a covenant being recorded for the unplatted balance of the tract, and that platted lots are 5 acres or less. The provision for a simplified Administrative Review for up to 5 lots in the AR zone is a very simple process in comparison to a Preliminary Plan requirement and allows staff review without having to go before the Planning Board.

OPPORTUNITIES:

There is an opportunity to simplify and make the procedures more uniform in the Subdivision Ordinance by modifying Section 3.3 so that unplatted parcels are still exempt from preliminary plan requirements but are required to go through an Administrative Review process to obtain building permits for single unit living. This will standardize all residential development in the AR zone to at least have this basic level of Administrative review and to have the lots recorded into the County's Land Records.

C. BUILDING CODE ASSESSMENT

CHAPTER 8 BUILDINGS; ARTICLE 1. GENERAL REQUIREMENTS

SECTION 8-1. SCOPE AND APPLICABILITY

(d) Exemptions. All buildings or structures must be constructed, extended, repaired, removed or altered under a permit that satisfies this Chapter, except for:

(1) ordinary repairs as defined in Section 8-3;

(2) a building or structure used exclusively for agricultural purposes on land used exclusively for agriculture; however, a permit under this Chapter is required for:

(A) a building or structure used for a purpose that is not exclusively agricultural, including conditional uses, even though located on otherwise agricultural land;

(B) an equestrian facility, building, or structure intended for use by participants or spectators at an equestrian event;

ISSUES:

County staff has requested that this provision be reviewed. This provision in the Code exempts buildings used exclusively for agricultural purposes from the requirements of a building permit. However, Conditional Uses and equestrian facilities are excluded from this exemption. A key aspect of this provision is the definition of agricultural use, discussed above in the Zoning Ordinance Assessment. The definition of agriculture in Section 1.4.2 "includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product." As discussed above, the current definition is broad enough to include many aspects of agritourism. However, it is also recommended in this document that this definition be amended to more specifically define agritourism uses.

OPPORTUNITIES:

There is an opportunity to clarify how this provision is interpreted partly by refining the definition of agritourism-related uses as discussed above. With this, it may also be useful to clarify in this section (d) on exemptions, the specific list of uses that should not be exempted from building permits. For example, the provision that equestrian facilities that are used by spectators require building permits is presumably a safety issue for structures such as grandstands and bleachers. Similar requirements may be added for other spectator or event uses where safety of the visiting public may be an issue. For all other agritourism uses, however, it should be made clear that they are exempt from building permit requirements.

PART 2. STATE AND LOCAL ALCOHOL PRODUCTION REGULATIONS

WINERY/BREWERY/DISTILLERY REGULATIONS IN STATE CODE

Venues that produce and sell alcoholic beverages have been a major driver of agritourism across the nation. Maryland also has benefited from the rapid expansion of the craft beer and wine industries. In 2006 the state produced just under 2 million gallons of beer. By 2016 that figure had increased to more than 7 million gallons. Wineries have also grown in popularity and number. In 1970 the state had only 7 wineries. As of September 2017, the state had 91 wineries.

Unlike other agritourism enterprises, the production, wholesale distribution, and retailing of alcohol is heavily regulated by the State of Maryland. This section summarizes some important provisions of state law that affect zoning and other code provisions related to agritourism in Montgomery County.²

OVERVIEW

The regulation of alcohol in Maryland, and throughout the United States, separates manufacturers, wholesalers, and retailers into separate ownership and operations. The purpose of this regulatory arrangement is to prevent “vertical integration,” where all steps in the supply chain are controlled by the same firm. Manufacturing and wholesaling of alcoholic beverages in Maryland is regulated by the state’s Comptroller through the issuance of permits. Retail operations are regulated at the local level through either a control or a licensing model. Under the control model the government controls the retail (and in some instances wholesale) selling of alcoholic beverages. Under the licensing model, private firms purchase a license to sell alcoholic beverages.

Most Maryland jurisdictions follow the licensing model, with local boards of license commissioners regulating the sale of alcoholic beverages by private firms. Montgomery County uses both the control and licensing models. In Montgomery County the Board of License Commissioners issues licenses to retailers for the sale of alcoholic beverages. However, Montgomery is one of four counties statewide where retail liquor is only sold through County-run dispensaries. Montgomery County also holds a monopoly on the wholesale distribution of beer, wine, and liquor. This means that a licensed retailer in the County may only sell alcoholic beverages that are purchased from the Montgomery County Department of Liquor Control.

WINERY MANUFACTURER’S LICENSES AND PERMITS

Wineries are required to obtain either a Class 3 or 4 license from the State. The Class 3 license allows the winery to acquire bulk wines from out of state. The Class 4 limited wineries license is most relevant to agritourism in Montgomery County. The State’s Class 4 limited winery license allows license holders to ferment and bottle wine from available Maryland agricultural products. If the Maryland Department of Agriculture (MDA) determines, however, that an insufficient supply of Maryland agricultural products exists, the license holder may use agricultural products from outside the State. A license holder may serve samples of wine, sell or serve more than a dozen food items, hold planned promotional events, purchase bulk wine and blend the wine with the license holder’s wine and pomace brandy if the aggregate purchase does not exceed 25% of the license holder’s annual wine and pomace brandy production, and conduct winemaking and packaging activities at another winery under

² The source of the content in this section is “Regulation of the Alcoholic Beverages Industry in Maryland” written by the Department of Legislative Services in November 2017. [MONTGOMERY COUNTY AGRITOURISM STUDY](#) | Code Assessment

certain circumstances. Wineries with a direct wine shipper’s permit can ship their products directly to Maryland consumers.

Wineries with a Class 4 permit may also obtain a winery off-site permit to sell its products off-premises at the Montgomery County Agricultural Fair, certain farmers’ markets, wine festivals, and other events. According to State code, permit holders are allowed to participate in 32 or less off-site events each year, with no more than 9 at a single venue.

BEER MANUFACTURER’S LICENSES AND PERMITS

Brewers are required to obtain one of four types of state license. The Class 8 farm brewery license is most relevant to agritourism in Montgomery County. The Class 8 farm brewery license allows the license holder to brew, bottle, or contract (manufacture on behalf of another license holder) for up to 15,000 barrels of beer each year. However, that beer must be manufactured with an ingredient from a Maryland agricultural product and produced on the licensed farm. The Class 8 farm brewery license holder may contract with other license holders to brew and bottle beer from ingredients produced on the licensed farm. They may also enter into a temporary delivery agreement with a distributor only for delivery of beer to a beer festival. State law also sets limits on the hours of operation for farm breweries and allows for up to 12 brewery promotion events per year. These events may be held from 10 AM to 10 PM and may not exceed 3 consecutive days.

It should also be noted that Maryland is the only jurisdiction among its neighboring states and the District of Columbia to limit the total amount of beer that may be sold on-premises by a brewery. This is a state law that Montgomery County does not control.

DISTILLERY MANUFACTURER’S LICENSES AND PERMITS

The State’s Class 1 distillery license authorizes the establishment and operation of a plant for distilling, rectifying, and blending an unlimited amount of brandy, rum, whiskey, alcohol, and neutral spirits at the location described in the license. A license holder may sell up to 2.25 liters of product for off-premises consumption to a person on a guided tour of the distillery if the license holder manufactures no more than 27,500 gallons of products each year.

A distillery off-site permit allows the permit hold to sell its product at specific agricultural fairs, farmers’ markets, and liquor festivals, and not more than six other events in a year that have as their major purpose an activity that is not the sale and promotion of alcoholic beverages and for which the distillery’s participation is a subordinate activity.

OTHER

Montgomery (along with Frederick and St. Mary’s counties) may issue an alcoholic beverages license to:

- A nonprofit or for-profit retail business engaged in the display and sale of original artwork by an individual artist or a group of artists. The board may not issue the license to a business that displays and sells commercially prepared or mass-produced artistic products.
- To a holder of a beauty salon permit. The license authorizes the holder to provide limited amounts of beer or wine by the glass for on-premises consumption by a beauty salon customer when the customer is provided a cosmetology service, or while the customer is attending an authorized fundraising event at the beauty salon.

PART 3. ASSESSMENT OF ZONING TEXT AMENDMENT NO. 18-03

OVERVIEW

This zoning text amendment, adopted by the County Council on October 2, 2018 adds farm alcohol production as a use allowed in certain zones and establishes standards for farm alcohol production. ZTA 18-03 incorporates many of the standards applicable to wineries in the zoning ordinance and applies those standards and others to breweries, cideries, and distilleries. It allows farm alcohol production in agricultural and rural residential zones under certain circumstances. The amendment also includes standards for tasting rooms, the sale of food, and events.

SECTION 1.4.2 SPECIFIC TERMS AND PHRASES DEFINED

Regionally-Grown Products: Grains, fruits, vegetables, flowers, or honey harvested within the 5-state area of Maryland, Virginia, West Virginia, Delaware, and Pennsylvania and the city of Washington, DC.

ISSUES:

The multi-state definition of “regionally grown” used in the ZTA encompasses a large area, with the advantage that it pulls in more potential suppliers than if the definition were more narrowly construed. However, it may not fit with a consumer’s perceptions of what is a locally produced product. The Farm Alcohol Production use standards require that a “*plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.*”

OPPORTUNITIES:

A jurisdictional definition of regionally grown is easy to define but is not as relevant from a consumer marketing standpoint as a mileage definition. Some other counties use a 50-mile radius, for example, to define locally or regionally grown products. The County may want to consider adopting a mileage-based, rather than jurisdictional-based, definition.

SECTION 3.2.10 ACCESSORY AGRICULTURAL USES

B. Farm Alcohol Production

1. Defined

Farm Alcohol Production means the transformation of agricultural products into alcoholic beverages. Farm Alcohol Production includes wineries, cideries, breweries, or distilleries on farms. Farm Alcohol Production may include other activities unrelated to the production and sale of alcohol or farming under certain circumstances.

2. Use Standards

- a) Where Farm Alcohol Production is allowed as a limited use, it must satisfy the following standards:*
 - i. The production capacity and associated activities of the alcoholic beverage must comply with the license issued by the State of Maryland Comptroller's Office.*
 - a. A brewery must have a Class 8 Farm Brewery License;*
 - b. A winery must have a Class 4 Limited Winery License; and*
 - c. A distillery must have a Class 1 Distillery License.*

- ii. *Some ingredients used in the production process must be grown on site.*
- iii. *Wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and:

 - a. *have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or*
 - b. *source a majority of their grapes or other fruit from Maryland.**
- iv. *Breweries and distilleries must source a majority of their ingredients, if available at competitive prices, from Regionally-Grown Products. At least 1.0 acre of ingredients must be grown on site for use in the alcohol production process.*
- v. *A plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.*
- vi. *The underlying land must be classified as agricultural by the State Department of Assessments and Taxation and the facility must be an accessory use of the farm.*
- vii. *Subject to all licensing requirements, the facility may:

 - a. *operate an on-site tasting room for its products; and prepare and sell food to the extent allowed by the State alcohol manufacturing license.**
- viii. *Events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery, including membership-related events and traditional festivals related to agriculture or the business of alcohol production, are allowed without a limitation on the number of guests. A maximum of 5 days of events that require an entrance ticket or a cover charge is allowed each calendar year.*
- ix. *Weddings, corporate retreats, and other events accessory to the production of alcohol are allowed if the number of guests is equal to or lower than the capacity allowed by the Department of Permitting Service's Use and Occupancy Permit for on-site buildings:

 - a. *Except as allowed under subsection (c), the maximum number of participants at any event is 225. There is no limit on the number of events with 100 participants or fewer. The total maximum number of days of events in a calendar year is 50 for events with more than 100 participants.*
 - b. *A written log of all events must be kept by the holder of the alcohol production license. That log must be available for inspection by the Department of Permitting Services.*
 - c. *As a conditional use under Section 7.3.1, the Hearing Examiner may approve additional days of large public events and events with greater numbers of participants for either normal and customary events or other accessory events.**
- x. *If any structure is used for activities under subsection vii, viii, or ix, the structure must satisfy all building, life safety, fire, and sanitation code requirements.*
- xi. *Illumination at the property line must be limited to 0.1 footcandles or less.*
- xii. *All parking must be accommodated on site.*
- xiii. *Noise levels must satisfy Chapter 31B standards.*
- xiv. *Any new building or surface parking area used for Farm Alcohol Production and related events must be located at least 100 feet from an existing dwelling unit on an abutting property.*
- xv. *In the AR zone, except for sites where the property owner obtained a Maryland alcohol producer's license before October 2, 2018, the minimum site area for breweries and distilleries is 25 acres.*
- xvi. *Where Farm Alcohol Production is allowed as a conditional use, it must satisfy the standards under Section 7.3.1.*

ISSUES:

- Prior to the ZTA, the ordinance did not have specific allowance for farm alcohol production with the exception of wineries. The new ZTA combines wineries into a general provision for farm alcohol production that includes wineries, breweries, cideries and distilleries.
- For wineries, which were a Limited/Conditional use in the AR zone prior to the amendment, the former provisions allowed 9 days of events that require an entrance ticket or a cover charge for each calendar year under the A/R Limited Use provisions, with no language about other types of events. The new ZTA explicitly defines limits for types of events at breweries, cideries, and distilleries. It allows for up to 50 events accessory to the production of alcohol per year with between 100 and 225 participants (if the capacity of the facility allows for it), and it sets no limits on guests for events *“that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery.”*
- The zoning text amendment allows for the facility to *“prepare and sell food to the extent allowed by the State alcohol manufacturing license.”* Section 2-210 of the state’s Alcoholic Beverages article defines the food items that can be sold at Class 8 farm breweries to include *“bread and other baked goods; chili; chocolate; crackers; cured meat; fruits (whole and cut); hard and soft cheese (whole and cut); salads and vegetables (whole and cut); ice cream; jam; jelly; vinegar; pizza; prepackaged sandwiches and other prepackaged foods ready to be eaten; soup; and condiments.”* It should be noted that these facilities are allowed a more extensive array of food products than are allowed for rural country markets in the AR zone and that restaurants are not allowed in the AR or Rural Residential districts. This means that the Farm Alcohol Production use will be the only way to sell most foodstuffs as a restaurant in the AR zone.
- The zoning text amendment also both increases and relaxes standards related to the cultivation of crops grown on site for use in the production process. It states that *“wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and: have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or source a majority of their grapes or other fruit from Maryland.”* This relaxes the previous winery standard by allowing the fruit to be grown on an abutting or confronting property rented by the producer, rather than requiring it to be grown on site. But it also may be placing a requirement for crop production that is difficult to meet for a beginning vintner. For instance, in Virginia, 50 percent of vineyards are 7.3 acres or less.³

OPPORTUNITIES:

- In general, the recent adoption of this new ZTA makes it difficult to suggest major new additional changes to these new standards. However, one exception of an opportunity to reconsider the requirements for the cultivation of crops grown on site for use in the production process is noted below.
- Under the opportunities provided above for Wineries (under the ordinance provisions prior to the adoption of this ZTA) we had suggested that there is an opportunity to consider a “percent of land area under cultivation in grapes or other fruit” standard for the cultivation of crops grown on site for use in the production process, rather than an absolute minimum of 5 acres (although the 5-acre minimum could still be included in addition). This provision would provide more flexibility to smaller wineries and beginning vintners.

³ Virginia Commonwealth University. “Virginia 2016 Commercial Grape Report.”

PART 4. Options to Consider for Next Steps

OVERVIEW

The above Code Assessment was presented to the ASAC by the consultant team on November 28, 2018. County staff collected review comments on the draft Code Assessment in the following months and these were compiled and transmitted to the consultant team in April 2019. A summary of the main thematic issues in the review comments is provided in the Appendix.

The review comments reflected some disagreements on the potential opportunities identified in the Code Assessment, with some reviewers generally feeling that the standards on agriculture and agritourism related uses should not be made any more stringent, or should be relaxed, and others feeling the need to make them tighter to better protect the scenic and peaceful character of the Agricultural reserve.

The options for considerations below address opportunities for which there was at least some support from the review comments and are intended purely for future consideration by the ASAC and the County. They are framed in terms of “options to consider” rather than purposeful recommendations in recognition of the need for further discussion to resolve potential conflicts on key issues.

ZONING RELATED ISSUES

DEFINITION OF AGRITOURISM (ARTICLE 59-1; SECTION 1.4.2.)

Agritourism is not specifically defined in the County code. There is an opportunity to more clearly define agritourism, both as a term in Division 1.4. Defined Terms, and as a permitted farming use in the Use Table. Jurisdictions across the nation, such as Thurston County, WA, have created definitions of agritourism, some aspects of which may be appropriate for Montgomery County. Spelling out the definition of agritourism and allowing it specifically as a permitted use can clarify some of the potential disagreements around what constitutes appropriate event and tourism uses in the Ag Reserve.

OPTIONS TO CONSIDER:

1. Amend Division 1.4 to add Agritourism as a defined term
2. Add Agritourism as a permitted use in the Use Table, Division 3.2.

BENEFIT PERFORMANCE STANDARDS (ARTICLE 59-3. USES AND USE STANDARDS; SECTION 3.1.4. TEMPORARY USES)

A potential issue identified has to do with standards for benefit performances in the AR District. There are very few performance standards associated with this provision and it is possible that large or lengthy benefit performances could present concerns of traffic, noise or other complaints from adjacent landowners.

OPTIONS TO CONSIDER:

3. Poll ASAC members if this issue is a concern of theirs.
4. If this issue is an ASAC concern, develop standards for traffic, noise, number and timing of benefit performances and potentially size of events

AGRICULTURAL PROCESSING (ARTICLE 59-1; SECTION 3.1.6.)

The definition of Agriculture under Article 59-1. includes agricultural processing, which is not identical with how agricultural processing as a use is described under 3.2.2 and could be confusing from a regulatory standpoint. As part of this clarification, there is an opportunity to strengthen the relationship to farming and the farm economy in the definition portion. In addition, Use Standard 3. requires frontage on a primary residential roadway and there is an opportunity to refine it so that it is more performance-based, using standards for vehicular traffic generated by the use.

OPTIONS TO CONSIDER:

5. Resolve the differences in the definitions of Agricultural Processing as a term (Article 59-1) and as a permitted use (Division 3.2.2).
6. Revise the definition of Agricultural Processing to add language that ties it more closely to farming (for example, that the primary use of the land be for growing farm products).
7. Refine Use Standard 3. so that it is more performance-based using standards for vehicular traffic generated by the use

EQUESTRIAN FACILITY (ARTICLE 59-1; SECTION 3.1.6.)

Use standards for equestrian facilities, although extensive, have potential opportunities for enhancement, relating to roadway classifications, lighting and unclear language in the conditional use standards.

OPTIONS TO CONSIDER:

8. Poll ASAC members if issues such as roadway classification, lighting and conditional use standards are concerns of theirs.
9. If these issues are of concern, develop performance standards that address the amount of vehicular traffic generated by the use rather than the roadway classification.
10. Eliminate the lighting requirements under 1.f. and develop comprehensive lighting standards (e.g. “dark sky” standards elsewhere in the Code.
11. Revise the language under 2.b. eliminating the wording, “must not adversely affect abutting land uses or the surrounding road network.” Revise the language to focus on specific measurable impacts to allow staff less leeway in subjective interpretation of the standards.

FARMING (ARTICLE 59-1; SECTION 3.1.6.)

The definition of farming includes a series of important definitions of the accessory uses to farming, many of which deal with agritourism issues. There are opportunities to clarify definitions and use standards under the Farming use that would both allow more flexibility for agritourism uses and more guidance for staff review of zoning applications.

OPTIONS TO CONSIDER:

12. Correlate the definitions of farming and agricultural processing in this section with those in Article 59-1 and eliminate any redundancies.
13. Eliminate the requirements under accessory use C for “temporary” storage of off-site horticultural products in exchange for limiting the type or quantity of goods grown off-site that are sold on a farm. This would eliminate the need to define and monitor temporary storage as well as reduce the redundancy with the definition of Farm Market-On Site under Accessory Agricultural Uses.

14. Loosen the standard for percent of total agricultural structures that may be devoted to agritourism (agritourism structures limited to only 10% of the total agricultural structures on the property) in order to better align with the modern agritourism economy and needs for support structures.

ACCESSORY AGRICULTURAL USES / FARM MARKET, ON-SITE (ARTICLE 59-1; SECTION 3.1.6.)

The Use Standard limitation (a.iii.) of a maximum of 25% of the display and sales area being devoted to off-site grown products is an important standard that helps reinforce the connection to farm-grown products. However, there is an opportunity to encourage marketing of locally grown products by allowing more flexibility for the 25% maximum display area in cases where the products are grown within a defined local area.

OPTIONS TO CONSIDER:

15. Allow more flexibility for the 25% maximum display area in cases where the products are grown, for example, within a certain radius of the farm (50 mile or 100 mile) or where the products are grown elsewhere in the county or just in the Ag Reserve.

RETAIL SALES & SERVICE/RURAL COUNTRY MARKET (ARTICLE 59-1; SECTION 3.1.6.)

While there are no major issues to consider for this use, it should be noted that the use standards reference “locally grown.” This is potentially confusing in light of the new definition of “regionally grown” and the reference to “local products” both referenced in the new ZTA 18-03.

OPTIONS TO CONSIDER:

16. More clearly define “locally grown” more comprehensively in Article 59.1; Division 1.4; Defined Terms, so that it is clear when used here, as well as in the new provisions of ZTA 18-03.

BUILDING CODE RELATED ISSUES

CHAPTER 8 BUILDINGS; ARTICLE 1. GENERAL REQUIREMENTS; SECTION 8-1. SCOPE AND APPLICABILITY

This provision exempts buildings used exclusively for agricultural purposes from the requirements of a building permit. However, Conditional Uses and equestrian facilities are excluded from this exemption. The current definition of agricultural purposes is broad enough to exempt many aspects of agritourism but there is an opportunity to more specifically define agritourism uses as exempt from building permits.

OPTIONS TO CONSIDER:

17. Clarify in section (d) on exemptions, the specific uses that should not be exempted from building permits, such as spectator type events uses where safety of the visiting public may be an issue.
18. Add a provision that agritourism uses, other than those noted above, are exempt from building permit requirements.

SUBDIVISION RELATED ISSUES

CHAPTER 50. SUBDIVISION OF LAND; ARTICLE 1. IN GENERAL; SECTION 3.3. EXEMPTIONS TO THE REQUIREMENTS OF THIS CHAPTER

This provision in the Subdivision Ordinance allows “single unit living” to be built (or rebuilt) on certain types of unplatted parcels without requiring the recordation of a plat, and thereby, a Preliminary Plan. While requiring full preliminary plan application for single lots could be onerous, there is still a need to require recording of lots so that the lot can become part of the County’s Land Records.

OPTIONS TO CONSIDER:

19. Modify Section 3.3 so that unplatted parcels are still exempt from preliminary plan requirements but are required to go through an Administrative Review process to obtain building permits for single unit living (as per Section 50.6 of the Code that defines the procedures for an “ADMINISTRATIVE SUBDIVISION PLAN”). This will standardize all residential development in the AR zone to at least have this basic level of Administrative review and to have the lots recorded into the County’s Land Records.

APPENDIX A. Summary of Review Comments Received

Montgomery County Agritourism Study							
Summary of Input Received - 4/24/19							
Issue	REVIEWERS						SUMMARY- shows number of agreements across reviewers
	Tom Hartsock	C. Taylor	RRAC	Ellen Gordon	JC Group	Heritage Montgo mery	
Clarify definition of Farming / Agritourism	1	1			1		3
Preserve farming in the Reserve	1	1				1	3
Preserve open space in the Reserve	1	1				1	3
Permit the sale of goods made/processed on site	1						1
Prohibit the sale of goods not made/processed on site	1						1
Tourism, Education & Accessory Uses should be tied to farming	1	1	1	1		1	5
Ag Tourism & Education should be tied to activities on a working farm	1	1					2
Provide performance standards for Benefit Performances		1		1			2
Provide performance standards for general Agritourism uses & Events		1	1				2
Do not loosen standards for Accessory Ag Structures		1		1			2
Revise Winery standards to reflect State code		1					1
Clarify definition of Locally Grown		1		1			2
Strike recommendations for Solar facilities		1			1		2
Do not loosen acreage requirements for Farm Alcohol production		1		1			2
Support protection of Rustic Roads		1	1				2
Standards need to be measurable & enforceable		1					1
Need data on financial success of farming currently in the Reserve			1				1
Do not exempt agrotuirism uses from building permit requirements				1			1
Do not impose performance standards for agritourism uses					1		1
Do not redefine Accessory Agricultural uses					1		1
Do not limit tyes of goods or products sold on a farm					1		1
Revise standards for minimum building footprints for Agritourism use, Rural Country Market and other sections to comply with State legislation					1		1
Increase allowable percent of sales area that requires products to be grown on site					1		1

APPENDIX B. Consultants Responses to Issues

Montgomery County Agritourism Study	
Consultant Responses to Inp+A2:B17ut Received - 6/12/19	
Issue	Consultant Responses to Issues
Clarify definition of Farming / Agritourism	Spelling out the definition of agritourism and allowing it specifically as a permitted use can clarify some of the potential disagreements around what constitutes appropriate event and tourism uses in the Ag Reserve
Preserve farming in the Reserve	This should be a primary objective in moving forward and should be reinforced in plans and policies that guide any code revisions in the future
Preserve open space in the Reserve	This should also be a primary objective in moving forward although the definition of open space needs to be clear in the context of permitted uses
Permit the sale of goods made/processed on site	The 25% maximum display area for off-site grown products (under ARTICLE 59-1; SECTION 3.1.6.) could be considered for expansion in cases where the products are grown, for example, within a certain radius of the farm (50 mile or 100 mile) or where the products are grown elsewhere in the county or just in the Ag Reserve.
Prohibit the sale of goods not made/processed on site	Same as above response
Tourism, Education & Accessory Uses should be tied to farming	There are several references already in the code that highlight the nexus to farming for these uses. Opportunities for strengthening the linkage to farming in the definitions of "locally grown" and in the sales of products have been pointed out in the Code Assessment.
Ag Tourism & Education should be tied to activities on a working farm	Same as above response
Provide performance standards for Benefit Performances	It is unclear if there have been issues in the past with Benefit Performances. If this issue is an ASAC concern, consider developing standards for traffic, noise, number and timing of benefit performances and potentially size of events
Provide performance standards for general Agritourism uses & Events	This consideration would need to account for the new standards in ZTA 18-03 which permit a variety of events for farm alcohol production uses. Events are not addressed comprehensively with uniform standards but individually under permitted uses in the AR Zone, such as Temporary Outdoor Sales or Equestrian Facilities. The use of permitting (Temporary Use Permits) as a tool to address events can also be an effective way to address these types of temporary uses. Although they require additional staff time, they can also be an effective regulatory tool for recurring event-type uses that are done for-profit (weddings, reunions, etc.). and can include requirements for transportation and parking plans, for example.
Do not loosen standards for Accessory Ag Structures	This opportunity to loosen the standard for percent of total agricultural structures that may be devoted to agritourism was based on a general national trends of the modern agritourism economy and needs for support structures. However, it is unknown if this is an issue particular to the Ag Reserve and more research is recommended.
Revise Winery standards to reflect State code	It is our understanding that the new standards for Farm Alcohol Production under ZTA 3-18 are compliant with the State Code
Clarify definition of Locally Grown	There is an opportunity to clearly define "locally grown" more comprehensively in Article 59.1; Division 1.4; Defined Terms, so that it is clear when used in the Code, as well as to clarify its relationship to the "regionally grown" terminology used in the new provisions of ZTA 18-03.
Strike recommendations for Solar facilities	It is unclear that there is any desire to loosen the requirements for solar facilities in the Ag reserve. If this issue is not an ASAC concern, it should not be a consideration for code amendments.
Do not loosen acreage requirements for Farm Alcohol production	It is unclear that there is any desire to loosen the requirements for the "percent of land area under cultivation in grapes or other fruit" standard for the cultivation of crops grown on site for use in the production process in the Ag reserve. If this issue is not an ASAC concern, it should not be a consideration for code amendments.
Support protection of Rustic Roads	In some cases, potential opportunities were identified to replace use standards by class of roadway with standards based on traffic counts. This issue should be investigated with the ASAC to better understand whether frontage on Rustic Roads should be used as use prohibition or whether it should be based on measurable criteria such as traffic on a roadway.
Standards need to be measurable & enforceable	In general, the Code Assessment attempted to identify opportunities to replace standards based on a use with standards based on measurable performance. However, these should be investigated relative to the potential for additional staff time needed to enforce measurable standards.
Need data on financial success of farming currently in the Reserve	This was beyond the scope of this Code Assessment.
Do not exempt agritourism uses from building permit requirements	Traditionally, local governments have exempted agricultural structures from building permits and Montgomery County's code exempts buildings used exclusively for agricultural purposes from the requirements of a building permit. The current definition of agricultural purposes is broad enough to exempt many aspects of agritourism but investigation with ASAC members may help to refine the types of uses and structures that should be subject to this exemption.
Do not impose performance standards for agritourism uses	In general, the Code Assessment attempted to identify opportunities to replace standards based on a use with standards based on measurable performance rather than imposing new performance standards. However, these should be investigated relative to ASAC opinions and the potential for additional staff time needed to enforce measurable standards.
Do not redefine Accessory Agricultural uses	The Code Assessment did not recommend redefining Accessory Agricultural Uses but identified an opportunity to both loosen and tighten the definition by limiting the type or quantity of goods grown off-site that are sold on a farm in exchange for eliminating the provision that these are "temporarily" stored on the farm
Do not limit types of goods or products sold on a farm	The Code already has limits on the types of goods and products sold on a farm. It is unclear if this comment is intended as a recommendation to roll back or loosen the current standards?
Revise standards for minimum building footprints for Agritourism use, Rural Country Market and other sections to comply with State legislation	It is our understanding that the reference to State Code (House Bill 1141 passed during the 2018 MD Legislative Session) applies to a list of specific counties in the State that does not include Montgomery County. It is unclear if this comment requests that the State legislation should be changed to include Montgomery County or that the County Code should adopt the State Code language.
Increase allowable percent of sales area that requires products to be grown on site	The 25% maximum display area for off-site grown products (under ARTICLE 59-1; SECTION 3.1.6.) could be considered for expansion in cases where the products are grown, for example, within a certain radius of the farm (50 mile or 100 mile) or where the products are grown elsewhere in the county or just in the Ag Reserve.



**Montgomery County
Department of Permitting Services**

255 Rockville Pike, 2nd Floor Rockville, MD 20850-4166
 Phone: 311 in Montgomery County or (240)777-0311
 Fax: (240)777-6262 | <http://www.montgomerycountymd.gov/permittingservices>

Agricultural Producer Certificate for Farm Alcohol Production

Name: _____

Date: _____

Site Address: _____

Zoning: AR RC R RNC RE-2 RE-2C RE-1 (circle)

Tax Assessment Ag: yes no

**please attach a copy of your [MD Department of Assessment & Taxation real property worksheet](#)*

Phone: _____

Email: _____

Total Property Acreage: _____ (facility location)

Acreage of ingredients grown: _____ acre(s)

Your property affiliation:

own rent lease other _____

Production: List crop(s) and acreage planted of each.

Requesting approval for:

brewery - class 8 farm brewery license

winery/cidery – class 4 limited winery license

distillery – class 1 distillery license

** please attach a copy of the [license issued by the MD Comptroller](#)*

Will there be a tasting room: yes no

If yes, what will the capacity be of the tasting room?

49 or less 50 or more

Do you plan to host events on this property?

yes no If yes, then provide additional information. May need additional permits.

Other required documents that must be submitted with your application:

Written plan: outline the agricultural production, detail information about the sourcing of other ingredients and provide a schedule for increasing the use of local Montgomery County agricultural products. Include a site plan showing the layout of the property & parking.

Have you had a pre-design meeting with DPS: yes no

Note: An Events Journal is required with details to include the following information – event type, date, # of attendees. Also, noise amplification must comply with Chapter 31B if you are providing amplified music.

FOR OFFICE USE ONLY

Inspection Agent Name/Signature: _____

Jeremy V. Criss, Director
Office of Agriculture

Phone No. (301) 590-2830 | E-mail Address: Jeremy.criss@montgomerycountymd.gov

Department of Permitting Services Signature: _____

Ehsan Motazedi, Division Chief
Zoning and Site Plan Enforcement

IF YOU HAVE ANY QUESTIONS PLEASE CALL (240) 777-0311

