

NEW HAMPSHIRE LAND TRUST COALITION

“SOWING THE SEEDS OF STEWARDSHIP IN AGRICULTURAL CONSERVATION EASEMENTS”

AGRITOURISM

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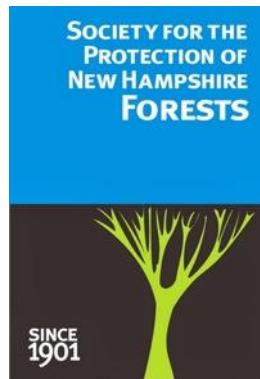
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Agenda

1. Legal Framework Governing Agriculture
2. Forster's Christmas Tree Farm v. Town of Henniker
3. Agritourism Legislation – 2016 & 2018
4. Land Trust Perspective
5. Questions & Answers

Legal Framework Governing Agriculture

Forster's Christmas Tree Farm v. Town of Henniker

<u>Supreme Court</u>	<u>Legislative Fix</u>
Agritourism not agriculture	Agriculture includes agritourism
Towns & cities can prohibit agritourism	Agritourism cannot be prohibited on farms
Towns & cities can define agritourism however they want	Towns & cities cannot define agritourism inconsistently with state definition

Forster's Christmas Tree Farm v. Town of Henniker

**Still unanswered:
Are weddings agritourism?**

Agritourism Legislation – 2016 & 2018

Bottom Line

Agritourism cannot be prohibited where
the property's primary use is for
agriculture

HOWEVER

New or significant expansions are
subject to local zoning and may be
regulated

Dual Objectives

1. Promote economic sustainability by enabling farms to market themselves; and
2. Preserve local control of planning decisions (sort of)

LOCAL REGULATION OF AGRICULTURE TOOLKIT



Presented by The NH Coalition for Sustaining Agriculture

Land Trust Perspective

Agriculture Defined in Easements

- Some Easements: explicitly incorporate State definition
- Oldest Easements: agriculture often not defined
- 1980's Era Easements: agriculture “shall include *agriculture*, animal husbandry” etc.

- 1990's Era Easements: agriculture includes processing and sale of products (ex. pick your own)
- Most Recent: explicit agritourism language

Questions to Consider

Which method for defining agriculture is preferable?

How decide if agritourism events permissible under older definitions of agriculture?

Hypothetical: Corn Maze



Real Example: Road Race



Real Example: Camping



Real Example: Cross Country Skiing



Real Example: Haunted House



Real Example: Weddings



Real Example: Spillover from Exclusion Area



Questions?



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SEPTEMBER 27, 2018

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Legal Framework Governing Agricultural Land Use

RSA 143-A:15-16	Exemptions for certain poultry and rabbit processing
RSA 425:2-a	Granite State Farm to Plate
RSA 431:34-35	Best Management Practices; Investigations of alleged violations
RSA 432:32-35	Right to Farm; Agriculture not exempt from certain public health laws
RSA 436:8	Investigation of animal cruelty
RSA 644:8	Defines animal cruelty and sets forth the penalties
RSA 672:1, III-b	Policy in favor of agriculture, including agritourism
RSA 674:17, I(i)	One of purposes of zoning ordinances to encourage agriculture
RSA 674:32-a	If agricultural use not prohibited in zoning ordinance it is deemed permitted
RSA 674:32-b	Municipal regulation of agriculture for existing uses; Preemption (see SB 412 below)
RSA 674:32-c	Other provisions about municipal regulation of agriculture
RSA 674:32-d	Cannot prohibit agritourism on farms
RSA 674:44-e	Agricultural Commissions
RSA 21:34-a	Definitions, as follows

RSA 21:34-a, I. The word "**farm**" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple

syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations named in paragraph II of this section.

RSA 21:34-a, II. The words "**agriculture**" and "**farming**" mean all operations of a farm, including:

(a)

- (1) The cultivation, conservation, and tillage of the soil.
- (2) The storage, use of, and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
- (3) The use of and application of agricultural chemicals.
- (4) The raising and sale of livestock which shall include but not be limited to all beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).
- (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
- (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.
- (7) The raising, breeding, or sale of poultry or game birds.
- (8) The raising of bees.
- (9) The raising, breeding, or sale of domesticated strains of fur-bearing animals.
- (10) The production of greenhouse crops.
- (11) The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence.

(b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to:

- (1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.
- (2) The transportation to the farm of supplies and materials.
- (3) The transportation of farm workers.
- (4) Forestry or lumbering operations.
- (5) The marketing or selling at wholesale or retail, of any products from the farm, on-site and off-site, where not prohibited by local regulations. Marketing includes **agritourism**, which means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.
- (6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.
- (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).
- (8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

RSA 21:34-a, III. A **farm roadside stand** shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

RSA 21:34-a, IV. **Practices** on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, and appropriate agencies of the United States Department of Agriculture.

RSA 21:34-a, V. The term "**farmers' market**" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

SB 412 - VERSION ADOPTED BY BOTH BODIES

03/15/2018 1011s

2018 SESSION

18-3004

08/01

SENATE BILL **412**

AN ACT relative to agritourism.

SPONSORS: Sen. Giuda, Dist 2; Sen. Gannon, Dist 23; Rep. Weyler, Rock. 13; Rep. Binford, Graf. 15; Rep. Eaton, Ches. 3

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill prohibits municipalities from adopting an ordinance, bylaw, definition, or policy regarding agritourism that conflicts with state statute.

This bill also allows the commissioner of the department of agriculture, markets, and food to issue a declaratory ruling on whether agricultural activities constitute agritourism.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/15/2018 1011s 18-3004

08/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to agritourism.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Agricultural Uses of Land; Existing Agricultural Uses. Amend RSA 674:32-b, II to read as follows:

II. Any new establishment, re-establishment after abandonment, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety. ***No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a.***

2 New Paragraph; Duties of Commissioner of Department of Agriculture, Markets, and Food; Agritourism Disputes. Amend RSA 425:4 by inserting after paragraph VIII the following new paragraph:

IX. Adjudicate disputes concerning activities that constitute agritourism pursuant to RSA 21:34-a. Prior to a party filing a land use application with a municipality, or after such land use application is denied, an applicant may petition the commissioner for a declaratory ruling regarding whether or not a municipality's ordinance bylaw, definition, or policy regarding agritourism activities, conflicts with RSA 21:34-a. The commissioner's jurisdiction shall be limited to the question of whether or not a municipality's ordinance, bylaw, definition, or policy on agritourism conflicts with RSA 21:34-a. The commissioner, or the commissioner's authorized representative, shall notify the parties, hold a hearing within 30 days of such request, and shall issue a declaratory ruling within 15 days of the hearing. The commissioner's declaratory ruling shall be dispositive, including in future land use applications with a municipality where such ordinance, bylaw, definition, or policy is at issue. A party aggrieved by the declaratory ruling may petition the commissioner for reconsideration within 20 days of the declaratory ruling, and thereafter, within 30 days of the decision on reconsideration, may appeal such decision to the New Hampshire supreme court. If the applicant petitions the commissioner for a declaratory ruling, all municipal appeal processes, including those defined in RSA 677:2 shall be stayed. The 30 day time period in which to request a rehearing shall begin on the next calendar day after the commissioner issues the declarative ruling, or after any appeal of the declarative ruling is complete. The commissioner shall adopt rules pursuant to RSA 541-A relative to the declaratory ruling process, including, but not limited, an allowance for timely intervention of an aggrieved party. A municipality shall furnish the commissioner with a copy of any non-confidential appeal decision on any land use application involving whether or not a municipality's definition or policy on agritourism conflicts with RSA 21:34-a.

3 Effective Date. This act shall take effect 60 days after its passage.