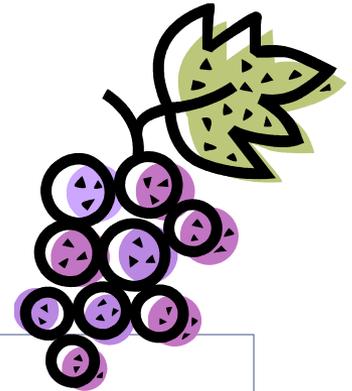


***When Spirits and Land Use  
Meet:***  
**A Discussion on Legal Issues  
Faced By Maryland Wineries  
and Breweries**



Nicole M. Folks, Esq.

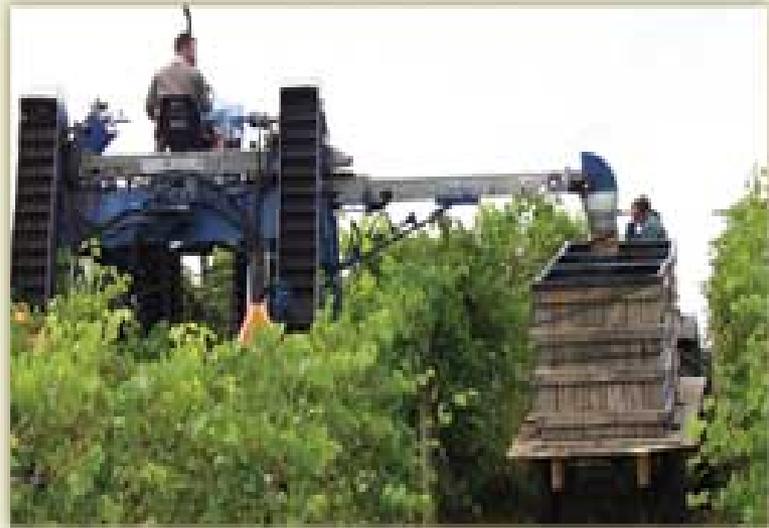
Kelliher & Salzer, LLC

*Maryland Planning Commissioners Association  
Conference*

*October 25, 2013*

*Ripken Stadium, Aberdeen, Maryland*





# Is it “Agriculture” when final product is....

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OR



# Prohibition in the Roaring 20s

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# Purpose of Prohibition / 21<sup>st</sup> Amendment

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} Lower crime and corruption

} Reduce social problems

} Lower taxes needed to support prisons and poorhouses

} Improve health and hygiene

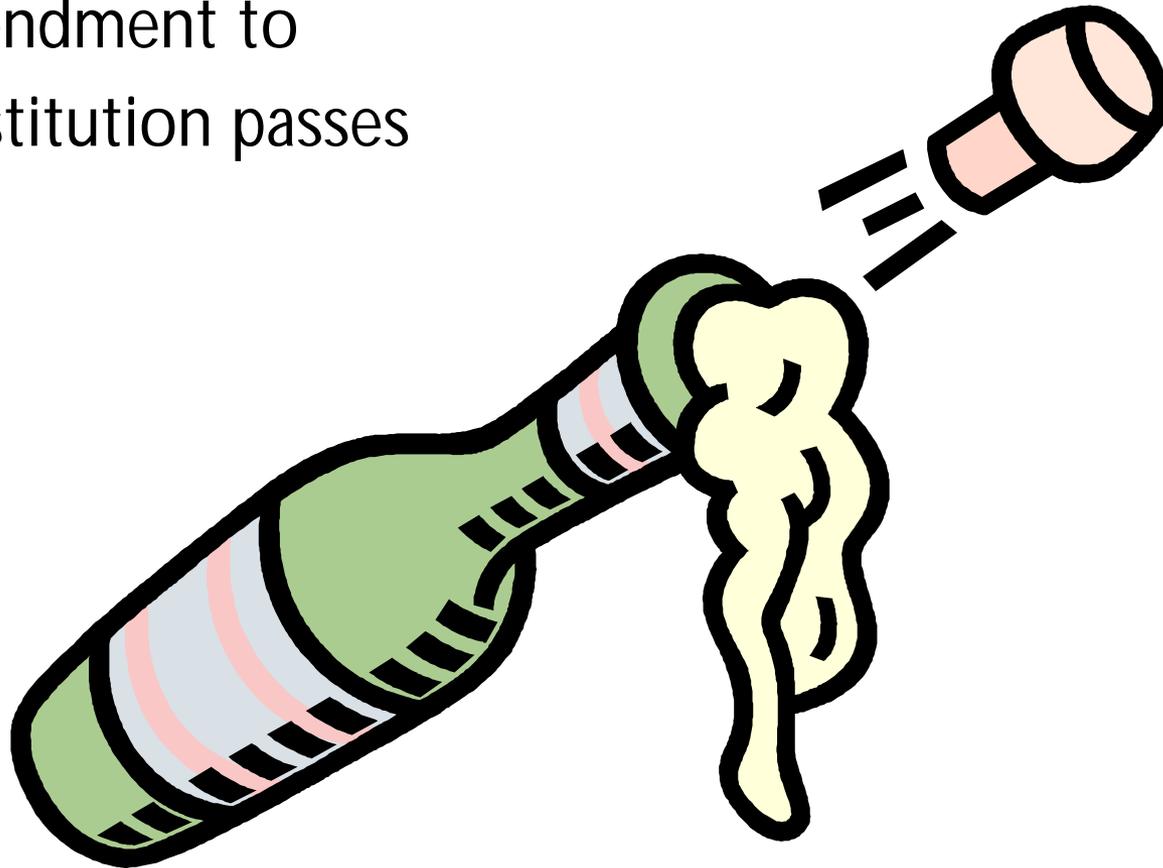
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# 13 years later....

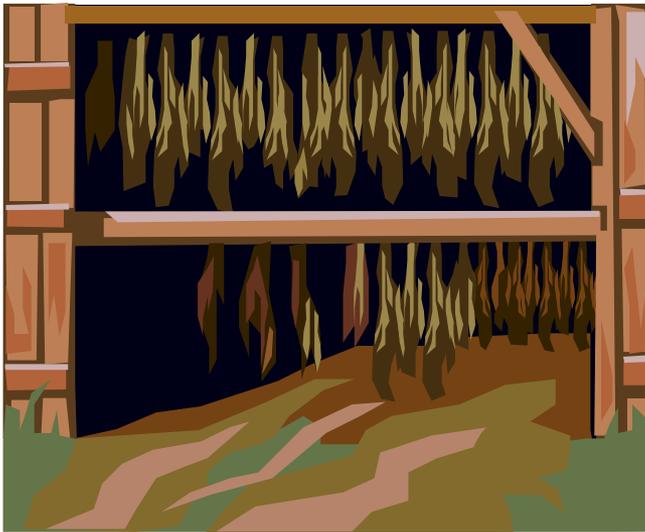
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21<sup>st</sup> Amendment to  
US Constitution passes



# Another part of Maryland history....

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# **Governor Task Force on....**

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*Transition Programs/Strategies for Southern Maryland Tobacco  
Farms*

Prepared by the Tobacco Crop Conversion Task Force

Report dated December 10, 1999



# ***THE BALTIMORE SUN***

**Arundel's largest family farm seeks to join state's growing wine industry**

**County Council considers legislation to loosen regulations on agricultural wineries**



**4:36 P.M. EDT, AUGUST 16, 2012**  
**BY ERIN COX**

Source: <http://www.baltimoresun.com/news/maryland/anne-arundel/bs-md-ar-winery-bill-20120814,0,2873222.story#ixzz2if2cZRak>

# The Daily Record

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## **In Anne Arundel County, an urban vineyard is taking hold**

6:38 pm Wed, September 21, 2011

By The Capital of Annapolis, Elisha Sauers

28-acre Harness Creek Vineyards:

*“It’s one of a handful of “experiments” initiated in Maryland a few years ago, when several old tobacco plantations took state buyouts and were recultivated as vineyards.”*

---

▶ Source: <http://thedailyrecord.com/2011/09/21/in-anne-arundel-county-an-urban-vineyard-is-taking-hold/#ixzz2iawVWbft>

# Wineries as Tourist Destinations

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More than 400 different wines to choose from in State

Popular for events such as weddings and private parties

Partnering with local chambers of commerce



# Westminster Patch

## County, Chamber Applaud Carroll County Businesses

Carroll County government and the Chamber of Commerce recently honored several businesses in Carroll County.

Posted by [Kym Byrnes](#) (Editor) , November 26, 2012 at 03:54 PM

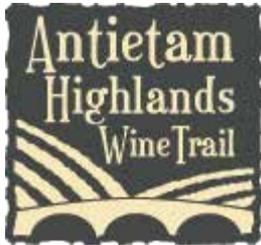
The Department of Economic Development and the Carroll County Chamber of Commerce recently partnered to recognize successful and growing Carroll businesses.

The following Carroll County business was recognized:

**Agritourism Award -- Detour Winery**

# While preserving agricultural lands....

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# Promotional materials for the State's wine industry



*Maryland Wine Press -  
Official Guide to the  
Maryland Wine Industry  
and Tourism*

Maryland Wine Passport Program



# Agricultural Land Preservation and Purchase of Development Rights Program

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“The purpose of the Harford County Agricultural Land Preservation and Purchase of Development Rights Program is to preserve productive *agricultural land* and woodland which provides for the *continued production of food and fiber* for the citizens of the County. This program is to be administered by the Department of Planning and Zoning and the Harford County Agricultural Land Preservation Advisory Board.” [*emphasis added.*]

Section 60-9, Harford County Code

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# Definitions in Section 60-10, Harford County Code

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- } **AGRICULTURAL LAND:** Land used *primarily for agriculture* with an agricultural zoning classification as identified on the most recently approved Harford County Zoning Maps.
  
  - } **AGRICULTURAL USE:** Any use of land which directly contributes to the production, processing or storage of *agricultural products as defined by the United States Department of Agriculture*, including uses currently permitted within the Agricultural District of the Harford County Zoning Code that are directly related to agricultural activities.
- 



# USDA Definition of “Agricultural Product”

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Agricultural product: *Any product which is produced, processed or marketed by the industries **by utilizing natural resources, agricultural materials and technology**, including agricultural, forestry, fishery and animal goods.*

Source: Article 3, AGRICULTURAL PRODUCTION AND CERTIFICATION ACT, Promulgated on January 29, 2007 per Presidential Order

[<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5076186&acct=nopgeninfo>]

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# Section 267.4, Harford County Code

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**AGRICULTURAL PRODUCT:** Products grown or raised on a farm, **intended for direct human or animal use**, such as vegetables, fruits, dairy products, eggs, grains, meat, poultry, fish, honey, jelly, jam, hay, bedding plants, and wool.



## Cont'd...Definitions Harford County Code

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} **AGRICULTURE:** All methods of **production and management of** livestock, **crops, vegetation and soil**. This includes the related activities of tillage, fertilization, pest control, harvesting and marketing. It also includes the activities of feeding, housing and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses and poultry and handling their by-products.

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# Cont'd...Definitions in Harford County Code

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} **AGRICULTURAL PUBLIC EVENTS:** Events related to agricultural vocations, other than temporary uses already permitted in this article, **including farm tours**, animal rodeos, corn mazes, fee fishing and hunting, cross country skiing, sledding, pond ice skating and equestrian trail rentals.



# Definitions in Harford County Code

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- } WIND ENERGY SYSTEM
- } WIND GENERATOR
- } WIND TOWER
- } [WINERY??? – Not listed within definitions]
- } YARD
- } YARD, FRONT
- } YARD, REAR



# Harford County Liquor Control Board

## Rules & Regulations

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### CLASS A – BEER AND WINE – OFF SALE ONLY LICENSE:

- } Permits off-sale of beer and wine only. Issued only to bona fide retail stores selling food, drugs, or other similar commodities as may be approved by the Board.

### CLASS A – WINERY LICENSE:

- } This license is not required if the winery holds a limited winery license issued by the Comptroller of Maryland.



# Anne Arundel County

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- } (122) “**Winery** ” means a facility that has been issued a Class 3 or Class 4 Manufacturer’s License under Article 2B, of the State Code.

*Source:* Anne Arundel County Zoning Code, § 18-1-101.  
Definitions.

- } No definition for “brewery” in County Code



# Anne Arundel County – Conditional Use

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- } § 18-10-141. Wineries.
- } A winery shall comply with all of the following requirements.
- } (1) A winery shall be located on a farm of at least 10 acres, and the farm shall produce at least 25% of the fruit that is processed into wine at the winery.
  
- } (2) The minimum setback from any lot line for a structure, storage, parking, picnic area, or loading area shall be 100 feet, except that if the farm is bounded by a road the minimum setback from the road may be reduced to 50 feet if the Planning and Zoning Officer finds that the reduced setback is compatible with surrounding uses.
  
- } (3) Vehicular access shall be located on an arterial or collector road and shall be sufficient to prevent traffic congestion on roads in adjoining residential areas. No point of a vehicular access drive may be closer than 40 feet to the lot line of a residentially zoned property that is not part of the winery.

(Bill No. 4-05; Bill No. 78-05; Bill No. 82-09; Bill No. 39-10; Bill No. 15-12)

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# Anne Arundel County

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§ 17-10-301. Agricultural operations as a defense in private nuisance action.

(a) **Definition.** In this section, "agricultural operation" means the production of food and other agricultural products, including structures, vehicles, or other farm machinery, conditions, or associated activities. Types of agricultural operations include: cultivation of land; raising or production of poultry; production of eggs; production of milk and other dairy products; production of fruits, vegetables, or other horticultural or floricultural crops; raising, production, or the occasional slaughtering and rendering of livestock, including the livestock listed in the Agriculture Article, § 1-101(E), of the State Code; pasturage; apiaries; silvaculture; and **wineries**. The term does not include regular rendering; manufacturing or processing of feed products, tallow, or grease; or bone distillation.

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# Washington County

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*Following zoning classifications included in its County  
Zoning Code:*

Wineries involving on-site production and bottling of  
wine

Wineries involving off-site production and bottling of  
wine



# MD State Bar Association's Real Property Section

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Tour of a Winery and Cidery in September 2013

*Received valuable input from:*

- owner of Elk Run winery, and
- owner of Distillery Lane Cidery



# An important recent battle won...

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Direct Shipping now allowed  
in Maryland



Effective Date: July 1, 2011

Md. Ann. Code, Tax-General, Art. 2B, § 7.5

Maryland wine producers can now ship wine directly to a consumer, saving producers money because they no longer have to pay a middleman

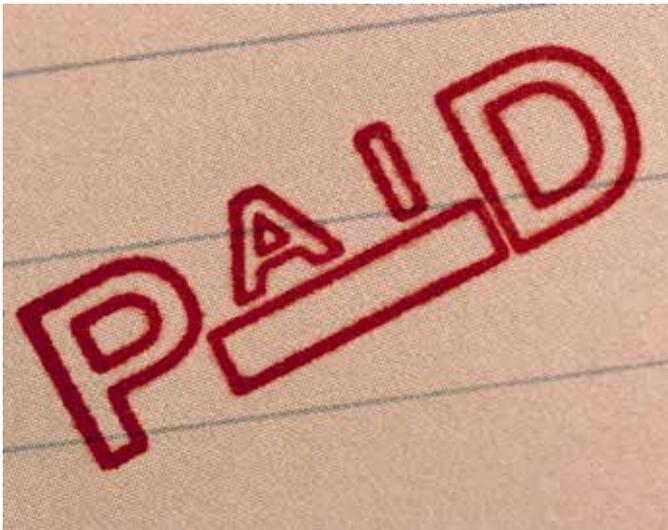
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# Other issues faced by wineries in Maryland

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Financing for profits in long-term, not immediate term like other agricultural businesses



# More issues for consideration...

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Have you ever said or heard someone say,

*"I love [fill in the blank... California/Argentina/German/South Africa] wines."*

Maryland wineries produce, collectively, "**Maryland wine**" to many consumers



# More issues for consideration...

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## *Federal labeling restrictions*

- } Often takes up to six weeks for federal approval of new labels
- } Then can take up to six weeks for printing process of labels
- } Delays the entry of new products to the market.



# More issues for consideration...

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*Interest of powerful special interest groups may not align with the interest of wineries.*



## *A little trivia...*

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Can anyone provide two explanations as to why Maryland is sometimes called the "Free State?"



Thank you for your time and attention.

Any further questions?

