

**CHAPTER 338**  
**HB 663 - FINAL VERSION**

19Mar2019... 0751h  
04/25/2019 1488s

2019 SESSION

19-0827  
08/10

HOUSE BILL                    **663**

AN ACT                    relative to the definition of agriculture and existing agricultural uses.

SPONSORS:            Rep. Pearl, Merr. 26; Rep. Lang, Belk. 4

COMMITTEE:          Environment and Agriculture

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ANALYSIS

     This bill makes changes to the definitions of agriculture and existing agricultural activities and uses in zoning and planning ordinances and rules.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struckthrough]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT                      relative to the definition of agriculture and existing agricultural uses.

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

1            338:1 Definition of Agriculture. Amend RSA 21:34-a, I to read as follows:

2            I. The word "farm" means any land, buildings, or structures on or in which agriculture and  
3 farming **operations or** activities are carried out or conducted and shall include the residence or  
4 residences of owners, occupants, or employees located on such land. Structures shall include all  
5 farm outbuildings used in the care of livestock~~[-and]~~; in the production and storage of fruit,  
6 vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of  
7 annual or perennial plants; and any other structures used in **the operations or activities** named in  
8 paragraph ~~[H]~~ **II(a) or (b)** of this section **or any combination of such individual operations or**  
9 **activities.**

10          338:2 Definition of Agriculture. Amend RSA 21:34-a, II to read as follows:

11          II. The words "agriculture" and "farming" mean all operations **or activities** of a farm,  
12 including:

13              (a)(1) The cultivation, conservation, ~~[and]~~ **or** tillage of the soil.

14              (2) The storage~~[-]~~ **and** use of~~[-and]~~ **or** spreading of commercial fertilizer, lime, wood  
15 ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules  
16 and regulations, other lawful soil amendments.

17              (3) The use of ~~[and]~~ **or** application of agricultural chemicals.

18              (4) The ~~[raising]~~ **husbandry** ~~[and sale]~~ of livestock which shall include but not be  
19 limited to all beef ~~[and]~~ **or** dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other  
20 equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry,  
21 rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), ~~[and]~~ **or**  
22 reindeer (*Rangifer tarandus*).

23              (5) The ~~[breeding]~~ **husbandry**, boarding, ~~[raising,]~~ training, **or** riding instruction~~[-~~  
24 ~~and selling]~~ of equines.

25              (6) The ~~[commercial raising,]~~ **husbandry and** harvesting~~[-and sale of fresh water~~  
26 ~~fish or other]~~ aquaculture products **including fresh or salt water finfish, shellfish, or other**  
27 **aquatic organisms grown for consumption or processing.**

28              (7) The ~~[raising, breeding, or sale]~~ **husbandry** of poultry or game birds **or**  
29 **production of eggs.**

CHAPTER 338  
HB 663 - FINAL VERSION  
- Page 2 -

- 1                   (8) The ~~[raising]~~ **husbandry** of bees **or production of honey**.
- 2                   (9) The ~~[raising, breeding, or sale]~~ **husbandry** of domesticated strains of fur-bearing  
3 animals.
- 4                   (10) The production of greenhouse crops.
- 5                   (11) The production, cultivation, growing, **or** harvesting~~[—and—sale]~~ of any  
6 agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to,  
7 berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses,  
8 nursery stock, sod, trees ~~[and]~~ **or** tree products, Christmas trees grown as part of a commercial  
9 Christmas tree operation, trees grown for short rotation tree fiber, compost, or any ~~[other]~~ plant that  
10 can be legally grown ~~[and]~~ **or** harvested extensively for profit or subsistence.
- 11                  (b) Any practice **or activity** on the farm incident to, **ancillary to**, or in conjunction with  
12 such farming operations, including, but not necessarily restricted to:
- 13                   (1) Preparation for market, delivery to storage or to market, or to carriers for  
14 transportation to market of any products or materials from the farm.
- 15                   (2) The transportation to the farm of supplies and materials.
- 16                   (3) The transportation of farm workers.
- 17                   (4) Forestry or lumbering operations.
- 18                   (5) ~~[The]~~ Marketing or selling at wholesale or retail, **regardless of the manner or**  
19 **form of the transaction**, ~~[of]~~ any **livestock or** products **derived principally** from the **production**  
20 **of the** farm, **including, but not limited to items listed in subparagraph (a), whether** on-site  
21 ~~[and]~~ **or** off-site, **provided that marketing such products is** ~~[where]~~ not **specifically** prohibited  
22 by local regulations. ~~[Marketing includes]~~ **For the purposes of this section marketing shall**  
23 **include** agritourism, which means attracting visitors to a farm to attend events ~~[and]~~ **or** activities  
24 that are accessory uses to the primary farm operation, including, but not limited to, ~~[eating]~~ **being**  
25 **provided** a meal, making overnight stays, enjoyment of the farm environment, education **which**  
26 **shall be instruction or learning** about ~~[farm]~~ **the farm's** operations, or active involvement in the  
27 ~~[activity]~~ **activities** of the farm.
- 28                   (6) Irrigation of growing crops from private water supplies or public water supplies  
29 where not prohibited by state or local rule or regulation.
- 30                   (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA  
31 21:34-a, II(a)(4).
- 32                   (8) The production and storage of compost and the materials necessary to produce  
33 compost, whether such materials originate, in whole or in part, from operations of the farm.
- 34                  338:3 Definition of Agriculture. Amend RSA 21:34-a, IV to read as follows:
- 35                  IV. **Management** practices on the farm shall include technologies recommended from time  
36 to time by the university of New Hampshire cooperative extension, the New Hampshire department

CHAPTER 338  
HB 663 - FINAL VERSION  
- Page 3 -

1 of agriculture, markets, and food, ~~and~~ **or** appropriate agencies of the United States Department of  
2 Agriculture.

3 338:4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

4 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"  
5 includes the failure of local land use authorities to recognize that agriculture and agritourism  
6 **operations or activities** as defined in RSA 21:34-a, forestry, renewable energy systems, and  
7 commercial and recreational fisheries, when practiced in accordance with applicable laws and  
8 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,  
9 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an  
10 ordinance or regulation to address them;

11 338:5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

12 674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural **operations**  
13 **or activities as defined in RSA 21:34-a** are not explicitly addressed with respect to any zoning  
14 district or location, **such operations or activities** ~~they~~ shall be deemed to be permitted there, as  
15 either a primary or accessory use, so long as conducted in accordance with best management  
16 practices **guidelines** adopted by the commissioner of **the department of** agriculture, markets, and  
17 food and with **applicable** federal and state laws, regulations, and rules.

18 338:6 Existing Agricultural Uses and Activities. Amend RSA 674:32-b to read as follows:

19 674:32-b Existing Agricultural Uses **and Activities**. Any agricultural use **or activity** which  
20 exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing  
21 technology or markets, or changed to another agricultural use **or activity**, as set forth in RSA 21:34-  
22 a, so long as any such expansion, alteration, or change complies with all federal and state laws,  
23 regulations, and rules, including **agricultural** best management practices **guidelines** adopted by  
24 the commissioner of **the department of** agriculture, markets, and food; subject, however, to the  
25 following limitations:

26 I. Any new establishment, re-establishment after abandonment, or significant expansion of  
27 an operation involving the keeping of livestock, poultry, or other animals may be made subject to  
28 special exception, building permit, **site plan review**, or other local land use board approval **in**  
29 **accordance with the provisions of RSA 674:32-c, II and III.**

30 II. Any new establishment, re-establishment after abandonment, or significant expansion of  
31 a farm stand, retail operation, or other use **or activity** involving on-site transactions with the public,  
32 including agritourism as defined in RSA 21:34-a, may be made subject to applicable special  
33 exception, building permit, **site plan review**, or other local land use board approval **in accordance**  
34 **with the provisions of RSA 674:32-c, II and III**, and may be regulated to prevent traffic and  
35 parking from adversely impacting adjacent property, streets and sidewalks, or public safety. No  
36 municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities  
37 that conflicts with the definition of agritourism in RSA 21:34-a.

**CHAPTER 338**  
**HB 663 - FINAL VERSION**  
**- Page 4 -**

1       338:7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

2       II. Nothing in this subdivision, ***or in RSA 674:32-b***, shall exempt new, re-established, or  
3 expanded agricultural operations ***or activities*** from generally applicable building and site  
4 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking  
5 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in  
6 circumstances where their literal application would effectively prohibit an agricultural use ***or***  
7 ***activity*** allowed by this subdivision, or would otherwise be unreasonable in the context of an  
8 agricultural use ***or activity, in accordance with the provisions of RSA 672:1, III-b***, the board of  
9 adjustment, building code board of appeals, or other applicable local board, after due notice and  
10 hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit  
11 the agricultural use ***or activity***, unless such waiver would have a demonstrated adverse effect on  
12 public health or safety, or ***on*** the value of adjacent property. Such waiver shall continue only as long  
13 as utilized for the permitted agricultural use ***or activity***.

      338:8 Effective Date. This act shall take effect upon its passage.

Approved: September 05, 2019

Effective Date: September 05, 2019