

Katherine Douglas

Public Comment - WE Watch

# 7



**From:** Kathryn Lohmeyer Rohrer <lohrohrer@gmail.com>  
**Sent:** Sunday, November 3, 2024 9:06 PM  
**To:** sbcob  
**Cc:** Susan Bott; Kathy Rosenthal; Nicole Peña; Nancy Emerson; Theresa Reilly; Teresa McNeil MacLean; Barbara Goldstein  
**Subject:** WE Watch public comment for Agenda Item 7. AEO (11/05/2024 Board of Supervisors)  
**Attachments:** WEW AEO ltr to BOS final 11.04.2024.pdf

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Please include the attached written Public Comment (16 pages total: 3 page letter + attachments) from WE Watch in the record for this Tuesday's Board of Supervisors Hearing on Agenda Item 7. the Agricultural Enterprise Ordinance.

Thank you for your time and assistance.

Sincerely,

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Kathryn Lohmeyer Rohrer

**WE Watch, P.O Box 830, Solvang CA 93464**

November 4, 2024

TO: County of Santa Barbara Board of Supervisors  
FROM: WE Watch Board of Directors  
RE: Agricultural Enterprise Ordinance



WE Watch both treasures the rural character of the Santa Ynez Valley and continues to be supportive of the Agricultural Enterprise Ordinance (AEO) as a means to provide a supplemental income stream for Santa Barbara County agriculturalists. To assure neighbor and neighborhood compatibility, this far reaching ordinance still needs some fine tuning.

With [slightly more than half of the SYV plan area designated Rural](#), our farmers and ranchers are close neighbors and often share boundaries with smaller AG-I land, Urban and Inner-Rural parcels, and EDRNs. Neighborhood compatibility, *i.e.*, community members' rights and ability to enjoy the peaceful use of their homes and property, is necessary if AEO uses are to thrive.

One of the stated goals of the AEO is to help sustain the economic viability and diversity of commercial agricultural operations in the unincorporated areas of our County. Our focus is on the following uses, where neighbor compatibility will be most threatened if regulations affecting these uses are not carefully constructed, and none of which can be defined as a commercial agricultural use.

- A. Small-scale campgrounds
- B. Educational experiences and opportunities
- C. Farmstays
- D. Incidental food service
- E. Small-scale events (including weddings)

Our first 4 recommendations explain the regulations we think are needed to achieve neighbor and neighborhood compatibility, especially since only Campground and Farmstays require more than a Zoning Clearance, which is not appealable. See **Attachment B** for details.

**1. Use a 9:00 p.m. Ending/Quiet Time for the 5 Uses listed above**

This can mitigate the negative impact of nighttime AG-II site noise and traffic on road networks. Visitors and staff should be off the property before 10 p.m. Unlike County and State parks,

many AEO sites have residences nearby with hundreds of residential and AG-I sites directly abutting rural AG-II parcels along with AG-II residences.

## **2. Establish Consistency in AEO Setbacks from Adjacent Residences for 5 Uses**

We are asking that the Use be 400 feet from its property boundary and have natural or landscape screening. **To augment appropriate ending hours and setbacks**, we support **additional** tools (*e.g.*, CUPs) to provide more protection for neighbors in the Inner-Rural area of the Santa Ynez Valley where smaller parcels surround AG-II-40 and AG-II-100 parcels. There may be similar situations elsewhere in the County.

## **3. Incorporate an Enforcement/Revocation Mechanism Applicable to 5 Uses**

An ounce of prevention is worth a pound of cure. The complaint-driven model already provides incentives for too many property owners to do as they please and ask forgiveness after a disturbance has occurred.

The AEO needs a provision expressly addressing the penalties that will apply if an AG-II parcel owner/operator violates the AEO's limits. Such an enforcement mechanism may list fines and should include revocation of the ability to offer previously approved AEO uses on the parcel.

If an enforcement mechanism is not included at the time the AEO is enacted, neighbors will be left with nowhere to turn if there are abuses of the program; and the County could run the risk of costly litigation if it seeks to "revoke" a landowner's vested right to continue operating an established use.

In addition, it would be advisable to include a mechanism whereby, after a set amount of time, we can examine what has occurred and how well the system is working for farmers, ranchers and other County residents, including SYV's rural AG-II interface with its Urban/Inner-Rural areas and EDRNs.

## **4. Expressly Exempt the 5 AEO Uses from Right to Farm Protections**

As noted above, the 5 AEO rural uses listed on page 1 are not within the meaning of "Agricultural use" as defined in Sec. 3-23(b)(2) of the Right to Farm Ordinance; and, as such, the protections of the Right to Farm Ordinance-should not apply. WE Watch respectfully requests that the AEO be revised to state on its face that the uses listed on page 1 are exempt from the provisions of the Right to Farm Ordinance.

## **5. Define Key Terms**

Clarity of statutory language is essential, starting with definitions of key terms. At a minimum, a definition is needed for:

- **"Principal or Primary Use"**: This definition should reflect the necessity of a close nexus between any AEO enterprise and existing and ongoing commercial agricultural use of a

parcel. There is no definition of “Primary or “Principal Use” in the LUDC Glossary (35.11) or the AEO Glossary.

- The LUDC Glossary defines “**Secondary Use**” as “A land use subordinate or accessory to a principal land use.”

We recommend removing the following terms: “incidental, supportive, supplemental.” If retained, they need to be defined as they are not synonymous with the key terms.

Many of the points made above are reiterated in the attached compilation of summaries of litigation related to agritourism (agricultural enterprise) programs throughout the U.S. in recent years. See **Attachment A**. For example, the Rhode Island and Tennessee cases (on pages 4 and 6, respectively) dealt with the question of whether agritourism is protected under the Right to Farm Act. Additionally, several of the case summaries highlight the importance of defining terms and of the interplay between new agritourism legislation and existing land use regulation.

We greatly appreciate the time and care that has already gone into the drafting of the AEO. We will support your efforts to maintain neighbor and neighborhood compatibility and to mitigate the impacts of the 5 AEO uses (e.g. Noise, especially amplified sound, closeness to use, traffic congestion, parking sites) that conflict with residential uses of adjacent parcels in our Santa Ynez Valley and elsewhere.

# Exhibit A





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# The National Agricultural Law Center

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## Recent Agritourism Litigation in the United States

**Peggy Kirk Hall\***

*Associate Professor, Ohio State University Extension*

**Ellen Essman**

*Sr. Research Associate, Ohio State University Extension*

There has been significant growth in agritourism entrepreneurship in recent years.<sup>1</sup> “Agritourism,” also referred to as “agricultural tourism,” and “agritainment,” refers to visiting a working farm or an agricultural, horticultural or agribusiness operation to enjoy the rural setting, be educated, or be involved in special activities.<sup>2</sup> Examples of agritourism activities include corn mazes, hay rides and tours, horseback riding, petting zoos, you-pick operations, farm stays, educational classes, wineries, farm markets, hunting, nature and recreational activities, and wedding and event centers. With the growth of agritourism, however, comes legal issues for agritourism operators.

The National Agricultural Law Center has focused on helping agritourism operators understand legal issues and manage agritourism legal liability risk. To continue our work in this area, we sought to identify litigation across the United States related to agritourism operations. What types of agritourism lawsuits are arising, and how are they resolved? This report summarizes our findings of recent court cases involving agritourism operations, and also highlights legal incidents that occurred but did not produce litigation.

We can classify our findings on agritourism litigation into two major categories: land use and personal injury. Somewhat surprisingly, there are more cases in the land use category than in the personal injury category. Land use cases center on issues of zoning compliance, interpretations of “agritourism,” “agriculture,” and related terms, and relationships between agritourism and nuisance laws. Personal injury cases involve incidents of physical injuries to agritourism participants. We expected to find a higher number of these types of lawsuits, but two factors might explain why we did not. One is the continued adoption of immunity statutes that grant agritourism providers immunity from personal injury liability in more than half of the states in the U.S.<sup>3</sup> Another explanation could be that personal injury cases are more likely to involve insurance policies and settlements rather than litigation that results in a court decision. For this reason, we include in our findings on reported personal injury incidents on agritourism operations that did not result in court decisions.

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\* The authors thank Johnathan Cottingim, OSU student intern, for his able assistance with this publication.

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Below is our summary of each case and its outcome, beginning with land use cases related to agritourism and followed by court cases and reported incidents in the personal injury category. We wind up the report with another surprise revealed by our research: an agritourism case in a bankruptcy law proceeding.

## **Agritourism litigation involving land use issues**

Most of the recent agritourism litigation we identified falls in the category of land use and pivots on defining agritourism in relation to existing land use laws and definitions. The cases often center on questions related to determining if agritourism activities fit within the definition of a permitted “farm” or “agricultural” land use and whether such activities violate land use laws. The summaries below illustrate a common scenario that arises: a farm or ranch landowner adds agritourism activities to the property, raising the question of whether the new agritourism activity is legally permissible.

### **1. Adding events at a vineyard in an “exclusive farm use” zone:**

***Friends of Yamhill County v. Yamhill County*, 298 P.3d 586 (Or. Ct. App. March 19, 2013)**

Stoller Vineyards, located in Yamhill County, Oregon, applied for a conditional use permit to construct a building to house a tasting room, limited service restaurant, commercial kitchen, offices, and storage. The building would also be used to host up to 44 events per year. Stoller Vineyard had received prior approval to establish a winery on its 373-acre property in 2003 under an Oregon law that allows a winery as a permitted use in the “exclusive farm use” zone in which the property was located.<sup>4</sup> The county approved the permit application for the new building, with several limitations on the number of events and event attendees. The “Friends of Yamhill County” opposed the permit approval, arguing that an events venue and commercial food service facility were not permitted as “farm-use-related commercial activities” in an “exclusive farm use” district. However, the court determined that with the conditions the county had put in place, the food service and events at the winery were “commercial activities that are in conjunction with farm use” under Oregon law, and allowed the conditional use permit to stand. The court also reasoned that the event and food-service activities would be “incidental and secondary to the processing and sale of wine,” and that the activities were meant to promote the wine made on the property.

### **2. Adding fee-based activities to a farm stand in an “Exclusive Farm Use” zone:**

***Greenfield v. Multnomah County*, 317 P.3d 274 (Or. Ct. App. Dec. 4, 2013)**

In a second case from Oregon, the court focused on Oregon’s “farm stand statute,” which authorizes a farm stand as a permitted use in an “exclusive farm use” district and allows the retail sale of incidental items and offering promotional activities for a fee at farm stands.<sup>5</sup> Bella Farms applied to modify its farm stand permit to allow for farm-to-plate dinners, structures for incidental retail sales and fee-based promotional activities, food cart sales, and small-scale events such as birthday parties and picnics. The hearings officer allowed some of the proposed activities but did not allow the use of tents and temporary structures for activities. Upon a challenge by the farm owners, the Land Use Board of Appeals affirmed in part and denied in part. On appeal, the Oregon Court of Appeals examined Oregon’s farm stand statute and concluded that it “pertained exclusively to the use and design of the farm stand structure.” The statute allowed the sale of farm products and some incidental items, said the court, but promotional activities are allowed only outside of farm stand structures. The predominant use of a farm stand structure such as a tent, ticket kiosk or food cart must be for selling farm crops or livestock, said the court. Based on this interpretation, the court found that farm-to-plate dinners and small parties can be allowed under the statute if

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properly conditioned to result in a contemporaneous sale of farm crops, but the court remanded the case to determine whether food carts could be designed and used to sell farm crops or livestock.

**3. Whether nighttime culinary workshops for adults at a farm barn are “educational”:  
*Marshall v. Charlestown Twp.*, 169 A.3d 162 (Pa. Commw. Ct. Aug. 29, 2017)**

Two Pennsylvania landowners sought to offer farm-to-table educational culinary workshops in the historic barn on their 12.5-acre parcel of land located in a “farm residential” zoning district, with workshops for children during the day and adults at night. They applied for a conditional use permit under the township’s zoning ordinance that allows the use of a historic resource as an “educational” facility. The Board of Supervisors approved the daytime workshops for children but denied the evening workshops for adults on the basis that such workshops would not be educational, but the trial court reversed the Board’s decision and allowed the adult workshops. On appeal, the court focused on the meaning of “educational,” which the court determined must be defined broadly because the zoning ordinance did not define the term. The court determined that whether a use is educational is tied to the primary function of the facility, and concluded that the adult workshops would not be tied to the facility but would instead resemble a farm-to-table restaurant with alcohol and full meal service. Even though the owners proposed educational dialogue with farmers who produced the crops, the court reversed the trial court’s approval of the permit because there was not enough of an educational purpose to the proposed adult workshops.

**4. A wedding barn as an accessory use to a residence:  
*Webster Twp. v. Waitz*, No. 325088, 2016 Mich. App. LEXIS 1109 (June 7, 2016)**

A couple in Michigan bought a residential property with a barn on it and began hosting wedding receptions and similar events in the barn. The township allowed the use as an accessory use that was incidental and subordinate to the primary use of the property as a single family home. The popularity of the barn was its demise, however. The township held that the intensity of the use, with large weddings nearly every weekend from spring to fall, outdoor music until 11 pm and construction of a parking lot made the barn the principal rather than accessory use. On appeal, both the trial court and the Court of Appeals agreed with the township. The Court of Appeals reasoned that the wedding barn could not be subordinate to the dwelling, that the noise, disruption and traffic had no connection to the house, and that building a parking lot made the property more of a “commercial events venue” than the permissible single-family home.

**5. Wedding barns are not considered “seasonal agri-tourism”:  
*Nixon v. Webster Township*, No. 343505, Mich. Ct. App. (Jan. 21, 2020)**

An unpublished case from the Michigan Court of Appeals concerns a wedding barn on a several hundred-acre farm that raised corn, soybeans, pumpkins and hay in the agricultural district of Webster Township. The farm had received permission from the township zoning administrator to use an existing barn as a wedding venue because the operation was considered seasonal. In 2011, however, the Township adopted a new zoning ordinance, part of which was intended to preserve the community’s agricultural history. The ordinance specifically allowed for “seasonal agri-tourism” in the agricultural district, “including but not limited to hay rides, pumpkin patches, corn mazes, and Christmas tree farms.” After receiving a letter from the township indicating that the wedding barn was in violation of the zoning ordinance, the farm asked

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the zoning board to define “agri-tourism.” The zoning board decided that wedding barns do not fit within the ordinance language and its examples of agri-tourism and specifically pointed to previous occasions in which the township had not accepted “event barns” in the agricultural district. The case went before the trial court, which determined that there was doubt as to the legislative intent of the ordinance and so the ordinance must be understood to include wedding barns. On appeal, the Court of Appeals overturned the lower court’s decision. The court held that wedding barns violated several parts of the ordinance as written and that the zoning board’s decision to exclude wedding barns from seasonal agri-tourism was consistent with the legislative intent of the ordinance. The Court also decided that it was the right of the zoning board, not the court, to determine the definition of “seasonal agri-tourism” so long as it complied with the law.

#### **6. Wedding barn or winery?**

***Litchfield Twp. v. Forever Blueberry Barn, LLC, 2019 Ohio 322 (Ohio 9<sup>th</sup> Dist. Feb. 4, 2019)***

A lengthy litigation is still underway in Ohio, where the township has long battled the owners of a barn over whether weddings and social gatherings at the barn qualified for Ohio’s “agricultural exemption” from local zoning authority. Initially, the trial court imposed an injunction on the use of the barn for weddings and other events, but the court lifted that injunction upon receiving evidence that the owners were also using the property for the growing of wine grapes, which fit the use within the agricultural exemption and also exempted the barn if used “primarily for vinting and selling wine.” On appeal, the township argued that the barn owner must show by “clear and convincing” evidence that the barn’s primary use was for vinting and selling wine, but the Court of Appeals disagreed and utilized a “preponderance of the evidence” standard, which the court held was satisfied by the owner’s testimony that wine would be sold at the weddings and social gatherings. The township has since appealed this ruling, and the Ohio Supreme Court should release its opinion on the issue in 2020.

#### **7. Weddings and events are not “agricultural operations” protected by the state’s Right to Farm Act: *Gerald P. Zarrella Trust v. Town of Exeter, 176 A.3d 467 (R.I. Sup. Ct. Jan. 16, 2018)***

A Rhode Island landowner sought to offer weddings and other “premier events” on a 36-acre property known as “Gerald’s Farm.” The Town of Exeter had previously sued the landowner upon determining that its zoning ordinance did not permit such “commercial events,” and the parties entered into a consent judgment in 2011 that permanently enjoined the landowner from using Gerald’s Farm for weddings and other fee-based commercial events. However, the consent judgment stated that the injunction would run with the land permanently unless superseded by statute. In 2014, the landowner claimed that amendments to the state’s Right to Farm law did supersede the permanent injunction. The Rhode Island General Assembly had amended its Right to Farm law by adding language stating that “the mixed-use of farms and farmlands for other forms of enterprise including, but not limited to, the display of antique vehicles and equipment, retail sales, tours, classes, petting, feeding and viewing of animals, hay rides, crop mazes, festivals and other special events are hereby recognized as a valuable and viable means of contributing to the preservation of agriculture.”<sup>6</sup> The landowner claimed that the amendment expanded the definition of “agricultural operations” protected by the law to include hosting commercial events such as weddings for a fee. The owner again applied for a zoning permit, but the Town denied the permit and the trial judge upheld the denial, agreeing with the Town that the Right to Farm Act amendment did not

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supersede the injunction. The Rhode Island Supreme Court agreed, stating that the amendment “offers the plaintiff no refuge” from the injunction. The Supreme Court concluded that the amendment was aspirational rather than definitional and therefore did not add the activity of hosting weddings for a fee to the definition of “agricultural operations.”

**8. “Agritourism” is not within the definition of “agriculture”:  
*Forester v. Town of Henniker*, 118 A.3d 1016 (N.H. Sup. Ct. June 12, 2015)**

In yet another case involving weddings, the Supreme Court of New Hampshire had to decide whether “agritourism” was part of the state’s definition of “agriculture” for purposes of zoning. The case involved a Christmas tree farm in a rural residential district for “a mixture of agriculture and low-density rural living outside of the built-up districts of the community where public water and sewer services are not generally available.” The zoning ordinance included “agriculture” and “uses accessory to a permitted use” as two permitted uses in the rural residential district and allowed only by special exception use of land for “home business/retail” and “Bed and Breakfast Homes.” When the farm owners used the property for 13 weddings, celebrations, and business and educational events over a two-year period, the Town issued a notice of violation for operating a non-permitted wedding/reception function facility. The owner appealed and claimed that the “agritourism” uses fit within the definition of “agriculture,” a permitted use in the district. The owner also argued that the weddings were an accessory use to the permitted agricultural use. The Zoning Board of Adjustment and Superior Court disagreed. The Supreme Court examined the definition of “agritourism,” which means “attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation” and the definition of “agriculture,” which means all operations on the farm as specified in the statute and any “practice on the farm incident to, or in conjunction with such farming operations.” While the production of trees is an operation specified in the definition, agritourism is not, said the court, nor is it a practice incident to a specified farming operation. The court also rejected the landowner’s argument that weddings are an accessory use, which the landowner failed to prove has “commonly, habitually and by long practice been established as reasonably associated with the primary use” in the local area.

**9. The definition of “agritourism” does not extend to a shooting range:  
*Jeffries v. Cty. of Harnett*, 817 S.E.2d 36 (N.C. Ct. App. May 15, 2018)**

North Carolina’s “Bona Fide Farm” law prevents a county from using its zoning authority to exempt rural activities on a qualifying farm, and agritourism is one of the qualified activities. This case involved a farm family that was looking to expand their longtime farm operations. In the 1990s, the family set part of their qualifying farm apart as a registered hunting preserve, eventually adding rifle and pistol ranges, 3D archery, skeet shooting, concealed carry handgun training, and several sport shooting competitions. A group of local petitioners requested the Harnett County zoning department review the farm’s activities to determine if the activities were exempt under the Bona Fide Farm exemption. The department determined that most of the activities, except pistol training and shooting competitions, qualified for zoning exemption. After being ordered to review the case again by the county superior court, the department determined the activities were “used in preparation” for hunting, thus qualifying for the exemption. The county supreme court ordered further review, ultimately resulting in an appeal to the North Carolina Court

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of Appeals. The Court of Appeals called on *Hampton v. Cumberland County*, 808 S.E.2d 763 (2017), stating that “non-farm uses, even on bona fide farms, are not exempt from zoning regulation” as a basis for taking up the case. Due to the lack of clarity in the statute, the court chose to use three principles of legal canon to decide the case and found that operating a hunting preserve did not qualify for exemption because: hunting was not mentioned in the statute, shooting activities do not require the rural aesthetic as other agritourism activities do, and the dangers outlined in the statute were attendant to farming and ranching, not hunting.

#### **10. Right to Farm Act doesn’t protect music concerts on a farm:**

*Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. Sup. Ct. Aug. 19, 2013)

A nuisance case in Tennessee involved an agritourism operation that offered vehicle demonstrations, helicopter rides, firework displays and loud concerts that shook the houses of nearby neighbors. When the farm was sued for creating a nuisance, the Supreme Court of Tennessee found that “amplified music concerts” on the farm were not shielded from nuisance claims under the state’s Right to Farm Act because concerts were not connected to producing farm products, and therefore were not part of a “farm operation.” The court also found that although the county zoning ordinance exempted agricultural uses, state law does not include “entertainment activities on a farm” as “agriculture.” As a result, the court determined that the neighbor was able to bring a nuisance claim against the farm.

### **Agritourism litigation involving personal injuries**

Numerous activities can take place on a property under the umbrella of “agritourism.” The previously discussed land use cases involved everything from wedding barns to farm-to-plate events to shooting ranges. Given the diversity of agritourism activities, it should be of no surprise that liability lawsuits have resulted from injuries on the farm. The number of liability cases seem to pale in comparison to the number of news reports about injuries to agritourism participants, suggesting that many of these injuries don’t result in litigation. We highlight those that have resulted in litigation below, then follow with several injury occurrences that did not lead to a court decision.

#### **1. Exception to open and obvious danger doctrine for effectively unavoidable dangers:**

*Davis v. Lenhart*, No. 329092 (Mich. Ct. App. Sep. 22, 2016)

This case deals with a “haunted corn maze” on a farm in Michigan. The plaintiff fell and broke his leg while trying to cross flowing water which was not a part of the maze, but rather had arisen as a result of heavy rain. Employees of the corn maze directed the customers out of the maze, which had become wet and slippery, and onto the only exit path for the maze, where the plaintiff fell while trying to walk through the flowing water. The plaintiff claimed that the farm should have had adequate measures in place to respond to occurrences like rain and that the conditions that created his fall were neither open nor obvious. The circuit court sided with the owner, concluding that the conditions the plaintiff encountered were open and obvious and therefore it was not the owner’s legal duty to protect the plaintiff from such conditions. On appeal, the court of appeals reasoned that although the conditions might have been open and obvious, Michigan law contains an exception to the open and obvious danger doctrine for unusual, “effectively unavoidable” dangers, and that landowners do have a legal duty to protect visitors from such

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dangers. The court ruled that the flowing water could be an “unavoidable danger” because it was the only route that employees directed customers to use for exiting the corn maze. The court remanded the case to further examine whether exiting through the flowing water was “effectively unavoidable.” A final determination is pending.

**2. Fallen corn stalks are open and obvious dangers of a corn maze:**

***Spinella v. Fink’s Country Farm, Inc.*, 15-1548, 2017 N.Y. Misc. LEXIS 2054 (Sup. Ct. N.Y. May 24, 2017)**

Fink’s Country Farm hosts a fall festival each year that provides rides, games, and a corn maze for visitors. While trying to catch up to his sister, an eight-year-old boy tripped and fell on a corn stalk that had fallen in the middle of the corn maze path. A lawsuit ensued. The court found that the corn stalk was “open and obvious” and not inherently dangerous, because it could not be overlooked by anyone making reasonable use of their senses. The court also concluded that the downed corn stalk was inherent to the nature of the corn maze and that the farm owner had no constructive notice of the condition. As a result, the court granted summary judgment to the farm, finding that it was not liable for the injury.

**3. Duty to minimize risk of exposure to E. Coli from farm animals**

***Stephanie Heidish, et al. v. Dehn’s Pumpkins LLC*, No. 27-CV-14-17068 (Minn. Dist. Ct. Hennepin Co. Feb. 22, 2017)**

A seven-year-old child came into contact with E. coli by touching cattle, goats and their manure on a petting zoo operated by Dehn’s Pumpkins LLC in Minnesota. The girl became seriously ill and was diagnosed with hemolytic uremic syndrome, which requires ongoing dialysis treatments, may require kidney transplants in the future, and makes her more prone to heart attacks, strokes, and cancer. The girl’s parents filed a negligence claim against the farm, its owners, and the owners’ sons who run the business, asserting that the defendants failed to take common sense precautions that would have minimized the risk from exposure to E. coli, such as providing hand washing stations. Defendants argued that the child’s caretakers were negligent because they should have used hand sanitizer on the girl after visiting the animals. The farm owners settled for \$415,000 but the remaining defendants went to trial, where the jury agreed that the farm was negligent and assessed damages totaling \$7.55 million including \$300,000 for past medical expenses, \$250,000 for past suffering, \$2 million for future suffering and \$3 million for future earnings.

**4. Agritourism immunity statute doesn’t preclude allocation of fault:**

***Green v. St. George’s Episcopal Church*, No. M2017-00413-COA-R3-CV (Tenn. Ct. App. Dec. 5, 2017)**

An elderly woman who was riding on a church-sponsored bus to visit a local farm sued the church rather than the farm when she was injured when the bus hit a drainage berm on the farm’s gravel driveway. The plaintiff argued that the farm could not be listed as a defendant in the suit because of Tennessee’s agritourism statute, which protects agritourism professionals from liability when the injury results “solely from the inherent risks of agritourism activities” and the agritourism professional has posted a warning sign. The trial court disagreed that the farm could not be sued and allowed information about the farm’s fault to be presented in the trial. The court determined that 85% of the fault should be assigned to the farm but the statutory immunity prevented any the allocation of any liability to the farm. The

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Tennessee Court of Appeals agreed, holding that while the statute limits the liability of agritourism professionals, that immunity does not prevent a determination of fault. As a result, a jury may still allocate fault to an agritourism provider when making a final determination of fault among several parties. Not doing so would result in a non-agritourism party being responsible for a greater share of the liability and damages, which the court deemed unfair. While the injured party can't recover actual damages from an agritourism professional that the statute protects, the actions of the agritourism professional should still be considered when determining the amount of fault for each party involved in the incident, the court concluded.

### 5. *Personal injury cases that did not result in court decisions*

There have been several injuries at agritourism operations reported through media outlets for which we did not find corresponding court decisions. These cases were likely resolved through settlement or have not yet have been resolved. Such cases illustrate the risk of potential injuries on agritourism operations with similar activities.

- ***Haunted hayride.*** The parties reached a settlement for an accident at Harvest Hill Farm in Maine in October 2014. A 17-year old girl died on the farm's haunted hayride when the brakes went out on the vehicle that pulled the hay wagon.<sup>7</sup>
- ***Pumpkin patch.*** A pumpkin patch in Sauvie Island, Oregon has been sued at least twice since 2012 for injuries sustained on the property. One woman reportedly filed a \$432,000 lawsuit against the pumpkin patch's owners for injuries sustained after getting caught up in hay baling twine when jumping from a hay wagon, resulting in a broken elbow, significant bruising, arthritis and tendinitis.<sup>8</sup> Another man brought a \$154,000 claim against the owners when a "cow train" ride pulled by a tractor tipped and threw him to the ground, resulting in a broken wrist and pain in his back, neck, thumb and knee.<sup>9</sup>
- ***Inflatables.*** Several serious injuries have occurred to children playing on inflatable bounce houses at agritourism operations. A two-year old boy died when a 59 mph gust of wind tore the inflatable from its moorings and lifted it 30 to 40 feet in the air, trapping the child inside. His five-year old sister was injured after being thrown 40 feet from the inflatable. The incident occurred at JK's Pumpkin Patch near Lincoln, Nebraska in 2018.<sup>10</sup> A similar situation occurred on a farm in Nashua, New Hampshire, where the two toddlers playing on the inflatable survived but suffered broken bones and a potential traumatic brain injury, according to a news report.<sup>11</sup>

## Chapter 12 bankruptcy law and agritourism

*In re: Vecchione* is a federal bankruptcy case worth noting because it interprets the meaning of "family farmer" under Chapter 12 of the Federal Bankruptcy Code in regards to agritourism activities.<sup>12</sup> Chapter 12 bankruptcy is available to "family farmers" who are "engaged in a farming operation," and allows a farmer to reorganize debts. The applicant in this case claimed that Chapter 12 bankruptcy should be available to him because his use of his land for "agritourism" activities like ice skating, sledding, hayrides, and archery qualified him as a farmer. The bankruptcy court examined the term "farming operation," which is defined as "farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." Even

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though the court found that the list of activities in the definition is not exclusive, it was not convinced that “agritourism” fell under the “letter or spirit” of the bankruptcy code’s definition of a farming operation. The court did not allow the landowner to use Chapter 12 bankruptcy process.

## What can we learn from recent agritourism litigation?

As farmers and ranchers continue to diversify their operations with new ideas for what they can do under the umbrella of “agritourism,” litigation is a risk they must expect. It appears that at least some local land use laws simply don’t know what to do with agritourism activities, while others either distinguish agritourism activities from other agricultural land uses or include it within the definition and laws that address agriculture. Most problematic in the land use arena are weddings and events held on farms and ranches, which look much different than traditional agricultural land uses and carry the potential of nuisance impacts on the surrounding community. The court decisions we summarized did not bode well for these types of activities, resulting in more cases than not that did not consider weddings and events to fit neatly within the definition of agriculture. Our research highlights the need for a clear understanding of how local land use laws define and regulate agritourism before proceeding with an activity, so as not to end up in a land use lawsuit.

Our personal injury case findings yield mixed results for agritourism activities. Seemingly innocuous agritourism activities like petting zoos, hay rides and corn mazes do lead to personal injury litigation, but the open and obvious danger doctrine and immunity statutes play a critical role in the allocation of liability. Activities that appear to pose high risks of serious injuries to children are petting zoos and inflatables. The scarcity of court decisions on personal injury cases suggests that injuries aren’t occurring in large numbers or are resolved through settlements. Unlike land use law cases, personal injury cases aren’t challenged by the issue of whether the activities that create the harm are agritourism, agriculture, or something else.

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<sup>1</sup>U.S. Dept. of Agric. Nat’l Statistics Service, 2012 Census of Agriculture, Report No. AC-07-A-51 at 292. Available at [https://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

<sup>2</sup> *Agritourism*, AGRICULTURAL MARKETING RESOURCE CENTER, (Sept. 2019), <https://www.agmrc.org/commodities-products/agritourism>.

<sup>3</sup>For our compilation of state agritourism laws, see Alexandra Lizano and Elizabeth Rumley, *States’ Agritourism Statutes*, THE NATIONAL AGRICULTURAL LAW CENTER, <https://nationalaglawcenter.org/state-compilations/agritourism/>.

<sup>4</sup> Or. Rev. Stat. § 215.283(1)(n).

<sup>5</sup> Or. Rev. Stat. § 215.283(1)(o).

<sup>6</sup> 2 R.I. Gen. Laws § 2-23-4(a).

<sup>7</sup> David Sharp, *Settlement reached in fatal hayride crash suit*, TIMES STANDARD (Aug. 9, 2017), <https://www.fosters.com/news/20170809/settlement-reached-in-fatal-hayride-crash-suit>.

<sup>8</sup> Aimee Green, *Woman sues Sauvie Island pumpkin patch for \$432,000 after belly flop off hay ride*, THE OREGONIAN (Oct. 5, 2012), [https://www.oregonlive.com/pacific-northwest-news/2012/10/woman\\_sues\\_sauvie\\_island\\_pumpk.html](https://www.oregonlive.com/pacific-northwest-news/2012/10/woman_sues_sauvie_island_pumpk.html).

<sup>9</sup> Aimee Green, *Man sues Sauvie Island pumpkin patch for \$154,000 after breaking wrist on ‘Cow Train’ ride*, THE OREGONIAN (Aug. 21, 2014), [https://www.oregonlive.com/portland/2014/08/man\\_sues\\_popular\\_sauvie\\_island.html](https://www.oregonlive.com/portland/2014/08/man_sues_popular_sauvie_island.html).

<sup>10</sup>Riley Johnson, *2-year-old who died after bounce pillow incident was ‘adored by all,’* LINCOLN JOURNAL STAR (Oct. 5, 2018), [https://journalstar.com/news/local/crime-and-courts/year-old-who-died-after-bounce-pillow-incident-was-adored/article\\_8668c4a2-74ab-50b9-972b-f0a693897c44.html](https://journalstar.com/news/local/crime-and-courts/year-old-who-died-after-bounce-pillow-incident-was-adored/article_8668c4a2-74ab-50b9-972b-f0a693897c44.html).

<sup>11</sup> Jen Fifield, *Bounce House injuries are skyrocketing*, USA TODAY (Nov. 4, 2017), <https://www.usatoday.com/story/news/2017/11/04/bounce-house-injuries-skyrocketing/830807001/>.

<sup>12</sup> *In re Vecchione*, Case. No. 13-42201-MSH, 2013 Bankr. LEXIS 4978 (U.S. Bankr. D. Mass. Nov. 25, 2013).

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# Exhibit B

## **Attachment B. Details Related to WE Watch AEO letter, 11/4/24**

Information below comes from 11/5/24 County Attachments: 1, Findings and 4-1 LUDC Ordinance Amendments (with revisions)

### **1.. Ending/Quiet Times.**

**Findings MM NOI-1. Noise.** Amplified sound shall not exceed 65 dBA at exterior boundary of premises for rural recreational uses. Small-scale Events, 10 a.m.-11 p.m.. Amplified sound ceases at 10 p.m.

**Pg.17, (3)(1). Educational Experiences.** Amplified sound, 10 a.m-10 p.m.

**Pg 20, c.(2). Incidental Food Service.** Limited to hours of use that bring public to premises.

**Pg.23,.d.(3).(a). Small-scale Special Events.**

Dinners, parties, classes, workshops – 10 a.m.-11 p.m.

Non-motorized races, runs, endurance rides, etc.- No hours of operation.

Events using outdoor amplified sound, 10 a.m.- 10 p.m. Amplified sound speakers directed away from adjacent residences.

**Pg. 58,17. Farmstays.** Quiet Hours, 10 p.m.- 8 a.m., sound may not exceed 45 dBA.

**Pg.66,(7). Campgrounds,** Quiet hours 9 p.m. – 7 a.m.

**Pg.79,8.d.(1). Incidental Food Service, Tasting Rooms.** Hours same as hours open for wine tasting. If no hours via permit, 10 a.m.-8 p.m.

### **2. Setbacks**

**Pg. 17.(3)(c). Educational Experiences & Opportunities.** If amplified sound, no closer than 500 ft. from exterior boundary and event activities no closer than 1,000 ft. from premises boundary abutting residential zone.

**Pg. 24.E.5.b. Small-scale Special Events.** No closer than 400 ft. from a residence located on an adjacent property, not part of the ag. Enterprise premises. Amplified sound setback same as Educational Experiences.

**Pg.24.E.5.b.All Uses.** Same as 1<sup>st</sup> sentence, Small Scale Special Events.

**Pg.58.10. Farmstay Setbacks from adjacent premises.** Same as 1<sup>st</sup> sentence, Special Events.

### **3. Enforcement/Revocation**

**Pg.59.E Farmstays and Pg.67.f. Campgrounds**

### 3. Key Terms

**Pg.13. 35.42.035.Sec.7, A. Agricultural Enterprises, Purpose & Intent.**

Sentence 2.” The intent is to provide for flexibility in the development of uses that are individual and cumulatively **accessory to, supportive of, and subordinate** to the primary commercial agricultural use of the property ...”

**Pg.16,Sec. 7.D.2.d.(1).** “Educational experiences and opportunities shall be **secondary, incidental, and subordinate** to the primary agricultural use of the premises.” “Secondary” is defined in the LUDC 35.11 Glossary.

**Pg.20, D.4.c.(1).** “The provision of food shall be **secondary, incidental, and subordinate** to the primary agriculture use of the premises ...”

**Pg.23, D.6.d.(1)** “Small-scale special events shall be **secondary, incidental, and subordinate** to the primary agricultural use of the premises.

**Pg.51, 35.42.134. Farmstays. A.** “The intent of this section is to: (1) ensure that farmstays are **incidental and supportive** of the primary agricultural use of the land”

**Pg.73,F.1. Rural Recreation Uses.** “The use shall be **incidental, supportive and supplemental** to the primary agricultural use.

**Pg 79.Sec.14.8.g.b.** The provision of food shall be **secondary, incidental, and subordinate** to the primary function of tasting room operations.