

# Statewide Guidance and Analysis:

## Maryland's Value-Added Agriculture and Agritourism



**Prepared by Maryland Department of Agriculture**

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# Purpose

As Maryland's largest *commercial* industry, in economic impact, Agriculture contributed approximately \$8.25 billion annually to the economy and covered nearly 2 million acres of the State in 2022, per the United States Census of Agriculture (Census of Agriculture, 2022). Although agriculture is a foundational piece of Maryland's history and economy, industry faces numerous challenges. For farms to be sustainable, they must be profitable and encouraged to expand and grow. Although traditional agricultural practices remain a prominent economic driver in the State of Maryland, a steady decline in total farms and farmland is leading to new and emerging trends capable of keeping next-generation farming operations sustainable. These trends, which include processing and tourism dimensions, present opportunities for growth within the agricultural industries but test the bounds of existing regulatory frameworks across multiple agencies. Unlike other commercial enterprises, farm and agricultural operations are tied to the land and typically lack flexibility to relocate if presented with a challenging business climate. In an aging industry that is the primary occupation for less than half of total operators, establishing a regulatory framework which supports currently existing businesses and facilitates new entrants to the industry is critical. Attracting and retaining the next generation of agricultural producers will be achieved by streamlining regulations, while recognizing and addressing the evolving category of value-added operations. The State of Maryland supports agriculture through existing incentives and initiatives such as agricultural use assessments, preservation programs, and waivers of transfer taxes, but existing regulatory structures present challenges to an industry that is constantly evolving.

"Value-Added" agriculture has traditionally been recognized as the process of changing a raw product into a higher value product. However, Value-Added agriculture is a broader concept, spanning from products to experiences and is rapidly expanding in demand and popularity. This concept is also recognized to include "Agritourism", where the public is welcomed onto a private farm for the purposes of education and recreational activities that supplement or enhance the underlying farm operations. The regulation of these practices involves numerous governmental agencies, including those that may lack familiarity or technical expertise relating to agriculture. The evolution of agriculture within an outdated regulatory framework, at both State and local levels, has proven challenging for supporting and expanding existing and new agricultural businesses within the value-added space. Through Maryland Department of Agriculture's (MDA) conversations with fellow State Agencies, local agricultural specialists, County-level economic and agriculture development offices, recommendations from advisory bodies (Maryland Agricultural Commission and the Governor's Intergovernmental Commission for Agriculture) and agricultural businesses, it is apparent that there are significant regulatory challenges Maryland farms and agricultural businesses face in scaling up and expanding into value-added operations.

**The purpose of this publication is to establish a baseline understanding of the complexities with regulating agricultural enterprises, as they continue expansion towards consumer facing and value-added processing functions and operations. This document will address existing policy, language, and processes on numerous regulatory levels, identifying challenges and opportunities related to the growth of these relevant industries throughout Maryland.**

## **Intent & Implementation**

This Guidance and Analysis Document is intended to inform agencies and industry on the diversity and evolution of value-added agriculture, to include agricultural processing and agritourism, for the sake of regulatory and policy-based decision making. Through outreach, engagement, and the development of this document, the Maryland Department of Agriculture will:

- 1. Untangle a complicated web of regulation to identify and address complexities and barriers, either outdated or unintended, that hinder the growth of these industry sectors.*
- 2. Familiarize local and State officials with important trends across Maryland's Agricultural Industries and the varying levels of laws and regulations that govern it.*
- 3. Identify definitions, concepts and processes that pose challenges and hurdles for the recognition and regulation of trending industries and operations, while recognizing critical considerations for public safety, health, and environmental protection.*
- 4. Introduce and establish consistent and recognizable concepts for what Value-Added Agriculture and Agritourism is in Maryland, now and in the future.*
- 5. Showcase successful benchmarks and creative regulatory recommendations for growing and protecting farms and agriculture, while supporting the economic growth of these industry sectors.*

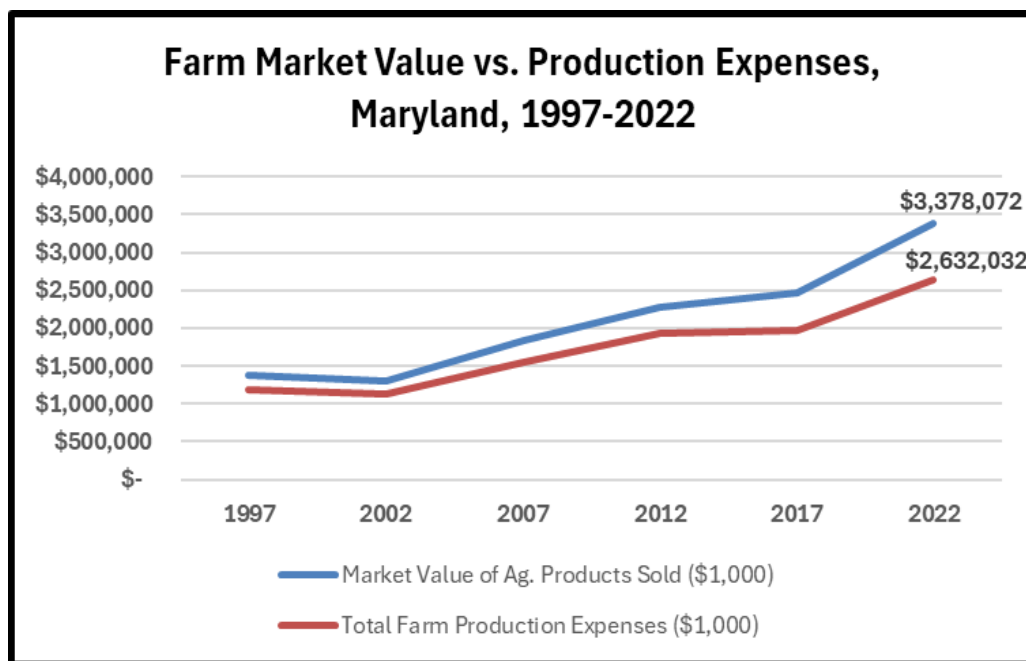
Through the process of developing this document, MDA engaged with County-level agricultural and economic development professionals across 24 Maryland counties, including Baltimore City. Representatives of MDA conducted County visits and engaged with regulators throughout the development of this document, facilitating formal discussions in most Counties. Through these County-specific roundtables, assembled by local agricultural and economic development specialists, planning, zoning, and permitting (to include Environmental Health) have been primary themes of discussions. Although the themes, opportunities, and challenges presented within this publication are broad and generalized through a Statewide lens, the local engagement was invaluable in understanding the complexities and challenges faced in regulating these unique and emerging industries.

# Evolution of an Industry

## Overview and Scope

The 2022 U.S. Department of Agriculture (USDA) Census of Agriculture indicates Maryland has experienced a loss of more than 12,000 acres of farmland since 2017. Contrary to a nationwide trend of significant farm consolidation, Maryland has seen approximately 1% growth in the total number of farms reported. (Census of Agriculture, 2022) This most recent Census of Agriculture illustrates that the size of the typical Maryland farm is shrinking, which is leading to a shifting landscape of the agricultural industry. Scale of operation is imperative in all business, and Maryland's significant loss of farm acreage implies that some conventional models may not work for smaller parcels or the next generation of farmers.

Per the 2022 U.S. Department of Agriculture (USDA) Census of Agriculture, the average market value of agricultural products sold per farm is \$269,169, with total farm production expenses averaging \$209,724. These production expenses exclude the market value and depreciation of all machinery and equipment and emphasize how thin and delicate profit margins are for these industries (*Figure 1*).



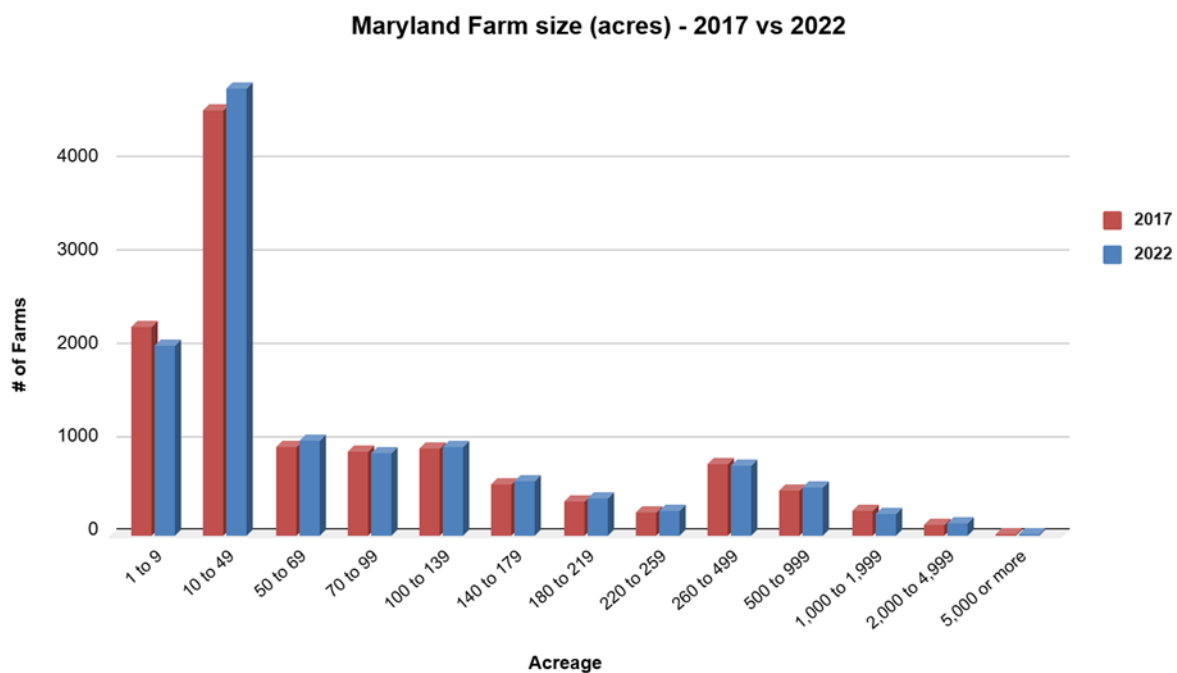
*Figure 1. Maryland Farm Market Value versus Production Expenses, 1997 - 2022 - USDA Census of Agriculture*

There are scalability challenges as it relates to input costs for farming, and Maryland's expensive land costs add a barrier of entry for young, beginning, and small agricultural operators. With often limited resources for investing and expanding operations, business operators are forced to make decisions based on the viability and achievability of their projects.

## Shifting Agricultural Landscape

The 2022 USDA Census of Agriculture reported approximately 12,550 Maryland farms across nearly 2 million acres. Maryland's average farm size is 158 acres, with average farm sizes exceeding 300 acres in some counties on the Eastern Shore. (Census of Agriculture, 2022) Given an average farm size of less than 100 acres across five Maryland Counties, and more than half of all counties below the State average, there is evidence of smaller parcels and changing farm footprint.

In Maryland, per the 2022 U.S. Census of Agriculture, nearly 70% of all farm operations are less than 100 acres in size (*Figure 2*). Furthermore, most reported farms in the State are less than 50 acres, with more than 15% of all farms being between 1 to 9 acres in size.



*Figure 2. Maryland Farms, by Size (acreage), 1997 - 2022 - USDA Census of Agriculture*

Although the threshold to qualify for the Census of Agriculture is low, requiring that a farm generates \$1,000 or more from agricultural products in a year, all these businesses are contributors to Maryland's local food system and economy. With the acreage footprint of farming in Maryland declining at an alarming rate, the steady retention of farms of a smaller scale present opportunities for the next generation of agriculture, which may test the bounds of existing regulations and expectations.

In recording the value of processed or value-added agricultural products sold, the 2022 USDA Census of Agriculture has reported growth. The Census represents this value-added agricultural data as the value of products that originated from crops or livestock commodities produced on the operation. This data is not all-encompassing of what Maryland acknowledges as a value-added enterprise, as this only represents the alteration and creation of a product and not the educational and recreational benefits of agritourism or expanded distribution and marketing channels.

For the purposes of the Census of Agriculture, the USDA defines "value-added products" as a change in the physical state or form of an agricultural product or production in a manner that increases value, such as certifications like "organic". Value-added processing can expand a customer base for the commodity or product and improve profit margins with vertical integration under the operator's control.

The USDA Census of Agriculture 2022 reported 575 farms selling value-added products, up nearly 70 from 2017. Of 575 producers, 115 reported sales of \$50,000 or more. Although this data does not completely capture the total reach and economic impact of what Maryland recognizes as "Value-Added Agriculture", there is an indication that there is significant growth opportunity in this industry sector. Whereas the USDA Census of Agriculture recognizes Value-Added Agriculture as products-only, the economic impact of farm visits and Agritourism activities are significant though not as easily measured. Although USDA's definition does not encompass experiential value-added practices, the 2022 Census of Agriculture reports impressive growth among producers. Outpacing the slight growth in total farms, Maryland saw approximately a 14% increase in farms selling value-added products. (*Figure 3*) Although most reporting value-added producers generated less than \$10,000, there are signs of steady growth in revenue generation, with fewer producers reporting less than \$1,000, even with 70 more farms in 2022. (Census of Agriculture, 2022)

<b>Maryland Farms - Value-Added Products Sold (2022)</b>					
<b>Value of Sales</b>	<b>2017</b>	<b>2022</b>	<b>% Change</b>	<b>% of Farms</b>	<b>% of Farms</b>
<b>\$1 to \$499</b>	105	81	-23%	14.09%	60.00%
<b>\$500 to \$999</b>	52	48	-8%	8.35%	
<b>\$1,000 to \$4,999</b>	107	123	15%	21.39%	
<b>\$5,000 to \$9,999</b>	36	93	158%	16.17%	
<b>\$10,000 to \$24,999</b>	55	72	31%	12.52%	20.00%
<b>\$25,000 to \$49,999</b>	33	43	30%	7.48%	
<b>\$50,000 or more</b>	118	115	-3%	20.00%	20.00%
<b>Total # of Farms</b>	<b>506</b>	<b>575</b>	<b>14%</b>	<b>100%</b>	<b>100%</b>

Source: USDA Census of Agriculture, 2022

Figure 3. Maryland Farms, Sales of Value-Added Products, 1997 - 2022 - USDA Census of Agriculture



A 2023 University of Maryland Eastern Shore (UMES) Extension report published to establish a baseline of agritourism services in Maryland identified 485 locations of Agritourism operations, encompassing a spectrum of on farm tourism activities spanning from farm stores to tasting rooms and pick-your-own produce. The UMES report noted that, although the average age of all producers was 57.8 years old, new and beginning producers with 10 years or less of farming accounted for 7,319 producers, up 27% from 2017. (Ejiogu, Escobar, & Kairo, 2023) The report also illustrated a lack of a clear, uniform definition of agritourism, creating confusion for consumers and limited collaboration among stakeholders, impacting policy creation, marketing strategies, academic collaboration, and the authenticity of the agricultural experience.

## Regulatory Frameworks

### Regulatory Themes

“Value-added agriculture” encompasses many different aspects of enhancing on-farm products and experiences. Discussing the concept broadly may disregard some important dimensions of the regulatory framework, as separate facets of this industry are regulated in different ways and at varying governmental levels.

**For this document and effective dialogue surrounding the complexity of value-added agriculture, “Value-added agriculture” has been divided into four separate regulatory themes:**

- *Value-Added Processing*
- *Agritourism & Food Service*
- *Retail of Value-Added Products*
- *Other (Indirect)*

**Value-added processing** is the concept of transforming raw agricultural products into finished goods, such as making cucumbers into pickles, milk into cheese, or grapes into wine. The value-added processing of food products, except for alcoholic beverages and meat products, are typically State-licensed processes.

Unlike value-added processing, which falls within standardized State-licensure, **agritourism and food service** licensure and activities are primarily regulated at the local level. Although food service licensing and regulations are largely consistent from jurisdiction to jurisdiction because they are delegated by the State, there can be differences in interpretation due to local regulations specific to land use, permitting, and other considerations specific to engaging with the public.

The **retail of value-added products** involves regulations concerning the sale of processed agricultural products, which may require additional licensing or approvals related to land use or environmental health. There is far more flexibility in selling raw farm-grown agricultural products than processed foods; however, local licensing is required for processed products, especially food items requiring refrigeration. Transporting products off-site to farmers markets and other events is also a common practice of value-added sales that is regulated uniquely. For a business to offer samples of food products at these off-site venues, additional local licensing is required and will differ across each jurisdiction.

With the three previous themes revolving around food products and on-farm recreation, it is important to acknowledge that there are other critical functions of farms and agricultural operations. **Other on-farm activities** that require acknowledgement and consideration include, but are not limited to, harvesting, composting, storage of equipment and products, agricultural water management, and farm adjacent practices such as aquaculture. Although seafood and aquaculture enterprises are not always recognized in certain laws or regulations specific to farming practices, these industries are recognized as agricultural activities at the Federal level.

These themes are not all-encompassing of Maryland's value-added agricultural industries, though the clarification allows for untangling a complex web of how agriculture, food, and retail operations are traditionally regulated.

## Defining Agriculture

### Overview

There are government agencies responsible for overseeing and regulating the practice of farming, while there are also local standards to control the footprint and infrastructure of each agricultural practice. There are many facets of value-added agriculture that span across numerous codes and regulations for numerous agencies. Like other themes in this document, the concept of agricultural processes and practices is often disconnected from the discussions of land use, which cause hiccups and barriers throughout the regulatory process. There is minimal guidance and standards for local jurisdictions to reference as it relates to what a “farm” should and could look like, and the universal concept of a farm is evolving and expanding as value-added activities expand. Across State Law, agricultural related concepts are defined numerous ways across multiple Articles (*Figure 4*). There are inconsistencies and specificities to the purpose and section of the terminology.

Maryland State Law (Statute)	Keyword	Article	State Statute	Text
	<i>Farm</i>	Environment	§9-1725	"the site of a business or activity operated for the primary purpose of tilling, cropping, keeping, pasturing, or producing an agricultural product other than compost, including livestock, poultry, plants, trees, sod, food, feed, or fiber, by in-ground, out-of-ground, container, or other culture. "Farm" does not include the site of a business or activity operated for the primary purpose of producing compost."
	<i>Agritourism</i>	Land Use	§4-213	"...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 a active involvement in the farm operation."
	<i>Commercial Farm</i>	Agriculture	§8-801	"...means a farm that performs activities related to the production and sale of agricultural commodities, including row crops, fruits, vegetables, horticulture, and silva culture."
	<i>Value-Added Agriculture</i>	Agriculture	§2-2201	" (1) Means the alteration or enhancement of a raw agricultural product, including livestock, or an agricultural service in a way that increases the product or service's worth to a consumer and brings more revenue to a farmer, producer, or processor; and  (2) Includes all enterprises, including those providing equine activities, in which an agricultural business or the agricultural business's products or services are altered, marketed, produced, or processed in a way that adds income to a farmer, producer, or processor."
	<i>Alcohol Production</i>	Land Use	§4-213	"...an activity that is: (i) carried out by a license holder, as defined in § 1-101 of the Alcoholic Beverages and Cannabis Article; and (ii) related to the manufacture, packaging, storage, promotion, or sale of alcoholic beverages. "Alcohol production" includes the use of an area to: (i) provide tastings of alcoholic beverages; or (ii) accommodate the license holder's customers. A local jurisdiction may adopt the definition of "alcohol production" as defined in this section by local ordinance, resolution, law, or rule."
	<i>Agricultural Activity</i>	Environment	§5-901	"...aquaculture and farming activities. "Agricultural activity" includes: (i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products; and (ii) The grazing of livestock."
	<i>On-Farm Home Processing Facility</i>	Health	§21-308	"...a home or domestic kitchen located on an individual's farm that manufactures and processes foods for commercial sale."
	<i>On-Farm Food Service Facility</i>	Health	§21-309	"...a food service facility that: (i) Is located on a farm; (ii) Serves food as designated by the Department; and (iii) Operates during a period of time of not more than 30 consecutive days with up to two renewals in a 1-year period."

Figure 4. Maryland State Law; Statutory Language Related to Value-Added Agriculture

In the Maryland Department of Agriculture's outreach and engagement with regulators throughout the State, the question of "*What is a Farm?*" was a common topic of discussion. Although "Agritourism" continues to be a term that causes confusion and challenges across regulatory levels, there is a glaring need for a recognizable and foundational reference/term for what a "farm" should be for certain "Agritourism" functions to be encouraged, streamlined, and accessible through regulatory processes.

Disjointed definitions across different government layers may not only complicate local planning and implementation related to value-added agricultural industries but create challenges for State

regulators needing to validate businesses in a certain way that may be recognized and defined differently county-by-county. Beneath State Statute in the regulatory web, the concept of value-added agriculture becomes more convoluted (*Figure 5*). The most relevant language within the Code of Maryland Regulations (COMAR) is practice focused on land use, as most agencies are recognizing agriculture for the sake of licensing or regulating.

	Keyword	Agency	COMAR	Text
Maryland State Regulation	<b>Agricultural Activity</b>	SDAT	18.02.03.01	Approved agricultural activity means those activities recognized as agricultural pursuits: (1) Raising grains, fruit, herbs, melons, mushrooms, nuts, seeds, tobacco, or vegetables; (2) Raising poultry, for example, chicken, turkeys, or eggs; (3) Dairy, for example, milking cows; (4) Raising livestock, for example, cattle, sheep, lambs, hogs, or pigs; (5) Horse boarding, breeding or training; (6) Turf farming; (7) Raising ornamental shrubs, plants, and flowers, including aquatic plants; (8) Aquaculture; and (9) Silviculture.
	<b>Camp</b>	MDH	10.16.03.01	"...means a property consisting of a tract of land and all tents, vehicles, buildings, or other structures pertaining to it used as living quarters or shelter, which is operated gratuitously or for compensation, during any portion of any 5 or more days per annum, and which accommodates five or more persons at any time. However, this definition may not apply to a camp to be used by one family on its own premises, motels, motor courts, migrant labor camps, and mobile home parks."
	<b>Farm</b>	MDH	10.15.03.02	"... a place where agricultural commodities are grown, raised, or harvested for commercial purposes. (b) "Farm" includes a place where, for commercial purposes: (i) Crops are grown and harvested; (ii) Fruit, nuts, or other agricultural commodities are harvested from trees; or (iii) Animals are raised, fed, and managed for meat or other agricultural commodities."
	<b>Farmer's Market</b>	MDH	10.15.03.02	"... a place where a person offers or sells one or more of the following food products directly to the public: (i) Raw agricultural products; (ii) Products processed in a private home kitchen, as set forth in Regulation .27 of this chapter; (iii) Products that are not potentially hazardous and do not require refrigeration that are processed in a food processing plant licensed and operated according to COMAR 10.15.04.19; or (iv) Eggs in compliance with Regulation .05A(8) of this chapter."
	<b>Farm Product</b>	MDA	15.01.20.02	"Farm product" means: (a) Any agricultural, horticultural, vegetable, or fruit product of the soil, whether raw or canned, frozen, dried, pickled, or otherwise processed; (b) Livestock, meats, marine food products, poultry, eggs, or dairy products; (c) Wool, hides, feathers, nuts, or honey; or (d) Any product of farm, forest, orchard, garden, or water.
	<b>Food Service Facility</b>	MDH	10.15.03.02(34)	"... means: (i) A place where food or drink is prepared for sale or service on the premises or elsewhere; or (ii) An operation where food is served to or provided for the public with or without charge. (b) "Food service facility" includes: (i) A restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, retail market, or retail bakery outlet..."
	<b>Urban Agriculture</b>	MDA	15.01.20.02	(7) "Urban agricultural producer" means any person that (a) Annually produces farm products in an urban area; and (b) Sells, plans to sell, or normally would have sold at least \$1,000 annually of farm products produced from a farming operation. (8) "Urban area" means an area of the State delineated as an urban area by the U.S. Census Bureau set forth in "Urban Area Criteria for the 2020 Census—Final Criteria", at 87 Federal Register 16706 (March 24, 2022).

Figure 5. Annotated Code of Maryland (COMAR), Regulatory Language Related to Value-Added Agriculture

The term “commercial” is found within statutory and regulatory definitions relating to agricultural activities multiple times. From a land use perspective, agriculture and “commercial” are often viewed, recognized, and enforced as opposites. Maryland farming operations are diverse and still evolving; protecting agriculture in Maryland relies on recognizing how critical these businesses are to the economy, environment, and community. Agriculture is a commercial industry, and farmers in Maryland must be able to plant, grow, harvest, process, and sell their crops to stay in business.

## Agriculture and Farming

“Agriculture” and “Farming” are words often used interchangeably to recognize activities necessary to produce food, feed, and fiber products. However, it is important to distinguish the two terms, as there is a need to establish uniform associations for the sake of concept versus practice. The definition of “Agricultural activity” (*Figure 4*) within the State Environmental Article includes both farming activities and aquaculture. Plowing, tillage, cropping, seeding, cultivating, harvesting, and grazing of livestock are all included in the definition, but does not specify these functions as business activities.

The US Census of Agriculture, conducted by the USDA's National Agricultural Statistics Service (NASS), is a complete count of farms, ranches, and operators, every five years. For the sake of data collection, USDA defines a farm as “any place where \$1,000 or more of agricultural products were produced and sold (or normally would have been sold) during the census year.” This definition is vague and inclusive, fully capturing the industry and contributions to the Country’s food supply chain. Maryland regulates farm operations with similar qualifications, though the thresholds are higher.

Maryland farming operations that generate at least \$2,500 in gross sales or have 8,000 pounds or more of live animal weight, are required to follow state-approved nutrient management plans when fertilizing crops and managing animal manure (Maryland State Soil Conservation Committee, 2020). Within these specific regulations, “Commercial farm” means “a farm that performs activities related to the production and sale of agricultural commodities, including row crops, fruits, vegetables, horticulture, and silviculture.” **The Nutrient Management Law is the current standard for compliance among farm operations in Maryland but does not uniformly validate these businesses for expansion into Agritourism and other value-added practices.**

The Maryland Department of Environment (MDE) defines “farm” as “the site of a business or activity operated for the primary purpose of tilling, cropping, keeping, pasturing, or producing an agricultural product other than compost, including livestock, poultry, plants, trees, sod, food, feed, or fiber, by in-ground, out-of-ground, container, or other culture.”

Locally, Maryland Counties that currently define “Farm” in Zoning code have acreage minimums associated with the use, ranging anywhere from 3 to 25 acres, with a focus more on the use of the property and not the operation of the business. Although it is important for farms and value-added operations to align with local planning and ordinances, these varying thresholds cause inconsistency with increasing State-licensure for certain value-added practices.

## **Value-Added Agriculture**

Recognizing the statewide trends and demand for value-added goods and agritourism activities, the Maryland Department of Agriculture recently established a Value-Added Agricultural Specialist to guide businesses through various regulatory hurdles and improve the business environment for these industries. In 2023, the term “value-added agriculture” was defined by law in Maryland as “the alteration or enhancement of a raw agricultural product, including livestock, or an agricultural service in a way that increases the product or service's worth to a consumer and brings more revenue to a farmer, producer, or processor; and includes all enterprises, including those providing equine activities, in which an agricultural business or the agricultural business's products or services are altered, marketed, produced, or processed in a way that adds income to a farmer, producer, or processor.” The concept of value-added agriculture is broad, yet simple: expanding and localizing the agricultural supply chain and driving the public to local producers will bolster the profitability of the industry and assist in the preservation and advancement of Maryland farms and agriculture.

Although “Value-added agriculture” covers a broad spectrum, “Agritourism” (Land Use Article §4–212) is one facet that has faced numerous challenges over the years and has required significant discussion amongst State regulatory agencies.

**Within the respective State definitions, and the broad umbrella of each concept, both “Value-Added” and “Agritourism” represent a wide range of activities and business practices that may or may not be specific to farms and agricultural lands. The extent to which these industries have diversified has challenged the rigidity of local Land Use and Zoning regulations, especially with how “Agriculture” and “Commercial” concepts are often siloed with how they are recognized and interpreted. Current barriers stem from how agritourism is defined and regulated at the state level. As State requirements and guidance continue to evolve, developments in zoning and land use regulations at the local level are an important consideration.**

## **Agritourism**

The foundational concept of “Agritourism” is centered around inviting the public onto a farm, to engage, appreciate, and support Maryland’s agriculture. Members of the public visiting farms to purchase goods and services is not a new concept, however, the expansion of recreational activities and increased flow of visitors is drastically challenging how these value-added agricultural enterprises are viewed through a regulatory lens. Any public access to or use of a farm to buy or utilize an agricultural product is viewed as a “commercial use” under certain State regulations, such as definitions within the State Environment Article, and not as part and parcel to the underlying agricultural enterprise – this is an interpretation that can add exorbitant regulatory layers and costs. “Agritourism”, in concept, refers to an agriculturally related activity conducted on a farm that is offered to a member of the public, or to invite guests for the purpose of education, recreation, or active involvement in the farm operation. This broad term does challenge localized regulatory frameworks, as there is limited guidance related to thresholds and extremes of activities on-farm. The preexistence of certain uses included in the State’s definition of “Agritourism”, which is common across Maryland counties, is particularly noticeable with uses such as “camping” and “party facilities”, where these concepts may already exist within zoning language and guidance at the local level.

Navigating Agritourism regulations is confusing and complicated because of the need to start locally, both with Zoning and potentially a local Health Department if food service is involved. However, much of local Environmental Health enforcement is interpretation of State laws and policies. There are some State policies related to food service that are farm-specific, though most of the licenses issued are general and not always conducive to the primary layout of farm operations.

## **Land Use**

### **Overview**

In Maryland, a system of permits and regulations exists to guide agricultural activities in stewarding the environment, specifically the Chesapeake Bay, with important considerations including public health and safety, drinking water protection, wastewater, and flood protection. These Federal and State authorizations are issued by different agencies, including the Maryland Departments of Agriculture, Environment, and Natural Resources. These mandates and regulations determine how a farm operates; This is an important consideration as new regulatory structures and agencies get involved with a farm enterprise expanding into value-added processing, retail sales, or agritourism activities.

**The 2020 Farmers Guide to Environmental Permits, prepared by the Maryland State Soil Conservation Committee and the Maryland Department of Agriculture, is a business-facing document that identifies the relevant regulations and respective agencies that play a role in environmental compliance for farm operations. This document lists and describes 30 separate permits that may be relevant to a Maryland farming operation, with some regulations mandated for all farms. This long list of State-issued permits and State-enforced regulations is not all encompassing, as it is only specific to environmental stewardship. Maryland farmers are regulated by numerous other offices for products and practices, and emerging value-added industries and agritourism enterprises significantly add to the list of relevant agencies.**

Maryland farms are composed of primarily small and family businesses and often lack the resources for representation or design professionals that are often expected through full development projects. Operators in this industry are often left to navigate regulations on their own, which presents a burden. In an industry that is currently regulated by several different agencies, agricultural business owners often find existing processes and existing regulatory resources arduous and complicated. The uniqueness of the State's value-added agricultural industries is not appropriately reflected in outdated codes and regulations.

## **Conservation**

Maryland's Soil Conservation Districts (SCD) provide farmers with technical assistance, resources, and guidance on all permitting requirements (federal, state, and local) related to agricultural projects and activities, being conscious of environmental impact. These offices also play a role in reviewing and approving certain plans and activities related to environmental regulations, such as helping farmers determine the most cost-effective way to handle a project with minimal environmental impact.

Local SCDs are the approval authority for stormwater management and erosion and sediment control for land disturbances greater than 5,000 square feet associated with "agricultural activities" as defined in COMAR. The SCDs help determine the proper authorizations needed and ensure the farm's Soil Conservation and Water Quality Plan addresses sediment from the land disturbing activity. The SCD will guide the application process and coordinate with the local government or MDE for additional authorizations. Value-added agriculture projects currently walk the line between regulatory oversight since SCDs are not necessarily regulatory agencies, though the districts are providers of technical assistance and support services to Maryland farms.

Existing definitions of agriculture-related uses across State agencies, and lacking recognition of some farms' need to engage and welcome the public, has created a grey area of authority that limits some SCDs ability to completely support agritourism activities on farms. Stormwater Management Plan reviewers within County Permitting Offices may be accustomed to seeing more urban practices or larger scale development projects and may not frequently interact with



the unique considerations of animal agriculture or other farming practices; Soil Conservation Districts work with farms on conservation plans and support the agricultural community on a regular basis.

In Maryland, any land disturbance less than 5,000 square feet is exempt from both state erosion and sediment control and stormwater management requirements. Larger land disturbances associated with agricultural land management practices can meet compliance with assistance from SCDs under an approved Soil Conservation and Water Quality Plan. Land disturbances less than 1 acre for the construction of farm access roads and parking associated with agricultural structures may meet compliance through a SCD approved Soil Conservation and Water Quality Plan that uses NRCS Conservation Practice Standard 570. Land disturbances between 5,000 square feet and 1 acre for construction that is not considered an agricultural land management practice must be approved by the local jurisdiction under an engineered stormwater management plan. If the disturbance is for construction of an agricultural structure, the Standard Plan for Agricultural structures may be used in lieu of the engineered plan, with approval from the local jurisdiction. Land disturbance greater than 1 acre is required to obtain local approval of an engineered stormwater management plan, a local SCD approved erosion and sediment control plan, and a state issued NPDES permit for stormwater associated with a construction activity (20-CP).

**There is inconsistency across the State regarding Stormwater Management Plans and SCD involvement, particularly as it relates to value-added agriculture and infrastructure specific to public visitation. State definitions for agricultural activities and agricultural land management practices do not acknowledge value-added or tourism components. This limits the role the SCDs have as an approval authority for stormwater management and erosion and sediment control.**

## **Preservation**

A common farmland preservation method in Maryland is the sale of “easements”, agreements which apply conditions to the use of property such as the maximum number of developable lots and allowable land uses. Easements are usually recorded in county land records and, immediately prior to the sale of a development right, a covenant is recorded on the land which limits allowable land uses and future development.

The State and several counties have easement purchase programs. The Maryland Agricultural Land Preservation Foundation (MALPF) was one of the first state easement purchase land preservation programs in the Country, and some localities have “Rural Legacy” areas, managed by DNR or some equivalent. MALPF purchases agricultural preservation easements that forever restrict development on prime farmland and woodland and have permanently preserved land in each of Maryland's 23 counties.

MALPF has broad discretion to permit farm- and forest-related uses and home occupations compatible with agriculture and forestry, including on-site retail sales and value-added processing, to enhance or complement primary farming/forestry. The MALPF Board reviews requests for farm-related/supporting uses and home occupations on a case-by-case basis using criteria such as proportion/size, compatibility with farm/forest production, impact on soil, use of existing structures, new construction guidelines, rural character, county advisory board recommendations, compatibility with conservation plans, and impact on natural resources. Although there is flexibility for preserved farms and value-added opportunities, it is another example of a rapidly evolving industry longstanding program.

## **Zoning**

Zoning is a fundamental component of local planning used by jurisdictions and their planning commissions to guide growth, redevelopment, and community design. Frequently, across local jurisdictions, there is clear separation between rural regions and areas in the community prime for residential or “commercial” development.

Within the respective State definitions, and the broad umbrella of each concept, both “Value-Added” and “Agritourism” represent a wide range of activities and business practices that may or may not be specific to farms and agricultural lands. Local jurisdictions can reference these State terms or recognize these land uses in completely different ways. Therefore, there is no uniform definition used by counties across the state for agritourism, and some counties may not even have adopted definitions in their local codes or regulations. The extent to which these industries have diversified has challenged the rigidity of local Land Use and Zoning regulations, especially with how “Agriculture” and “Commercial” concepts are often siloed with how they are recognized and interpreted.

Published in 2022, and updated as recently as December 2023, the University of Maryland Agriculture Law Education Initiative (ALEI) developed and published a Statewide Agritourism Matrix. (*Figure 6*) In partnership with Grow & Fortify and support from the Russell Brinsfield Internship program, ALEI released this Zoning Matrix to consolidate information and capture the complexities and inconsistencies in how Maryland’s Counties and Baltimore City recognize and regulate value-added agricultural operations.

Agriculture-Related Uses, County Zoning Codes (Maryland)								
	"Farm"	"Agriculture"	"Value-Added"	"Agritourism"	"On-Farm Manufacturing"	"Agricultural Processing"	"Farm Alcohol Producer"	"Urban Farm"
Allegany								
Anne Arundel								
Baltimore City								
County								
Calvert								
Caroline								
Carroll								
Cecil								
Charles								
Dorchester								
Frederick								
Garret								
Harford								
Howard								
Kent								
Montgomery								
Prince George's								
Queen Anne's								
St. Mary's								
Somerset								
Talbot								
Washington								
Wicomico								
Worcester								
Total	14	20	7	15	1	9	7	1


Key:  notes relevant language in County Code

Figure 6. Agriculture-Related Uses within Local Zoning Ordinances, Statewide

The information collected and organized within the Zoning Matrix highlights the fact that there is no zoning use code that is standard across all jurisdictions. In fact, “Agriculture” or similar variations of the term are only recognized in 20 of 24 local zoning codes. Furthermore, only 14 jurisdictions define “farm”, and each of those definitions is unique.

Within the Land Use Article of Maryland State Law, “Agritourism” is defined as “...an activity conducted on a farm”, furthering the difficulty for certain State regulations and processes when only half of Maryland’s counties define “farm” in local zoning code.

The ALEI Zoning Matrix also includes definitions and concepts specific to food processing, often interpreted as “manufacturing” in many local codes, illustrating how these enterprises

struggle with the same regulatory rigidity of how “commercial” activities are not recognized or allowable as functions within zones and communities labeled and recognized as agricultural in nature. The largest void of definitions within this data set are related to manufacturing on-farm goods. When a farm chops vegetables or cans their fresh fruit, that is inherently the production of a value-added product, and there are many local examples where that practice is unrecognized within agricultural or rural zones. Food service is another common activity under Agritourism that may only be associated with restaurant-like uses, often not allowable or fully permissible in zones where farms exist and may be serving prepared foods from the farm or in conjunction with an on-farm winery.

Without detailed guidance and reference from the State-level, and an expanded acknowledgment of the commercial and public facing functions that can be critical to the success of Value-added agricultural businesses, these evolving practices will continue to be compartmentalized and challenged.

There is currently one Maryland County that defines “Urban” agriculture. “Urban agriculture” is recognized through Federal and State programs, sometimes with funding opportunities attached, but is not fully acknowledged in local zoning text. With “farm” and “agriculture” sometimes being associated with an acreage minimum across several jurisdictions, small-scale and/or “urban” operations are susceptible to getting stuck between regulatory webs with differences in concept and land use.

Many local jurisdictions have changed zoning ordinances over the past decade to allow businesses, such as farm alcohol production and events, and have amended relevant regulations to support and accommodate those businesses.

## **Licensing**

### **Value-Added Processing**

The Maryland Department of Health’s (MDH) Office of Food Protection is typically the starting point for value-added food processing, apart from alcohol manufacturing and any meat processing that falls within the purview of USDA. MDH generally has three regulatory categories for value-added food processing that include Cottage Food, On-Farm Home Processing, and a Processing License (Processing Plant).

**Cottage Food:** Unlicensed, for limited production of specific non-potentially hazardous foods in a residential kitchen, with labeling requirements, an annual revenue cap, and limited sales channels. (COMAR 10.15.03.02B (17-2)) Registration with MDH is an option for these food businesses interested in selling products to licensed food retailers.

**On-Farm Home Processing Facility:** Allows individual farms to (i) process raw agricultural products into certain value-added products (e.g., acidified foods, dried fruits and vegetables, honey and herb mixtures, and other non-potentially hazardous foods) on-site in a home or domestic kitchen on the farm; (ii) send their farm-raised meat and poultry to USDA-licensed and inspected processors for processing, packaging, and return for storage and sale at the farm; and (iii) send raw milk produced by their dairy herd to an out-of-state processor for processing into hard cheese, packaging, and return for storage and sale at the farm. There are product limitations and a revenue cap, and licenses are restricted to individual farmers and to the primary residence and the home kitchen.

**Processing License (Processing Plant):** Standard license for most other food products (except meat processing and alcohol manufacturing), held to commercial standards including waste and wastewater disposal.

Through the Center for Food Processing, the State-issued "On-Farm Home Processing License" was established to provide farms with an outlet to process certain agricultural products in a "home" or "domestic" kitchen (COMAR 10.15.04.15). This license allows operators to manufacture acidified foods (with the appropriate certification) and other products like dehydrated produce and herbs. Although the license name does not fully align with the product, this license has also become an umbrella for farm raised meat (cut and wrapped at a USDA facility, sold on-farm) and hard cheese (processed out of state, sold on-farm). (COMAR 10.15.04.15F (2)) MDH's Center for Milk and Dairy Product Safety issues three licenses specific to different on-farm dairy processing that include pasteurized milk, cheesemaking, and frozen desserts.

Through the State's Alcohol, Tobacco, and Cannabis Commission, Maryland's Class 4 Limited Winery and Class 8 Farm Brewery licenses are issued and regulated to be specific to on-farm craft beverage manufacturers. A farm-specific license does not currently exist for the distillation of spirits.

Value-added processing is a concept for some producers that goes beyond a residential kitchen but might not be a viable enterprise if held to processing plant standards on a farm property. Being reduced to an in-home kitchen by regulatory interpretation and operating under a revenue cap, the "On-Farm Home Processing License" is limited and does not encompass the full potential of further processing of Maryland grown products. Public health and safety remain of the utmost importance, but creative solutions may exist that would present cost effective opportunities for farms to successfully conduct value-added processing operations.

An updated regulatory framework for value-added agriculture could support the preservation and growth of the State's dairy industry, which is almost a third of what it was 25 years ago. Of the 342 recorded farms with milk cows in the State, approximately 11 farms in Maryland hold one or multiple State-issued licenses to process milk and dairy products. There are at least 15 other

State-licensed milk producers that get cheese processed out of state (Pennsylvania) to be sold on-the-farm.

## **Food Service and Retail**

Much like the lack of scalability jumping from the “On-Farm Home Processing” License to a “Processing License” depicted above, many agritourism operations are presented with similar commercial requirements when moving on from pre-packaged foods to food preparation and service. Lacking information on thresholds for infrastructure presents challenges for agritourism operations assessing food service as a component for their operations.

State regulatory code lacks definitions for agricultural events and activities, and value-added farm enterprises often get presented with costly upgrades that contradict the viability of the business concept. Lacking definitions and guidelines for seasonal operations at the State level introduce cost prohibitive regulations associated with permanent restroom and food service facilities. “Water under pressure” exists in standard building code requirements to ensure water is dispensed with sufficient force to dislodge food particles stuck to hands, food contact surfaces, and even nonfood contact surfaces. “Commercial” and “septic” are prominent considerations businesses face through the regulatory process that often present different expectations and regulations depending on the agency or office-level the business communicates with.

There is another caveat regarding the term “retail” as it relates to value-added processing. The State Health Department regulates food processing, with the expectation that 51% of the licensed products are intended for wholesale distribution. There are some products that require a processing license to process, regardless of sales model, such as low acid canned foods, acidified foods, or anything containing seafood, but generally a smaller scale food processor with limited sales channels may be licensed locally. If a value-added food processing business intends to primarily sell direct-to-consumer (farmers markets, events, delivery, etc.), the State Department of Health may redirect the applicant to a Local Health Department. If directed and licensed by a Local Health Department, a farm will be issued a “food service facility” license instead of any processing license, which may alter a business’s ability to sample or serve their product across County lines.

Statewide-manufacturing licensing is common for value-added food products, but county-by-county licensure is required for the sampling at markets with varying costs and processes. The “On-Farm Home Processing” License presents an opportunity for farms to access a “Producer Mobile Farmers Market Unit” License, which allows on-farm processed goods to be safely transported to and stored at farmers markets. (COMAR 10.15.03.02B (70)) However, other value-added producers operating under a State-issued processing license, or local “food service facility” License, are expected to obtain temporary licensure from each locality a market or event

exists. The sampling or service of products made under any State processing license still requires local approvals and licensure within each jurisdiction of participation.

The retail of value-added agricultural products has been a popular trend amongst farm stores and other markets, and there seem to be some regulatory and licensing gaps as it relates to making the leap from raw produce to value-added products. Excluding food service, farm or roadside markets interested in selling refrigerated, frozen, or other potentially hazardous goods may be regulated as a food service facility.

Expanding appropriate marketing and sales channels for small value-added businesses throughout the State will be necessary to encourage the expansion and development of Maryland-made products. Food safety is an important consideration, and effective regulation benefits public health by ensuring food is properly made, stored, sold, and served. However, farms and local markets are often not set up or have the resources to follow or invest in the regulatory guidelines of a grocery store. The “On-Farm Home Processing” license allows for farms to store and sell their own meat/hard cheese – but the sales of other refrigerated goods or perishables could catapult them into “retail” with full commercial requirements.

## **Agritourism**

Agritourism offers new opportunities to enhance the economic viability of agriculture and preserve farmland, but also presents challenges such as defining agritourism activities, regulating them consistently, and managing potential negative impacts on rural residential communities. The average farm size across Maryland has decreased, and there's been a shift from traditional farming to also include value-added processing, on-farm sales, agritourism, and education. A key challenge from the local regulatory perspective is determining if agritourism is considered "agriculture," "tourism," or a "commercial activity" for zoning purposes. With agritourism existing on underlying farm operations, they typically exist in rural communities and zones. Regulators must remain conscious of the balance between farm expansion and surrounding residential communities, but a scalable path to successful business enterprise is critical for the long-term preservation and protection of Maryland's agricultural landscape.

As depicted, expansion into value-added and agritourism activities introduce farm enterprises to new agencies, policies, and regulations across varying levels of government. Besides the unique local zoning and permitting considerations that differ across jurisdictions, the Maryland Departments of Health and the Environment play critical roles with standard processes for licensing and permitting. There are other State Agencies that may play a role that are not directly tied to the regulatory framework through any other process, specifically with corn mazes and some other farm amusements.

Although there is not a formal license issuance, corn maze attractions require approval from the State Fire Marshal's Office. State requirements for corn maze operation included standards for

conduct and staffing, as well as mandates for a viewing platform and other safety precautions. This is typically a standalone process, as there are a few examples across jurisdictions where a seasonal corn maze, or any outdoor farm activity, would trigger any kind of local permitting process that would include a formal review by the State Fire Marshal's Office; This means the onus is on the business to be familiar with the regulations and seek approvals separate to any other process. Not typically associated with the road to compliance for value-added processing or agritourism activities, the Department of Labor, Division of Labor and Industry provides inspections for amusement rides and attractions erected permanently or temporarily at carnivals, fairs and amusement parks throughout Maryland. The Division may require certain farm attractions (ex, ziplines) to be formally registered and inspected annually. **This widespread and siloed framework can be extensive for a farm operation diversifying into value-added activities, requiring the involvement of up to six (6) State Regulatory agencies on top of any local zoning regulations and permits.**

## Structures

Resemblant to the concept of agricultural versus commercial uses surrounding Zoning and Land Use concepts, Building Codes and permitting can be costly and burdensome for a farm's expansion into value-added processing and agritourism. There are important considerations in pursuing a value-added business model, such as public health, safety, and environmental protection, but it is important to acknowledge the integrity of the underlying farm operation. There are some existing efforts in the State to reduce some of these costs and burdens, but the complicated regulatory web often presents contradictions and unforeseen expenses.

The Maryland Building Codes Administration (BCA), which is housed within the Maryland Department of Labor, would be primarily responsible for amending and adopting the minimum building codes at the state level. These adopted codes are then enforced by local jurisdictions, where amendments can also be adopted that go beyond the minimum standards.

Currently, Maryland Statute (MD Public Safety Code § 12-508) presents an opportunity for a simplified regulatory framework specific to an "agricultural building" being used for agritourism purposes. However, this language causes challenges for exemptions that reference federal building codes and are enforced locally.

With "agricultural building" meaning a structure intended to house farm animals or store equipment and horticultural products, it is not viewed as a space occupied by employees or guests through a regulatory lens. There is currently no clarification for what an "existing agricultural building" means specific to how long a farm structure should pre-exist.

There is a requirement within this statute that an agricultural building "shall be structurally sound and in good repair". This language does not set forth a standard, nor do many localities have formal processes, to ensure the expectation of "structurally sound" is met through a consistent



measure. Along with erecting or repurposing a structure for the purpose of serving or connecting with customers, there are many infrastructure regulations that have proven counterproductive to farm integrity and layout.

There have been discrepancies in septic system requirements for some existing value-added agricultural operations in the State. This inconsistency may be associated with specific infrastructure formulas tied to structure and building capacities, as requirements for septic capacity are based on the maximum flow a structure can generate. This formula is calculated based on building occupancy as determined by the State Fire Marshal Office, where the allowed occupancy under local zoning or permitting approvals may be significantly less. Installation of sewage disposal systems can increase upfront costs for infrastructure that may or may not be utilized daily. Some agritourism operations have installed State-required septic fields with capacity loads that far exceed the Use and Occupancy permit awarded by the local jurisdiction, requiring significantly more upfront costs for infrastructure that may typically exceed necessity, and temporary solutions could be sufficient for those unique times. Regarding drinking water, a value-added agricultural operation with its own water supply would be considered a public water system if it regularly provides water for human consumption to 25 or more people daily, 60 or more days per year. Public water systems must meet Safe Drinking Water Act standards.

Another important agritourism consideration that lacks regulatory formulas is parking for customers and visitors. Asphalt roads are not always the ideal choice for a farm access road, based on heavy agricultural equipment and wear and tears, and certainly not a suitable parking lot choice on a property exemplifying land and environmental stewardship.

The Maryland Department of Environment defines “Impervious surface” to mean “any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.” (COMAR 26.17.02.02) Across some Maryland jurisdictions, grass fields (to include hayfields) that are temporarily or seasonally used as parking for agritourism activities are interpreted to be “impervious surfaces”, without any specification on the frequency or means that would qualify a field as such a surface. Although certain soil types could compact and act as an impervious surface under intensive use with respect to water absorption and runoff, there is not a uniform interpretation with frequency or thresholds. Seasonal agritourism enterprises could lose fields that could otherwise be used in the farm operation outside of the tourism season.

# **Navigating Regulatory Framework**

## **Overview**

Businesses can only be guided through the regulatory landscape as it exists, regardless of current complexities and hurdles. With numerous regulations existing across local, state, and federal levels, the best way to ensure clarity and consistency is to align regulations with how specific service providers, regulators, and decision-makers acknowledge and support new and expanding value-added enterprises.

Since environmental regulations and policies exist in State Statute, the theory that local ordinances and code can be used to skirt licensure requirements are a product of ineffective State policy, communication, and guidance between regulatory offices at various levels of government. Clear and concise terms, definitions, and guidelines that adopt and recognize value-added activities on farms are needed for equitable and accessible regulation. Despite varying zoning and land use policy across jurisdictions, State regulations and licensing can most effectively be navigated while businesses are directed to start locally and leverage agricultural knowledge and expertise amongst service providers.

## **Starting Local**

Through the Maryland Department of Agriculture's conversations and dialogue with fellow State Agencies, local agricultural specialists, County-level economic development offices, and agricultural businesses, it is apparent that there are significant regulatory challenges Maryland farms and agricultural businesses face in scaling up and expanding into value-added operations. The regulation of certain value-added practices involves numerous regulatory agencies, including those that would not be involved with traditional farm activities of planting, growing, raising, and harvesting raw agricultural products. The evolution of agriculture within an outdated regulatory framework, at both State and local levels, has proven challenging for supporting and expanding existing and new agricultural businesses within the value-added space. Recognizing the statewide trends and demand for value-added goods and agritourism activities, the MDA recently established a Value-Added Agricultural Specialist to guide businesses through various regulatory hurdles and improve the business environment for these industries. This role exists not only to guide and support individual value-added businesses through the respective regulatory frameworks, but also to support local service providers in representing and supporting local businesses.

Across Maryland 24 Counties, including Baltimore City, there are 13 with a designated County-level Agricultural Specialist. These agricultural-specific roles are most often found within an Economic Development office, along with a few County Offices of Agriculture. Whereas just over half of the State's counties have agriculture-designated roles, farm businesses have local

resources across all jurisdictions that may differ slightly from county-to-county. No matter which local service provider is offering support and guidance, whether it is an agricultural specialist, economic development office, Extension agent, or others, counties and jurisdictions can benefit from establishing a framework that directs new and existing businesses to these industry liaisons. Although the goal line for compliance in some of these operations is State or Federal licensing, the foundation of these regulatory frameworks relies on local zoning and permitting.

## Recognizing Farm Operations

Whether it is crop production, animal husbandry, or aquaculture, Maryland's farm operations populate a unique industry that benefits the State's economy and quality of life with a model and footprint that does not always align with the traditional regulatory structures of community and commercial development. To be a successful contributor to Maryland's agricultural landscape and food system, farms must be supported as businesses and presented with opportunities to educate and build awareness across the community on the benefits of these industries and the importance of food security.

Although specific requisites for what a farming operation must look like to qualify for certain agritourism activities or processing expansion are locally established, it is necessary to acknowledge and frame processes that accommodate the foundational farm functions of these diversified operations. As illustrated in the 2022 Census of Agriculture, Maryland farms may vary in size but are trending smaller over time.

**Growing and raising farm products, selling products, and inviting the public to the farm are different business functions that could very well require a varying degree of regulatory oversight. However, regulatory overcompensation for certain agritourism and value-added products hinder the core infrastructure or practices of existing and beginning farms.** Food can be grown on many different scales, including minimal footprints, yet there are many examples of "farms" only being recognized in local zoning ordinances as parcels with certain acreage minimums. **The sales of these farm-grown products are often spelled out as separate uses with specific processes; Being permitted to grow and create products, without the ability to sell these products, is antithetical to small business development.** There are certainly more unique considerations when farms expand into activities that include the public engaging in agricultural or recreational activities on-site but establishing thresholds and clear guidelines to not hinder agriculture's contribution to the food supply chain is critical.

For value-added and tourism related concepts, regulatory frameworks exist statewide and locally, often not meeting cohesively in the middle. State and local definitions for terms like "farm," "agritourism," "seasonal," and "temporary" are inconsistent, non-existent, or not scalable, leading to confusion for businesses and regulators. This makes it difficult to differentiate between agricultural activities, complementary to an ongoing farming operation, from other recreational uses unaligned with an agricultural enterprise.

## Improving Processes and Frameworks

Farms are businesses, operating within Maryland's largest commercial industry, yet often regulators operate within Laws and policy frameworks that are not specific to farms and agricultural infrastructure. This lack of specificity leads to enforcement of regulations and processes that don't always align with the core infrastructure and practices of these agricultural enterprises. As important as a clear, consistent and cohesive framework is across State policy and regulations for the support of value-added industries in Maryland, there is opportunity for local jurisdictions to set the regulatory tone from the bottom-up.

Exceptions can be difficult to implement from a regulatory perspective, especially when enforcing policy tied to standard use. Therefore, it is important to plan and implement policy that recognizes what makes farm activities unique, while still achieving the environmental, public health, and other goals for which those requirements were originally created. As noted previously, activities with broad definitions that are not farm-specific (i.e. "camping", "events", etc.) may introduce generalized regulations on farm infrastructure that do not align with the nature of that property. As local jurisdictions experience the growth of value-added industries, it is important to consider activities in a way that ties them specifically to a farm property (i.e. "farm stays", "event barns", etc.). Establishing these uses to accompany agritourism activities with less infrastructure (i.e. "pick-your-own produce", "farm stands", "corn mazes", etc.), allows clearer thresholds to establish what is and what is not relevant to, and reliant on, a functioning farm enterprise. Although "Agritourism" is encompassed as one broad definition in State Statute, there are many examples of the concept being divided into a few separate use codes.

While implementing unique and specific value-added definitions in local codes and ordinances may not immediately align with some umbrella policies at the State level, forward thinking planning and framing establishes a planning and permitting environment positioned to accommodate future adjustments to State law or regulations.

# Challenges

## No Unifying Definitions for “Farm” and Agricultural Activities

As illustrated through varying definitions for similar terms, across numerous regulatory layers, there is not enough certainty and foundational direction at the State level for effective planning and regulation across localities. A lack of definitions and benchmarks at the State level leads to inconsistencies, a lack of scalability, and sometimes no recognition of certain practices at all.

Through the development of this document, inconsistent regulation and lacking top-down guidance from the State were common themes. By establishing a clear expectation at the State-level for what is a “farm” and what activities and accessory uses are acceptable under an “Agritourism” umbrella, a foundation can be established for State regulatory processes and procedures. Simultaneously, a guiding concept will present a benchmark for localities that will present an opportunity for uniformity without interfering with County authority and comprehensive planning. An effective definition or guiding language would provide clarity for both farmers and regulatory agencies, differentiating agricultural and agritourism activities from unrelated operations. Beyond planning and land use, the absence of clear definitions causes confusion for local and state health departments regarding their regulations.

Maryland faces difficulties in regulatory interpretations because state definitions are not consistently applied, and there are numerous local factors that produce different results from county-to-county. Because Agritourism is farm-based, there is a regulatory mismatch between traditional farm operations and agritourism operations, especially when the public component introduces concerns such as facilities and parking areas.

## Fragmented Measurables for Tracking Industry Growth

Challenges with measurables for value-added agriculture include the difficulty of tracking industry growth due to fragmented licensing and certification processes. While there are licenses for value-added processing, craft beverages, and dairy products, there is no single license or certification for an agritourism enterprise. This makes it difficult to have a complete understanding at the State level of all operations and to effectively support and grow the industry. Value-added processed food products requiring State licensure could either fall under the purview of the Maryland Department of Health, or the Maryland Alcohol, Tobacco, and Cannabis Commission for alcoholic beverages, already siloing information related to an industry that is broad in theory.

**Without clear and standardized measurables, it can be difficult to effectively communicate industry growth and the full contribution of Maryland’s evolving agricultural landscape to the State’s Economy.**

## **Outdated Regulatory Language and Licensing Structures**

Existing State codes across numerous State Statutes and regulations contain outdated language and licensing requirements that do not adequately address the unique nature of farm and agricultural-based businesses, especially as they diversify into value-added activities.

With archaic definitions of how the agricultural landscape appears, regulators may struggle to draw a clear line between agricultural and “commercial” operations, especially as farms diversify. Requirements like paved parking lots, typically associated with “commercial” enterprises in development and industrial zones, can be detrimental and impose massive, unnecessary costs on farms that are primarily agricultural but have expanded to engage and educate the public. Comprehensive stormwater management infrastructure is based on impervious surface and quantity management. In terms of environmental impact and flooding risk, the underlying land classification is largely irrelevant, and management is driven by the land topology, human structures and roads, and impervious surface on the land. However, the expansion into public-facing agritourism activities, utilizing infrastructure that was established with Soil Conservation District assistance for “agricultural activities”, could entirely disqualify all the previous design work for access roads and parking areas and require new permitting and procedures.

Thresholds must exist in regulation for consistent and clear decision-making. Without definitions recognizing unique features of agricultural industries, such as seasonal activities or processing, many farms will be presented with costly requirements that will not make business sense. Without a clear threshold or formula for significant investments such as “water under pressure” or permanent bathrooms, regulatory agencies will be unable to offer concise or consistent direction to the business community. Tiered standards established for value-added and agritourism enterprises, as it relates to environmental health regulation, could create some scalable measures for these enterprises that exist in other sectors throughout the State.

## **Lacking Clarity and Consistency in Processes and Regulation**

A tangled web of Federal, State, and Local regulations creates confusion and inconsistent interpretations, leading to misdirection and ambiguity for businesses trying to achieve compliance. Different frameworks and compliance measures require various processes with no universal starting points. A lack of clear statewide definitions for "agritourism," "value-added," and related activities means counties often have varying and sometimes contradictory regulations.

Farms are typically designed and laid out for operational efficiency, while considering environmental stewardship and resource conservation. With assistance from experts in the field, such as local Soil Conservation Districts, farm infrastructure is effectively planned to

accommodate the primary agricultural enterprise. Meanwhile there's a perceived mismatch between farm and agritourism operations from a regulatory perspective, especially concerning public components like traffic and neighboring uses, which often leads to stricter requirements more akin to commercial enterprises. These standardized requirements can contradict the existing farm operation, leading to loss of efficiency or hindering costs and expenditures.

Within the food manufacturing space, it could be difficult for a value-added agricultural enterprise to fully understand where state regulation ends and local regulation begins, especially with food processing and environmental health regulations; There are often overlapping or blurred lines that may lead inquiring businesses to dead ends or in circular motions.

A glaring example of conflicting regulations surrounds an agricultural trend of farm-raised meats. More than 150 farms in Maryland are State-licensed to store and sell farm-raised meats that must first be processed and packaged by a USDA-inspected meat processing plant. Direct-to-consumer farm meat and cheese sales, both products that are processed off-site, are recognized under a license with the term “Processing” included. Where farms are typically inspected for the storage and safe transportation of these products, a processing-specific license is a unique fit but exists to allow for access to and sales of specialty processes that may not be conducive for on-site operations. If a farm sells meat or cheese on-farm and decides to add other local products requiring temperature control, a retail food service facility license issued by the County might be required. The coexistence of both a State and Locally issued licenses could present contradiction to where meat and cheese products are in relation to the other goods permitted under County licensure. **The varying intricacies and layered regulatory considerations specific to the sales and storage of value-added products could hamper contributors to the State’s food system, with differing costs and processes associated with a producer’s conscious business expansion.**

## **Limited Scalability for Infrastructure and Regulatory Requirements**

Farms and small agricultural businesses often lack the resources for representation or design professionals. Small business owners in this industry are often left to navigate regulations on their own, which presents a burden. In an industry that is currently regulated by several different agencies, agricultural business owners often find existing processes and existing regulatory resources arduous and complicated. As farms diversify into agritourism, food service, and retail, the lines between traditional agriculture, agritourism, and related activities and recreation become blurred across existing regulatory frameworks.

The uniqueness of the State’s value-added agricultural industries is not appropriately reflected in outdated codes and regulations. Current regulations often impose uniform infrastructure requirements (e.g., for bathrooms and parking) on all operations, regardless of their size or seasonality. This lack of scalability is a barrier for smaller, seasonal, or diversifying farm

businesses. Specific to Environmental Health regulations, the State does not effectively recognize terms such as “seasonal” or “temporary” related to processing, bathrooms, and infrastructure.

There are currently no clear thresholds for many infrastructure requirements, which leaves farm and agricultural businesses without a clear understanding of how to scale up an operation and when costly investments or regulations must be considered. Value-added enterprises exploring food service are often proposing creative concepts that don’t fit the mold of either temporary or brick and mortar operations. Many agritourism operations are seasonal and certain investments, such as permanent bathrooms, might not make economic or operational sense. The Maryland General Assembly, through the 2025 Legislative Session, enacted House Bill 559 for “the purpose of authorizing certain food establishments to comply with the requirement to provide a convenient lavatory...” by using portable chemical toilets to meet requirements generally relating to food establishments. The agricultural community must also remain flexible to shifting markets and demands; this means a business operation may change from season to season.

Providing adequate restroom facilities and septic systems is a significant and costly hurdle, especially for seasonal businesses. The “temporary” definition of a 90-day limit is often insufficient for seasonal agritourism activities, leading to lack of enforceability or forcing businesses to rely on less desirable options like licensed food trucks, which can reduce revenue for expanding farm enterprises. There's a demand for clearer, more scalable guidance from health departments regarding portable toilets, temporary solutions, and thresholds for permanent facilities. Regulations often fail to account for the seasonal nature of many agritourism operations, requiring permanent, year-round facilities for businesses that only operate for a few months.



# Opportunities

## **Establish a Foundational State Definition and Guidelines**

Through the development of this document, inconsistent regulation and lacking top-down guidance from the State were common themes. By establishing a clear expectation at the State-level for what is a “farm” and what activities and accessory uses are acceptable under an “Agritourism” umbrella, a foundation can be established for State regulatory processes and procedures. Simultaneously, a guiding concept will present a benchmark for localities that will present an opportunity for uniformity without interfering with County authority and comprehensive planning.

Effective regulations and guidance specific to standardized definitions for farming, value-added processing, and agritourism, would explicitly acknowledge crucial public-facing aspects of agritourism. Important considerations for the specific regulation of value-added agriculture include, but are not limited to, parking areas for accommodating the public, food service facilities, restrooms, and retail sales.

## **Potential State Certification for Qualified Value-Added Agriculture**

Along with a centralized and foundational standard for what farms and agritourism activities can be, at the State level, Maryland’s regulatory framework for value-added agriculture could benefit from a streamlined system for validating farm operations across the various agencies and codes. Some State agencies rely on a business or applicants to verify qualifications for certain licenses, often leading to references of County specific codes or procedures and a drawn-out communication process. There may be opportunities for value-added and agritourism businesses to be voluntarily recognized at the State level to ease regulatory processes and resource access.

There are existing State databases for specific farm operations that could be modeled to accommodate, recognize, and support value-added processing and agritourism activities. The Maryland Department of Agriculture, through the “Maryland’s Best” brand, promotes local farms and producers online by allowing a self-certification and posting. Not only would a similar model build a database for tracking and supporting an industry, but it could also allow for reference and compliance verification when an operation is pursuing resources or specific licensure across State regulations.

## **Alternative Licensing for Farms/Agritourism**

Maryland's current licensing framework for farms and agritourism operations is often outdated, inconsistent, and hinders growth. An alternative licensing approach specific to the uniqueness of farm layouts and operations could benefit regulatory navigation, provide scalability, and better support the evolving nature of agricultural businesses. This improved framework could be established to support processing, retail sales, and food service activities on farms.

A modernized licensing structure for value-added agriculture would provide guidelines and requirements that are less contradictory to the layout and day-to-day of a primary farming operation. This might include farm-specific licensing categories that allow for processing in various on-farm kitchen facilities, beyond only home kitchens. This would allow for approvals of on-farm facilities that are not full commercial plants but meet appropriate sanitary and safety standards for the scale of operation. Any future farm-centric regulatory frameworks might accommodate modern farm ownership structures (e.g., LLCs) and recognize that a farmer's primary residence may not be directly on the farm property. Not only is there room for expansion of value-added processing regs, but Maryland's food system infrastructure welcomes flexibility in the form of farm retail opportunities.

In 2024, the State of Vermont passed a Law that specifically addresses "Accessory On-Farm Businesses" (AOFBs). This law aims to expand farmers' ability to work together and sell their agricultural products without potential zoning prohibitions. This recent law changed the AOFB definition, allowing eligible AOFBs to sell unlimited amounts of "qualifying products" from other farms and certain promotional products like bread and baked goods. (Vermont Agency of Agriculture, Food and Market, 2024) This suggests an effort to provide a clearer and more flexible definition of on-farm business activities. The changes were implemented to facilitate collaboration among local farms for supply chains, marketing, direct sales, and improved economic viability. In Vermont, an AOFB can sell qualifying products from any other State-licensed farm beyond their own, as well as products that promote their business. With Maryland's "On-Farm Home Processing License" consisting of a variety of on-site processed goods, an expansion of some language specific to on-farm food service licensing could allow for agricultural operators to support fellow farms and expand food access for customers. An expansion of allowable retail sales for farm producers could establish clear thresholds and guidelines for on-farm retail activities to distinguish between value-added product sales and commercial storefronts, addressing issues like reselling and product limitations.

Farm-specific licenses, for a variety of regulated activities, could help distinguish genuine farm-based and agritourism activities from those that are not related to the farm activity, ensuring appropriate regulations are applied.

## **Develop Scalable Regulations within State Code**

The two extreme alternatives of “temporary” and “permanent” operations in Maryland’s existing regulatory frameworks do not allow small businesses in the industry much opportunity to scale up. A modernized framework could provide clear pathways for businesses to grow, allowing them to progress through tiers with increasing requirements as their operations expand in scope, revenue, and public interaction. A multi-tiered licensing system could immediately be achieved with the development and establishment of “seasonal” definitions and policies. Although some business models might aspire to operate permanently, year-round, a seasonal model would still allow small and limited enterprises to begin operation without preventative costs and regulatory burdens. Regulations and licenses, that recognize the seasonal nature of agritourism, could efficiently remove barriers to business phasing and scalability. These thresholds could clarify infrastructure for hosting the public, including necessary improvements for parking areas.

A tiering system of some variety would also offer direction to local governments for effective decision making and planning. Thresholds in regulations would establish consistent and clear road maps to compliance, with a uniform understanding of when further investment becomes necessary. Clear thresholds could address significant investments, such as "water under pressure" or permanent bathrooms, so regulatory agencies can offer precise and consistent guidance to businesses with potential scalable solutions. Standards must be established for value-added and agritourism enterprises regarding environmental health regulation; otherwise, agricultural businesses will continue to experience inconsistencies and tangled regulatory webs.

## **Conclusion**

Agriculture is part and parcel of Maryland’s history and economic future, but the industry's landscape is constantly changing. In response to a steady decline in acreage and average farm size, the industry has evolved significantly faster than State regulation. Value-added agriculture is a genuine opportunity to support farms and small businesses, with positive economic impact. However, to support small businesses existing or entering this industry, the existing regulatory framework must be adjusted to reflect the trends and opportunities within Maryland’s agricultural communities.

The industry is caught in limbo within a regulatory framework it has outgrown. Although there are actions and initiatives that can be implemented to offer clarity and consistency with cumbersome regulation, State policies do not currently reflect where the agricultural industry is headed with the emergence of value-added agriculture. There is opportunity for State and Local efforts to align more effectively and cohesively to support Maryland’s farm and protect the agricultural landscape for future generations.

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