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Melding agriculture with tourism can pose legal issues

Agritourism is an increasingly trendy approach to generating new revenue streams for small farms, but it is also an increasing area of litigation as tourism in farm areas tests the limits of existing statutes, ordinances and expectations of those who live in the country.

In 2009, family farms had an average off-farm income of \$70,302 and average on-farm income of \$6,866. Thus, while Big Ag is reaping record profits, most small- and mid-sized farms are not sustainable on agricultural revenues alone. The small farm's need for off-farm or secondary on-farm income has driven many farmers nationwide to seek secondary uses of their



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lands. At the same time, the "foodie" movement and growing interest of urbanites in how and where their food is produced has created a market for farm-related tourism. The result has been an exploding agritourism industry in activities as varied as dude ranches, farm-to-table dinners, and music

concerts on farms. Bringing new uses to the farm can generate a host of questions about the nature of the agricultural environment. Those questions have quickly become legal ones.

In 2013, Idaho passed the Idaho Agritourism Promotion Act, which eliminates liability for agritourism injuries where a warning is posted. The legislation also provides that the use of a farm for agritourism will not affect the farm's tax assessment. Agritourism does not affect whether a farmer is engaged in agriculture for purposes of agricultural tax exemptions.

But what about Idaho's other ag-related laws? Take, for instance, right-to-farm laws, which prevent

nuisance suits against farmers. In 2013, in Shore v.

Maple Lane Farms LLC, Tennessee courts had to determine whether amplified music concerts on an agricultural property were sufficiently "agricultural" to prevent a nuisance claim under Tennessee's right-to-farm law.

The Tennessee appellate court, recognizing that "agriculture is changing and evolving," prevented the nuisance claim. The Tennessee Supreme Court reversed, saying the concert use had nothing to do with "producing farm products." Would the same result occur under Idaho's right-to-farm law?

Similarly, other states have recently pursued legislation that seeks to ease re-

strictions — such as building and health codes — that can burden small agritourism operations.

For instance, Virginia passed a law this year that required local governments to demonstrate a "substantial impact on the health, safety, or general welfare of the public" before regulating agritourism. Some in Virginia further seek a "farm freedom" bill that would eliminate regulations on agritourism "home kitchens."

Will such new, aggressively pro-agritourism laws get out ahead of public opinion on agritourism and suffer a backlash?

Does "agriculture" include a farm-to-table dinner for 150 patrons, as the 2013

Oregon case of Greenfield v. Multnomah County had to decide?

These issues may arrive in Idaho soon. The state will need to decide them in a manner that provides new opportunities for small farms, continues to protect the public, and reflects the changing nature of how people want to engage with agricultural lands. If the litigation heating up in other states is any indication, balancing these interests will be a tough row to hoe.

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