

STATE OF NEW HAMPSHIRE
CURRENT USE CRITERIA BOOKLET

FOR

APRIL 1, 2006 to MARCH 31, 2007

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Current Use Rules (Cub 300)	Pages 12 – 24
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MESSAGE FROM THE CURRENT USE BOARD

Dear Current Use Constituent:

This CURRENT USE CRITERIA BOOKLET contains the laws (RSA's), the administrative rules (referred to as Cub's), a handbook section, which summarizes the current use laws and rules, and supplemental information containing references to court cases relating to current use.

The Current Use Board conducted a series of four public forums to provide current use landowners, municipal officials, foresters, conservation agents, and other interested individuals the opportunity to voice questions and concerns about New Hampshire's current use program.

The Current Use Board determined there would be NO changes to the current use assessment ranges for this year. However, there were changes to the Current Use rules, some of which were readopted or amended this year as required by RSA 541-A. Highlights of these changes include Cub 200 giving specific procedures for rulemaking, petitions and public forums. The Cub 300 rules include language reflecting the BTLA Town of Marlow decision determining where assessments fall within Current Use Range, a new section for Forms – Cub 309 and Appeal Procedures – Cub 310.

Additional Copies of the Current Use Booklet can be obtained:

On the department web site at www.nh.gov/revenue/currentuse.html

On disc or CD at no charge by sending a self-addressed stamped disc-envelope and a blank disk or CD to the NH Dept of Revenue Administration, Current Use Board, PO Box 487, Concord, NH 03302.

For a fee at the NH State Library, Reference and Information Bureau, 20 Park Street, Concord, NH 03301. Telephone: (603) 271-2239.

A reference to Current Use Decisions by New Hampshire courts and Board of Tax and Land Appeals can be found on the department web site at www.nh.gov/revenue/currentuse.html.

Please direct comments or questions by mail to the Current Use Board, PO Box 487, Concord, NH 03302, or in person at 57 Regional Drive, or by calling (603) 271-2687.

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RSA 79-A CURRENT USE TAXATION

79-A:1 Declaration of Public Interest. It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use. It is the intent of this chapter to encourage but not to require management practices on open space lands under current use assessment.

79-A:2 Definitions.

I. "Assessing official" means the assessing authority of any town, city or place.

II. "Board" means the current use board established by RSA 79-A:3.

III. "Board of tax and land appeals" means the board of tax and land appeals established pursuant to the provisions of RSA 71-B:1.

IV. "Commissioner" means the commissioner of the department of revenue administration.

V. "Current use value" means the assessed valuation per acre of open space land based upon the income-producing capability of the land in its current use, and not its real estate market value. This valuation shall be determined by the assessor in accordance with the range of current use values established by the board and in accordance with the class, type, grade and location of land.

VI. "Farm land" means any cleared land devoted to or capable of agricultural or horticultural use as determined and classified by criteria developed by the commissioner of agriculture, markets, and food and adopted by the board.

VII. "Forest land" means any land growing trees as determined and classified by criteria developed by the state forester and adopted by the board. For the purposes of this paragraph, the board shall recognize the cost of responsible land stewardship in the determination of assessment ranges.

VIII. "Land use change tax" means a tax that shall be levied when the land use changes from open space use to a non-qualifying use.

IX. "Open space land" means any or all farm land, forest land, or unproductive land as defined by this section. However, "open space land" shall not include any property held by a city, town or district in another city or town for the purpose of a water supply or flood control, for which a payment in place of taxes is made in accordance with RSA 72:11.

X. "Owner" means the person who is the owner of record of any land.

XI. "Person" means any individual, firm, corporation, partnership or other form of organization or group of individuals.

XII. "Soil potential index" means the production capability of land as determined by the United States Natural Resources Conservation Service.

XIII. "Unproductive land" means land, including wetlands, which by its nature is incapable of producing agricultural or forest products due to poor soil or site characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products, as determined and classified by criteria developed by the board. The board shall develop only one category for all unproductive land, setting its current use value equal to that of the lowest current use value established by the board for any other category.

XIV. "Wetlands" means those areas of farm, forest and unproductive land that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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79-A:3 Current Use Advisory Board; Members, Appointments, Term, Chairman.

I. There is hereby established a current use board which shall be administratively attached to the department of revenue administration, as provided in RSA 21-J:1-a.

II. The board shall consist of 14 members to be appointed as follows:

(a) Three members who are assessing officials shall be appointed by the governor with the advice and consent of the council, one of whom shall be an assessing official in a town with a population of less than 5,000; one of whom shall be an assessing official in a town with a population of more than 5,000; and one of whom shall be an assessing official in a city. Each member shall hold office for a term of his position as assessing official or for 2 years, whichever is shorter, and until his successor shall have been appointed and qualified, and any vacancy shall be filled for the unexpired term, by the governor with the advice and consent of the council. No other members of the board shall be former or currently practicing assessing officials.

(b) One member of the senate appointed by the president of the senate. The term of said member shall be coterminous with his term as senator to which he was elected at the time of his appointment. A vacancy shall be filled for the unexpired term by the president of the senate.

(c) One member of the house of representatives, appointed by the speaker of the house. The term of said member shall be coterminous with his term as representative to which he was elected at the time of his appointment. A vacancy shall be filled for the unexpired term by the speaker of the house.

(d) The commissioner of agriculture, markets, and food, or his designate.

(e) The commissioner of the department of resources and economic development, or his designate.

(f) The dean of the college of life sciences and agriculture of the university of New Hampshire, or his designate.

(g) The commissioner of revenue administration, or his designee.

(h) The executive secretary of the New Hampshire association of conservation commissions.

(i) The executive director of the department of fish and game, or his designate.

(j) Three members of the public appointed by the governor with the advice and consent of the council, at least 2 of whom shall represent the interests of current use landowners. Of these 2, one shall own forest land under current use assessment, and one shall own farm land under current use assessment.

III. Members of the current use advisory board who are not state employees or legislators shall be paid \$25 a day, each, for such time as they are actually engaged in the work of the board, all members shall be paid their actual expenses incurred as a result of such work, and nonlegislative members shall be paid mileage at the same rate as state employees but the legislative members shall be paid mileage at the legislative mileage rates.

IV. The board shall annually elect one of its members as chairman.

79-A:4 Powers and Duties of Board; Rulemaking.

I. It shall meet at least annually, after July 1, to establish a schedule of criteria and current use values to be used for the succeeding year. It shall have the power to establish minimum acreage requirements of 10 acres or less. It shall also review all past current use values and criteria for open space land established by past boards. The board shall make such changes and improvements in the administration of this chapter as experience and public reaction may recommend.

II. The board shall reduce by 20 percent the current use value of land which is open 12 months a year to public recreational use, without entrance fee, and which also qualifies for current use assessment under an open space category. There shall be no prohibition of skiing, snowshoeing, fishing, hunting, hiking or nature observation on such open space land, unless these activities would be detrimental to a specific agricultural or forest crop or activity. The owner of land who opens his land to public recreational use as provided in this paragraph shall not be liable for personal injury or property damage to any person, and shall be subject to the same duty of care as provided in RSA 212:34.

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III. The board shall annually determine, vote upon and recommend to the chairman of the board the schedule of criteria and current use values for use in the forthcoming tax year. The board shall hold a series of at least 3 public forums throughout the state to receive general comment through verbal and written testimony on the current use law. After the public forums are concluded and the board has made its recommended changes, the chairman shall proceed to adopt any proposed rules, in accordance with paragraph IV.

IV. The chairman of the board shall adopt rules, pursuant to RSA 541-A, for the schedule of criteria and current use values as recommended by the board, and for other forms and procedures as are needed to implement this chapter consistent with board recommendations and to assure a fair opportunity for owners to qualify under this chapter and to assure compliance of land uses on classified lands.

79-A:5 Assessment of Open Space Land.

I. The selectmen or assessing officials shall appraise open space land, as classified under the provisions of this chapter, excluding any building, appurtenance or other improvement on the land, at valuations based upon the current use values established by the board. The valuations shall be equalized for the purpose of assessing taxes. The selectmen or assessing officials shall use the soil potential index when available, to determine the value of farm land within the ranges established by the board. It shall be the duty of the owner to provide the soil potential index to the selectmen or assessing officials.

II. No owner of land shall be entitled to have a particular parcel of his land classified for any tax year under the provisions of this chapter unless he shall have applied to the assessing officials on or before April 15 of said year, on a form approved by the board and provided by the commissioner, to have his parcel of land so classified. If any owner shall satisfy the assessing officials that he was prevented by accident, mistake or misfortune from filing said application on or before April 15, said officials may receive said application at a later date and classify the parcel of land hereunder; but no such application shall be received after the local tax rate has been approved by the commissioner for that year.

III. The assessing officials shall notify the applicant on a form provided by the commissioner no later than July 1, or within 15 days if the application is filed after July 1, of their decision to classify or refusal to classify his parcel of land by delivery of such notification to him in person or by mailing such notification to his last and usual place of abode.

IV. Prior to July 1 each year, the assessing officials shall determine if previously classified lands have been reapplied or have undergone a change in use so that the land use change tax may be levied against lands changed in use, according to RSA 79-A:7. A list of all classified lands and their owners in each town or city shall be filed by the respective assessing officials each year. Such list shall be part of the invoice and subject to inspection as provided in RSA 76:7.

V. [Repealed.]

V-a. The commissioner shall include on the inventory blank, required under RSA 74:4, a question concerning whether any changes have been made in the use of land classified as open space. The question shall be written to enable the assessing officials to locate parcels which may require a change in assessment and to fit the context of the blank.

VI. The assessing officials shall file with the register of deeds in the appropriate county, on or before August 1 in each year, a notice of contingent liens describing all parcels of land classified under the provisions of this chapter. If a parcel of land is classified as open space land after such date, the assessing officials shall file notice of contingent lien with the register of deeds in the appropriate county within 14 days of said classification. The notice filed pursuant to this paragraph shall be on a form approved by the board and provided by the commissioner, shall contain the name of each owner, the date of classification and a short description of each parcel of real estate together with such other information as the board may prescribe; provided, however, the assessing officials shall not file each year parcels of land classified under this chapter which have been previously filed, unless there has been some change in the acreage involved.

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VII. A fee, in accordance with RSA 478:17-g, I, shall be paid by the owner for each parcel which is classified as open space land to the local assessing officials, to be paid over to the register of deeds for recording the notice of contingent lien. The notice of contingent lien shall constitute notice to all interested parties that a lien on the parcel shall be created if and when the land is subsequently disqualified from current use assessment, as provided in RSA 79-A:7, II(e) and RSA 80:85.

79-A:6 Valuation for Bonding Limit Purposes. In computing the total value of all land in a city or town, any land which is appraised at current use value under the provisions of this chapter shall, for all purposes including but not limited to the purposes of RSA 33:4-b, be inventoried by the town or city at its current use value.

79-A:6-a Valuation for Computing Equalized Value. In computing the equalized value of a city or town, the department of revenue administration shall use the current use value for any land which is so appraised under this chapter.

79-A:7 Land Use Change Tax.

I. Land which has been classified as open space land and assessed at current use values on or after April 1, 1974, pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for current use assessment. Notwithstanding the provisions of RSA 75:1, the tax shall be at the rate of 10 percent of the full and true value determined without regard to the current use value of the land which is subject to a non-qualifying use or any equalized value factor used by the municipality or the county in the case of unincorporated towns or unorganized places in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the change in land use if such date is not April 1. This tax shall be in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the change in land use. Nothing in this paragraph shall be construed to require payment of an additional land use change tax when the use is changed from one non-qualifying use to another non-qualifying use.

I-a. Land which is classified as open space land and assessed at current use values shall be assessed at current use values until a change in land use occurs pursuant to RSA 79-A:7, IV, V, or VI.

II. The land use change tax shall be due and payable by the owner at the time of the change in use to the town or city in which the property is located. If the property is located in an unincorporated town or unorganized place, the tax shall be due and payable by the owner at the time of the change in use to the county in which the property is located. Moneys paid to a county from the land use change tax shall be used, in addition to any other funds, to pay for the cost of the services provided in RSA 28:7-a and 7-b. The land use change tax shall be due and payable according to the following procedure:

(a) The commissioner shall prescribe and issue forms to the local assessing officials for the land use change tax bill which shall provide a description of the property which is subject to a non-qualifying use, the RSA 75:1 full value assessment, and the tax payable.

(b) The prescribed form shall be prepared in quadruplicate; the original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the land use change tax along with a special tax warrant authorizing the collector to collect the land use change tax assessed under the warrant; the quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the land use change tax warrant and the prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof. Such bill shall be mailed, at the latest, within 12 months of the date upon which the local assessing officials receive written notice of the change of use from the landowner or his agent, or within 12 months of the date the local assessing officials actually discover that the land use change tax is due and payable. Upon receipt of payment, the collector shall forward the original tax bill to the register of deeds of the county in which the land is located for the purpose of releasing recorded contingent liens required under RSA 79-A:5, VI. The tax bill shall state clearly whether all, or only a portion, of the land affected by the notice of contingent lien is subject to release. The recording fee charged by the

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register of deeds shall be paid by the owner of the land in accordance with the fees to which the register of deeds is entitled under RSA 478:17; 478:17-f or 478:17-g, I as applicable.

(d) Payment of the land use change tax, together with the recording fees due the register of deeds, shall be due not later than 30 days after mailing of the tax bills for such tax, and interest at the rate of 18 percent per annum shall be due thereafter on any taxes not paid within the 30-day period.

(e) All land use change tax assessments levied under this section shall, on the date of the change in use, create a lien upon the lands on account of which they are made and against the owner of record of such land. Furthermore, such liens shall continue for a period of 18 months following the date upon which the local assessing officials receive written notice of the change of use from the landowner or his agent, or the date the local assessing officials actually discover that the land use change tax is due and payable, and such assessment shall be subject to statutory collection proceedings against real estate as prescribed by RSA 80.

(f) Thereafter, the land which has changed to a use which does not qualify for current use assessment shall be taxed at its full RSA 75:1 value. The land shall again become eligible for current use assessment if it meets the open space criteria established by the board under RSA 79-A:4, I.

III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

IV. For purposes of this section land use shall be considered changed and the land use change tax shall become payable when:

(a) Actual construction begins on the site causing physical changes in the earth, such as building a road to serve existing or planned residential, commercial, industrial, or institutional buildings; or installation of sewer, water, electrical or other utilities or services to serve existing or planned residential, commercial, industrial, institutional or commercial buildings; or excavating or grading the site for present or future construction of buildings; or any other act consistent with the construction of buildings on the site; except that roads for agricultural, recreational, watershed or forestry purposes are exempt.

(b) Topsoil, gravel or minerals are excavated or dug from the site; except:

(1) Removal of topsoil in the process of harvesting a sod farm crop in amounts which will not deplete the topsoil; and

(2) Removal of gravel and other materials for construction and maintenance of roads and lands for agricultural and forestry purposes within the qualifying property of the owner or, with the approval of local authorities, to other qualifying property of the owner. Sale of excavated materials shall constitute a land use change of the property from which the material was excavated. The site shall be reclaimed when the construction or maintenance project is completed to mitigate environmental and aesthetic effects of the excavation. Both project completion time and acceptability of reclamation shall be determined by local authorities. The owner shall keep local officials informed in writing of plans to remove and use of soil material from qualifying lands for purposes of this subparagraph and to assure conformance with any local ordinances, as well as plans for reclamation of the site. Fully reclaimed land shall be eligible for current use assessment if it meets open space criteria established by the board under RSA 79-A:4, I, whether or not such land was under current use assessment prior to the excavation.

(c) By reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

V. The amount of land which has changed to a use which does not qualify for current use assessment and on which the land use change tax shall be assessed in the circumstances delineated in RSA 79-A:7, IV shall be according to rules adopted pursuant to RSA 541-A by the chairman of the board, based upon the

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recommendation of the board. Except in the case of land which has changed to a use which does not qualify for current use assessment due to size, only the number of acres on which an actual physical change has taken place shall become subject to the land use change tax, and land not physically changed shall remain under current use assessment, except as follows:

(a) When a road is constructed or other utilities installed pursuant to a development plan which has received all necessary local, state or federal approvals, all lots or building sites, including roads and utilities, shown on the plan and served by such road or utilities shall be considered changed in use, with the exception of any lot or site, or combination of adjacent lots or sites under the same ownership, large enough to remain qualified for current use assessment under the completed development plan; provided, however, that if any physical changes are made to the land prior to the issuance of any required local, state or federal permit or approval, or if such changes otherwise violate any local, state or federal law, ordinance or rule, the local assessing officials may delay the assessment of the land use change tax until any and all required permits or approvals have been secured, or illegal actions remedied, and may base the land use change tax assessed under RSA 79-A:7 upon the land's full and true value at that later time.

(b) When land, though not physically changed, is used in the satisfaction of density, setback, or other local, state or federal requirements as part of a contiguous development site, such land shall be considered changed in use at the time the development site is changed in use.

VI. For purposes of this section, land use shall not be considered changed and the land use change tax shall not be assessed when:

(a) Land under current use is taken by eminent domain or any other type of governmental taking which would cause the use change penalty to be invoked because, by reason of an actual physical change or by reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

(b) Land abutting a site taken by eminent domain or any other governmental taking upon which construction is in progress is used to stockpile earth taken from the construction site. Stockpiled earth may be removed at a later date after written notification to the appropriate local official.

(c) Land accorded current use assessment in one category is changed in use to any other qualifying category.

(d) Land under current use assessment is eligible for conservation restriction assessment pursuant to RSA 79-B. Such land shall then be allowed to change from current use assessment to conservation restriction assessment with no land use change tax being applied.

VII. When land which is accorded current use assessment in one category is changed in use to any other qualifying category as provided in subparagraph VI(c), the owner of the land shall notify the local assessing officials in writing of the change in use at the time that the change in use is made. If a land owner fails to provide the notice required under this paragraph, he may be fined not more than \$50 at the discretion of the town or city.

79-A:8 Failure to Reapply. [Repealed 1981, 561:6, eff. Aug. 29, 1981.]

79-A:9 Appeal to Board of Tax and Land Appeals.

I. If the assessing officials deny in whole or in part any application for classification as open space land, or grant a different classification than that applied for, the applicant, having complied with the requirements of RSA 79-A:5, II may, on or before 6 months after any such action by the assessing officials, in writing and upon a payment of a \$65 filing fee, apply to such board for a review of the action of the assessing officials.

II. The board of tax and land appeals shall investigate the matter and shall hold a hearing if requested as herein provided. The board shall make such order thereon as justice requires, and such order shall be enforceable as provided hereafter.

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III. Upon receipt of an application under the provisions of paragraph I, the board of tax and land appeals shall give notice in writing to the affected town or city of the receipt of the application by mailing such notice to the town or city clerk thereof by certified mail. Such town or city may request in writing a hearing on such application within 30 days after the mailing of such notice and not thereafter. If a hearing is requested by a town or city, the board shall, not less than 30 days prior to the date of hearing upon such application, give notice of the time and place of such hearing to the applicant and the town or city in writing. Nothing contained herein shall be construed to limit the rights of taxpayers to a hearing before the board of tax and land appeals.

IV. The applicant and the town or city shall be entitled to appear by counsel, may present evidence to the board of tax and land appeals and may subpoena witnesses. Either party may request that a stenographic record be kept of the hearing. Any investigative report filed by the staff of the board shall be made a part of such record.

V. In such hearing, the board of tax and land appeals shall not be bound by the technical rules of evidence.

VI. Either party aggrieved by the decision of the board of tax and land appeals may appeal pursuant to the provisions of RSA 71-B:12. For the purposes of such appeal, the findings of fact by said board shall be final. Any such appeal shall be limited to questions of law. An election by an applicant to appeal in accordance with this paragraph shall be deemed a waiver of any right to petition the superior court in accordance with RSA 79-A:11.

VII. A copy of an order of classification ordered by the board of tax and land appeals, attested as such by the chairman of the board, if no appeal is taken hereunder, may be filed in the superior court for the county or in the Merrimack county superior court at the option of said board; and, thereafter, such order may be enforced as a final judgment of the superior court.

79-A:10 Abatement of Land Use Change Tax.

I. Any person aggrieved by the assessment of a land use change tax may, within 2 months of the notice of tax date and not afterwards, apply in writing to the selectmen or assessors for an abatement of the land use change tax.

II. Upon receipt of an application under paragraph I, the selectmen or assessors shall review the application and shall grant or deny the application in writing within 6 months after the notice of tax date.

III. (a) If the selectmen or assessors neglect or refuse to abate the land use change tax, any person aggrieved may either:

- (1) Apply in writing to the board of tax and land appeals accompanied with a \$65 filing fee; or
- (2) Petition the superior court in the county.

(b) The appeal to either the board of tax and land appeals or superior court shall be filed within 8 months of the notice of tax date and not afterwards.

IV. For purposes of this section, ""notice of tax date" means the date the taxing jurisdiction mails the land use change tax bill.

V. Each land use change tax bill shall require a separate abatement request and appeal.

79-A:11 Appeal to Superior Court. If the assessing officials deny in whole or in part any application for classification as open space land, or grant a different classification from that applied for, the applicant, having complied with the requirements of RSA 79-A:5, II may, within 6 months after notice of denial or classification, apply by petition to the superior court of the county, which shall make such order thereon as justice requires. Any appeal to the superior court under this section shall be in lieu of an appeal to the board of tax and land appeals pursuant to RSA 79-A:9.

79-A:12 Reclassification by Board of Tax and Land Appeals. The board of tax and land appeals may order a reclassification or a denial of a classification of any parcel of land classified under the provisions of this chapter:

RSA 79-A CURRENT USE TAXATION

I. When a specific written complaint is filed with it by a land owner, within 90 days of being listed as provided by RSA 79-A:5, IV, that a particular parcel of land not owned by him has been fraudulently, improperly or illegally so classified, the complainant shall pay a fee of \$10 to the board of tax and land appeals for each specific particular parcel of land complained of. The board of tax and land appeals shall send notice by certified mail to the owner against whose land the complaint is made; or

II. When it comes to the attention of the board of tax and land appeals from any source, except as provided in paragraph I, that a particular parcel of land has been fraudulently, improperly or illegally so classified; or

III. When in the judgment of the board of tax and land appeals any or all of the land so classified in a town or city should be reclassified or denied classification; or

IV. When a complaint is filed with the board of tax and land appeals alleging that all of the land previously so classified in a town or city should be reclassified or denied classification for any reason. The complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the city or town, whichever is less.

79-A:13 Procedure for Complying With Orders of Board of Tax and Land Appeals. When ordered to make a classification, reclassification or denial of classification pursuant to action of the board of tax and land appeals under RSA 79-A:9, the assessing officials shall make it within such time as the board of tax and land appeals orders. If the classification, reclassification or denial of classification is not made in conformity with the order, is not made to the satisfaction of the board of tax and land appeals, or is not made within such time as the board of tax and land appeals has directed, then any order the board of tax and land appeals makes shall, at the expiration of such time, have full force and effect as if it were made by the assessing officials.

79-A:14 Neglect of Duty. Neglect or failure on the part of any assessing official to comply with an order of the board of tax and land appeals issued pursuant to RSA 79-A:9 or an order of the superior court made pursuant to RSA 79-A:11 shall be deemed willful neglect of duty, and such assessing official shall be subject to the penalties provided by law in such cases.

79-A:15 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:16 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:17 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:18 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:19 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:20 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:21 Repealed. [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

79-A:22 Lien for Unpaid Taxes. The real estate of every person shall be held liable for the taxes levied pursuant to RSA 79-A:7.

79-A:23 Enforcement. All taxes levied pursuant to RSA 79-A:7 which shall not be paid when due shall be collected in the same manner as provided in RSA 80:1-42-a.

79-A:24 False Statement. [Repealed 1991, 163:43, XXXIII, eff. May 27, 1991.]

79-A:25 Disposition of Revenues.

I. Except as provided in paragraph II, all money received by the tax collector pursuant to the provisions of this chapter shall be for the use of the town or city.

II. The legislative body of the town or city may, by majority vote, elect to place the whole or a specified percentage, amount, or any combination of percentage and amount, of the revenues of all future payments collected pursuant to this chapter in a conservation fund in accordance with RSA 36-A:5, III. The whole or specified percentage or amount, or percentage and amount, of such revenues shall be deposited in the conservation fund at the time of collection.

RSA 79-A CURRENT USE TAXATION

III. If adopted by a town or city, the provisions of RSA 79-A:25, II shall take effect in the tax year beginning on April 1 following the vote and shall remain in effect until altered or rescinded pursuant to RSA 79-A:25, IV.

IV. In any town or city that has adopted the provisions of paragraph II, the legislative body may vote to rescind its action or change the percentage or amount, or percentage and amount, of revenues to be placed in the conservation fund. Any such action to rescind or change the percentage or amount, or percentage and amount, shall not take effect before the tax year beginning April 1 following the vote.

79-A:25-a Land Use Change Tax Fund.

I. Towns and cities may, pursuant to RSA 79-A:25-b, vote to account for all revenues collected pursuant to this chapter in a land use change tax fund separate from the general fund. After a vote pursuant to RSA 79-A:25-b, no land use change tax revenue collected under this chapter shall be recognized as general fund revenue for the fiscal year in which it is received, except to the extent that such revenue is appropriated pursuant to paragraph II of this section. Any land use change tax revenue collected pursuant to this chapter which is to be placed in a conservation fund in accordance with RSA 79-A:25, II, shall first be accounted for as revenue to the land use change tax fund before being transferred to the conservation fund at the time of collection.

II. After any transfer to the conservation fund required under the provisions of RSA 79-A:25, II, the surplus remaining in the land use change tax fund shall not be deemed part of the general fund nor shall any surplus be expended for any purpose or transferred to any appropriation until such time as the legislative body shall have had the opportunity at an annual meeting to appropriate a specific amount from said fund for any purpose not prohibited by the laws or by the constitution of this state. At the end of an annual meeting, any unappropriated balance of land use change tax revenue received during the prior fiscal year shall be recognized as general fund revenue for the current fiscal year.

79-A:25-b Procedure for Adoption.

I. Any town may adopt the provisions of RSA 79-A:25-a to account for all revenues received pursuant to this chapter in a land use change tax fund separate from the general fund in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting by the selectmen, or by petition under RSA 39:3, and shall be voted on by ballot. The question shall not be placed on the official ballot.

(b) The selectmen shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 79-A:25-a to account for revenues received from the land use change tax in a fund separate from the general fund? Any surplus remaining in the land use change tax fund shall not be part of the general fund until such time as the legislative body shall have had the opportunity at an annual meeting to vote to appropriate a specific amount from the land use change tax fund for any purpose not prohibited by the laws or by the constitution of this state. After an annual meeting any unappropriated balance of the land use change tax revenue received during the prior fiscal year shall be recognized as general fund revenue for the current fiscal year."

II. If a majority of those voting on the question vote "Yes," RSA 79-A:25-a shall apply within the town, effective immediately.

III. If the question is not approved, the question may later be voted on according to the provisions of RSA 79-A:25-b, I.

IV. Any town which has adopted the provisions of RSA 79-A:25-a shall maintain a land use change tax fund until such time as the legislative body votes to rescind its action.

RSA 79-A CURRENT USE TAXATION

(a) Any town may consider rescinding its action in the manner prescribed in RSA 79-A:25-b, I(a) and

(b). The wording of the question shall be: "Shall we rescind the provisions of RSA 79-A:25-a which account for revenues received from the land use change tax in a fund separate from the general fund? Any unappropriated surplus remaining in the land use change tax fund, and any future land use change tax revenues received shall immediately be deemed general fund revenue."

(b) If a majority of those voting on the question vote "Yes," RSA 79-A:25-a shall no longer apply within the town, effective immediately.

V. The legislative body of any city may adopt the provisions of RSA 79-A:25-a in the same manner in which it adopts ordinances or bylaws, and may rescind its action in like manner.

79-A:26 Location of Contiguous Land in More Than One Taxing District. Where contiguous land which could be classified as open space land is located in more than one town, compliance with any minimum area requirement adopted by the open space board shall be determined on the basis of the total area of such land, and not the area which is located in any particular town.

RSA 212 LIABILITY OF LANDOWNERS

All property owners in New Hampshire, including those that have land in current use, have a specific duty of care or liability. Property owners who open their land to public recreational use in accordance RSA 79-A:4 II bear no additional liability other than the duty of care defined in RSA 212:34.

Listed below is a copy of RSA 212:34 for your reference.

212:34 Duty of Care. –

I. An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping, camping, horseback riding, water sports, winter sports, snowmobiling, or OHRVs as defined in RSA 215-A, hiking, sightseeing, or removal of fuel wood, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph III hereof.

II. An owner, lessee or occupant of premises who gives permission to another to hunt, fish, trap, camp, ride horseback, hike, use snowmobiles as defined in RSA 215-C, use OHRVs as defined in RSA 215-A, sightsee upon, or remove fuel wood from, such premises, or use said premises for water sports, or winter sports does not thereby:

(a) Extend any assurance that the premises are safe for such purpose, or

(b) Constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or

(c) Assume responsibility for or incur liability for an injury to person or property caused by any act of such person to whom permission has been granted except as provided in paragraph III hereof.

III. This section does not limit the liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or

(b) For injury suffered in any case where permission to hunt, fish, trap, camp, ride horseback, hike, use for water sports, winter sports, use of snowmobiles as defined in RSA 215-C, or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuel wood was granted for a consideration other than the consideration, if any, paid to said landowner by the state; or

(c) The injury caused by acts of persons to whom permission to hunt, fish, trap, camp, ride horseback, hike, use for water sports, winter sports, use of snowmobiles as defined in RSA 215-C, or use of OHRVs as defined in RSA 215-A, sightsee, or remove fuel wood was granted, to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

IV. Except as provided in paragraph III, a person using the premises as provided in paragraph I or given permission as provided in paragraph II, shall not maintain an action against the owner, occupant, or lessee of the premises for any injury which resulted while on the premises.

CURRENT USE ADMINISTRATIVE RULES

NOTE: Complete copies of Cub 100 and Cub 200 rules, as well as the Cub 300 rules with source note can be found at Administrative Rules, 25 Capitol Street, Room 217, Concord, NH 03301 or on the Department web site at www.nh.gov/revenue .

CHAPTER Cub 100 ORGANIZATIONAL RULES

NEW CHAPTER Cub 200 PRACTICES AND PROCEDURES, eff February 18, 2006 pursuant to RSA 541-A

CHAPTER Cub 300 CRITERIA FOR CURRENT USE

PART Cub 301 DEFINITIONS

Cub 301.01 “Betterment” means the installation or construction of improvements which influence the value of land such as:

- (a) Roads;
- (b) Water lines;
- (c) Sewage lines;
- (d) Utility lines; or
- (e) Other physical improvements.

Cub 301.02 “Certified tree farm” means a tree farm that has received from the NH Tree Farm Committee:

- (a) A tree farm approval letter that the tree farm meets the requirements of the national tree farm program of the American Forest Foundation; or
- (b) A current renewal letter.

Cub 301.03 “Contiguous parcels” means more than one parcel of land which is connected, disregarding whether it is divided by a highway, railbed, river or water body or the boundary of a political subdivision.

Cub 301.04 “Curtilage” for the purposes of this chapter means the land upon which a structure stands and the land immediately surrounding the structure, including the following:

- (a) A yard contiguous to the structure;
- (b) Land groomed and maintained around the structure; and
- (c) Land necessary to the support and service of the structure.

Cub 301.05 “Development plan” means:

- (a) Any subdivision plat, site plan, or building permit application supporting documents or similar documents required by state law or municipal ordinance and filed with the appropriate officials; or
- (b) A document prepared by the landowner describing his/her intent to build a road, construct buildings, create subdivisions, excavate gravel or otherwise develop land which is classified under current use.

Cub 301.06 “Highest and best use” means that use which will most likely produce the highest market value, greatest financial return, or the most profit.

Cub 301.07 “Soil potential index,” or SPI, means a number which indicates the production capability of farm land as determined by the United States Natural Resource Conservation Service, and obtainable through the county conservation district offices.

Cub 301.08 “Tract” means a parcel or contiguous parcels of land having identical ownership, and which qualifies for current use assessment in any category or combination of categories as described under Cub 304.01.

Cub 301.09 “Undeveloped land” means any land which is not used for residential, commercial, or industrial purposes, other than the growing of farm and forest products.

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Cub 301.10 “Unimproved land” means any land, left in its natural state, which is devoid of structures or other improvements.

PART Cub 302 APPLYING FOR CURRENT USE

Cub 302.01 Applying for Current Use.

(a) Landowners applying for current use shall complete and file by April 15 for that tax year Form A-10, “Application for Current Use”, with the local assessing officials of the municipality in which the land is located.

(b) Form A-10 shall be accompanied by:

- (1) A map or drawing of the entire parcel as described in Cub 309.01(c)(1);
- (2) The filing fee; and
- (3) Any required documentation such as a soil potential index or documented stewardship, if applicable.

Cub 302.02 Filing Fee.

(a) When a Form A-10 is filed, the landowner shall pay a filing fee, in accordance with RSA 478:17-g,I, to the assessing officials.

(b) If the assessing officials deny the application, the filing fee shall be refunded to the applicant.

(c) The filing fee shall be applied as follows:

- (1) For contiguous parcels of land, the landowner shall pay one filing fee; and
- (2) For non-contiguous parcels of land, the landowner shall pay a filing fee for each separate qualifying parcel.

Cub 302.03 Identifiable Boundaries. Each tract of land for which an application is filed shall be marked with identifiable boundaries on the ground.

Cub 302.04 Withdrawal of Application. The landowner may withdraw the application in the same year in which it was submitted, provided the municipality has not recorded Form A-10 with the county register of deeds.

Cub 302.05 Applying for Stewardship. Landowners applying for documented stewardship may submit with Form A-10 either;

- (a) Form CU-12, “Summary of Forest Stewardship Plan for Current Use Assessment”; or
- (b) The documentation listed in Cub 304.09.

PART Cub 303 FACTORS AFFECTING CLASSIFICATION

Cub 303.01 Frontage. Land which qualifies for current use assessment shall not be excluded because of road or water frontage.

Cub 303.02 Building Lot.

(a) A building lot shall consist of the curtilage of the building or buildings.

(b) The dimensions of the building lot, for the purposes of current use assessment, shall not be governed by:

- (1) Local municipal ordinances;
- (2) Planning board requirements; or
- (3) Local zoning ordinances.

(c) Sections of land divided by a building lot shall be considered contiguous, if, when combined, they meet the acreage requirement of Cub 304.01.

Cub 303.03 Excavation. Lands used in operations involving removal for sale of soil, gravel, stone and other surface minerals shall not qualify for current use assessment except as allowed by RSA 79-A:7,IV(b).

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Cub 303.04 Test Pits. Test pits shall not disqualify land from current use when the purpose of the test pit is to:

- (a) Determine whether or not the land would be suitable for building;
- (b) Detect the presence of water sources; or
- (c) Identify the mineral content of the land.

Cub 303.05 Utility Lines. Land supporting power lines, pipelines, sewer lines, water lines and other utilities that are not for the sole benefit of the landowner shall be eligible for current use assessment;

- (a) Under the category in which the land would normally qualify; or
- (b) If the presence and maintenance of such utilities would render the land ineligible under that category, it shall be considered for qualification in another qualifying category.

PART Cub 304 ASSESSMENT OF OPEN SPACE LAND

Cub 304.01 Acreage Requirement.

(a) “Value-added agricultural products” means, for the purposes of this section, products or materials grown on farm land, and processed beyond their natural state as harvested, for market or sale.

(b) Open space land shall consist of:

- (1) A tract of farm land, forest land or unproductive land totaling 10 or more acres;
- (2) A tract of any combination of farm land, forest land or unproductive land, which totals 10 or more acres;
- (3) A tract of undeveloped land of any size, actively devoted to the growing of agricultural or horticultural crops with an annual gross income from the sale of crops normally produced thereon totaling at least \$2,500, in accordance with Cub 304.05, below;
- (4) A certified tree farm of any size; or
- (5) A tract of unimproved wetland of any size.

(c) All land qualifying for current use assessment under Cub 304.01(b)(3), above, shall, be required to show \$2,500 of annual gross income from the sale of crops normally produced thereon.

(d) Land qualified under this section in tax years prior to 1993 may stay in current use even though the annual gross value of \$2,500 came from the sale of value-added agricultural products marketed from the land, provided that such land owners continue to produce such products that qualified the land for current use assessment.

Cub 304.02 Farm Land.

(a) Farm land shall be a tract or tracts of undeveloped land, devoted to, or capable of, the production of agricultural or horticultural crops including the following:

- (1) Forage;
- (2) Grains;
- (3) Fruit;
- (4) Vegetables;
- (5) Herbs;
- (6) Plantation Christmas trees;
- (7) Nursery stock;
- (8) Sod;
- (9) Floral products;
- (10) Pasturage;
- (11) Fiber;

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(12) Oilseeds; or

(13) Short rotation tree fiber farming.

(b) Land containing roads constructed for the purpose of harvesting agricultural or horticultural crops shall be assessed as farm land.

Cub 304.03 Assessment Ranges for Farm Land. The assessment ranges for farm land shall be \$25 to \$425 per acre.

Cub 304.04 Use of the Soil Potential Index (SPI).

(a) A landowner may require the local assessing officials to use the most recent SPI in determining the assessed value of a tract of land by providing:

(1) A single SPI for the entire tract of contiguous parcels of farm land; or

(2) A separate SPI for each separate parcel of farm land.

(b) When a landowner provides the SPI, the local assessing officials shall use the SPI to determine the assessed value of that tract of land as follows:

(1) The low end shall be subtracted from the high end of the assessment range from Cub 304.03 above;

(2) The difference derived from (1) above shall be multiplied by the SPI provided by the land owner;

(3) The dollar amount of the low end of the range from Cub 304.03, above, shall be added to the product derived from (2) above;

(c) The assessed value of farm land shall be equalized by multiplying the assessment by the municipality's most recent department of revenue administration median equalization ratio in accordance with RSA 79-A:5,I.

Cub 304.05 Forest Land.

(a) For purposes of this section, the following definitions shall apply.

(1) "Class" as referenced in RSA 79-A:2,V, means land enrolled in current use as forest land;

(2) "Grade" as referenced in RSA 79-A:2,V, means land having a physical geography affecting timber harvesting costs by the presence or absence of the following:

a. Steep slopes;

b. The presence of boulders and rock outcrops;

c. Ravines;

d. Wetland or bodies of water; or

e. Any other physical qualifications;

(3) "Location" as referenced in RSA 79-A:2,V, means characteristics affecting accessibility to the land, by the presence or absence of the following:

a. Legal restrictions to access;

b. Abutting a maintained public highway; or

c. Any other characteristics affecting accessibility;

(4) "Site quality" means the capacity of a parcel of land to produce wood, including factors that affect management, as follows:

a. The quality of soil;

b. The climate and elevation;

c. Physical geography; or

d. Any other factors that would affect the management of the land; and

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(5) "Type", as referenced in RSA 79-A:2,V, means the mix of tree species, as listed in Cub 304.03(e).

(b) Forest land shall be one of the following:

(1) A tract of undeveloped land actively devoted to, or capable of, growing trees of any age including the production or enhancement of one the following:

- a. Forest products;
- b. Maple sap;
- c. Naturally seeded Christmas trees; or
- d. Wildlife or wildlife habitat; or

(2) A certified tree farm.

(c) Land containing roads constructed for the purpose of forest product removal or forest protection shall be assessed as forest land.

(d) Forest land that has been subjected to clear cutting shall still qualify as forest land.

(e) Forest land shall be classified to a minimum of 10 acres in accordance with the majority of the type of trees growing on the land.

(f) Once the dominant forest type has been determined in (e) above, forest types of less than 10 acres shall be classified with the dominant type.

Cub 304.06 Forest Land Classifications.

(a) Forest land classifications shall be as follows:

(1) White pine forest stands in which white pine trees make up the majority of the stocking:

(2) Hardwood forest stands in which any combination of hardwood trees, as listed below, along with other less common hardwood species make up the majority of the stocking:

- a. Red oak;
- b. Sugar maple;
- c. Yellow birch; and
- d. White birch; or

(3) All other forest stands in which tree species not included in (1) and (2) above, make up the majority of the stocking.

(b) The assessed value of forest land shall be equalized by multiplying the assessment by the municipality's most recent department of revenue administration median equalization ratio in accordance with RSA 79-A:5,I.

Cub 304.07 Assessment Ranges for Forest Land Categories. The assessment ranges for forest land categories without documented stewardship shall be as follows:

- (a) The category of white pine shall be \$126 to \$191 per acre;
- (b) The category of hardwood shall be \$62 to \$94 per acre; and
- (c) The category of all other shall be \$99 to \$150 per acre.

Cub 304.08 Assessment Ranges for Forest Land Categories with Documented Stewardship. The assessment ranges for forest land categories with documented stewardship shall be as follows:

- (a) The category of white pine shall be \$73 to \$130 per acre;
- (b) The category of hardwood shall be \$15 to \$44 per acre; and
- (c) The category of all other shall be \$49 to \$94 per acre.

Cub 304.09 Documented Stewardship.

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(a) Landowners applying for documented stewardship shall submit Form A-10 accompanied by the following documentation at the time of application for open space assessment, and periodically thereafter at intervals of 5 or more years:

- (1) A statement of past forestry accomplishments, including an explanation of deviations from the objectives of past plans submitted under this section;
- (2) An updated map as required under Cub 309.01(c)(1); and
- (3) One of the following:
 - a. A letter from the New Hampshire Tree Farm Committee confirming certified tree farm status;
 - b. A forest stewardship plan that includes:
 1. A statement of forest stewardship objectives;
 2. Current forest stand descriptions;
 3. Current management prescriptions that address the following:
 - (i) Timber;
 - (ii) Fish and wildlife habitat;
 - (iii) Soil;
 - (iv) Water quality;
 - (v) Recreational resources;
 - (vi) Aesthetic values;
 - (vii) Cultural features;
 - (viii) Forest protection;
 - (ix) Wetlands; and
 - (x) Threatened and endangered species and unique natural communities;
 4. A boundary maintenance schedule;
 5. An access development and road maintenance plan, if applicable; and
 6. The signature of:
 - (i) A New Hampshire licensed forester; or
 - (ii) A person exempted from licensure under RSA 310-A:98,II, if the person meets the qualifications for licensure in RSA 310-A:104; or

(c) A completed form CU-12, "Summary of Forest Stewardship Plan for Current Use Assessment" as described in Cub 309.03, in lieu of Cub 304.09(b) above.

Cub 304.10 Assessing Factors for Local Assessors for Forest Land and Forest Land with Documented Stewardship.

(a) The local assessors shall consider the class, type, grade, site quality and location, in accordance with the following factors when determining where within the forest land range of assessments a particular parcel of land is placed pursuant to RSA 79-A:2,V:

- (1) The land shall meet the definition of "class" of forest land in Cub 304.05(a)(1);
- (2) The type of forest land shall be determined pursuant to Cub 304.05(a)(5) and (e);
- (3) The assessed value shall increase as the grade has an effect to decrease the costs of timber harvesting, and the assessed value shall decrease as the grade has an effect to increase costs; and
- (4) The assessed value shall increase as the location has an effect to increase accessibility, and the assessed value shall decrease as the location has an effect to decrease accessibility;

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(5) The assessed value shall increase as site quality has an effect to increase the ability to produce wood; and

(6) The assessed value shall decrease as site quality has an effect to decrease the ability to produce wood.

(b) The local assessors shall request an updated map as described in Cub 309.01(c)(1) periodically at intervals of 5 or more years.

Cub 304.11 Challenges to Forest Land Assessments.

(a) If a land owner challenges where, within the forest land assessment ranges, a parcel of forest land has been placed, either of the 2 following methods shall be used:

(1) The land owner shall provide site quality, location and grade information to the local assessors to support an appeal of the assessment, indicating that:

a. The grade, as defined in Cub 304.05(a), (2), of the land has either a positive or negative effect upon the costs of timber harvesting;

b. The effect upon the accessibility of the land due to location, as defined in Cub 304.05(a),(3), of the land has either a positive or negative effect upon the accessibility of the land; and

c. Site quality, as defined in Cub 304.05(a)(4), if the land has a positive or negative effect upon the capacity of the land to produce wood; or

(2) In lieu of (1), above, the land owner shall engage a forester to determine the site quality, location and grade of the land.

(b) When a land owner provides the information listed in Cub 304.11(a), above for a parcel of forest land, the local assessing officials shall consider that information in accordance with the following factors to determine the placement of that land within the forest land assessment ranges;

(1) The assessed value shall increase as site quality has an increased capacity to produce wood, and the assessed value shall decrease as site quality has a decreased capacity.

(2) The assessed value shall increase as the grade has an effect to decrease the costs of timber harvesting, and the assessed value shall decrease as the grade has an effect to increase costs; and

(3) The assessed value shall increase as the location has an effect to increase accessibility, and the assessed value shall decrease as the location has an effect to decrease accessibility.

Cub 304.12 Unproductive Land.

(a) Unproductive land, as defined in RSA 79-A:2,XIII, shall be one of the following:

(1) A tract of unimproved land that:

a. Has no structures;

b. By its nature is incapable of producing agricultural or forest crops, and

c. Is being left in its natural state without interference with the natural ecological process; or

(2) A tract of unimproved wetland, as defined in RSA 79-A:2, XIV, that:

a. By its nature is incapable of producing agricultural or forest crops; and

b. By reason of wetness is being left in its natural state.

(b) For wetland, assessing officials shall allow a buffer of up to 100 feet in depth provided that the land within the buffer is:

(1) Unimproved; and

(2) Is being left in its natural state without interference with the natural ecological processes.

CURRENT USE ADMINISTRATIVE RULES

Cub 304.13 Assessment Range for Unproductive Land. The assessment for unproductive land shall be \$15 per acre.

Cub 304.14 Assessment Range for Wetland. The assessment for wetland shall be \$15 per acre.

Cub 304.15 Unproductive Land. In accordance with RSA 79-A:5,I, the assessed value of unproductive land shall be equalized by multiplying the assessment by the municipality's most recent department of revenue administration median equalization ratio.

Cub 304.16 Land Having a Gross Income of \$2,500. To qualify under Cub 304.01(b)(3), the land owner shall demonstrate to the local assessing officials that during the previous year, at least \$2,500 gross income was earned from the sale of agricultural or horticultural crops grown on the land.

Cub 304.17 Open Space Assessment Classification. Land qualified for open space assessment under Cub 304.01(b)(3) shall be classified as follows:

(a) The acreage on which the income producing crop is actually grown shall be classified as farm land, pursuant to Cub 304; and

(b) Contiguous land not involved in the income producing activity shall be classified as farm land, forest land, or unproductive land, pursuant to Cub 304, regardless of acreage.

PART Cub 305 CHANGES IN CLASSIFICATION

Cub 305.01 Assessment.

(a) A change in classification may occur at any time during the tax year.

(b) Land shall be assessed in accordance with the category under which it was classified as of April 1.

Cub 305.02 Unproductive Land.

(a) Land classified as unproductive land because it is inaccessible or impractical to harvest agricultural or forest products, as provided under RSA 79-A:2, XIII, shall be reclassified as forest land or farm land if the land becomes accessible or practical to harvest.

(b) No notice of intent to cut, required by RSA 79:10 shall be approved for timber harvesting on land classified as unproductive land, until the land has been reclassified to the appropriate forest category.

Cub 305.03 Posting of Land.

(a) Land which has been granted an additional 20% reduction for recreation use pursuant to Cub 309.01 shall not be posted to prohibit activities described under RSA 79-A:4,II, unless such posting has been approved by the local assessing officials.

(b) If, the landowner posts the land without the approval of the local assessing officials, the 20% reduction shall not be allowed at the subsequent April 1st assessment period.

(c) Once the assessing officials have removed the 20% recreational reduction, the land shall not be eligible for the recreational reduction during the subsequent 3 year period, including the year of disallowance.

(d) Signage intended to warn the general public that a specific safety hazard exists on a particular tract of open space land shall not be considered a posting of land and not cause the removal of the 20% reduction for recreation use.

PART Cub 306 GOLF COURSE LAND - RESERVED

PART Cub 307 CHANGE IN USE

Cub 307.01 When is Land Changed.

(a) Assessing officials shall assess the use change tax on the owner at the time of change by completing Form A-5, "Current Use Change Tax", as described in Cub 309.02.

CURRENT USE ADMINISTRATIVE RULES

(b) Land under current use classification shall be considered changed, and the land use change tax imposed pursuant to Cub 308.03, when a change contrary to the requirements of the category under which the land is classified takes place. Such change shall be deemed to occur when:

- (1) The parcel of land is sold or transferred to another owner and no longer meets the minimum acreage requirements described in the category in which the land is classified except when:
 - a. The parcel of land is less than the minimum acreage, but is contiguous to and has identical ownership as the land owned by the purchaser; and
 - b. The purchaser advises the local assessing officials, in writing within 60 days from the date of the sale, of an intent to file for current use on the entire tract;
- (2) If the purchaser in (1)b., above, does not file Form A-10, "Application for Current Use", on or before the next April 15, the land use change tax shall be imposed as of the date on which the sale or change in use occurred; or
- (3) Development occurs which changes the condition of the land so as to disqualify it from open space assessment.

Cub 307.02 Development Other than Condominiums. In the case of a development, other than condominiums, which includes land identified in the development plan to satisfy the density requirement of RSA 79-A:7, V(b), that land shall remain in current use until such time as there is no longer 10 qualifying acres of developable land, as shown on the approved development plan.

Cub 307.03 Condominium Developments.

(a) In the case of a condominium development, land physically changed to accommodate the construction of a building(s), curtilage and infrastructure shall be removed from current use along with the amount of open space land needed to support that building(s) until such time there is no longer 10 qualifying acres.

(b) The amount of open space land needed to support the building(s) in (a) above, shall be the percentage interest that the building(s) represents in the entire project.

(c) The percentage of ownership interest in the condominium declaration language shall be used to calculate the amount of open space land in (b) above.

Cub 307.04 When Land is Sold or Transferred. If a parcel of land is sold or transferred to another owner and still meets the minimum or other acreage requirements as described in the category in which the land is classified, the land shall remain in current use.

Cub 307.05 When Land Does Not Produce \$2,500 Annual Gross Income. Land which qualified for open space assessment under Cub 304.01(b)(3) or Cub 304.01(d) shall be considered changed and the use change tax imposed when the landowner cannot demonstrate to the local assessing officials that at least \$2,500 gross income was earned each year from the sale of agricultural or horticultural crops grown on the land for 4 out of the 5 previous years.

PART Cub 308 ASSESSING THE USE CHANGE TAX

Cub 308.01 "Owner at the time of the change", in the case of a change in use resulting from a sale of land, means the person or persons who purchased the land.

Cub 308.02 Assessing Full and True Value.

(a) For purposes of this section, the full and true value of the land, as referenced in RSA 79-A:7, shall be based on the highest and best use of the land as of:

- (1) The date the actual physical change was begun; or
- (2) The date on which the parcel no longer qualifies for current use assessment due to size.

(b) The full and true value of the land being disqualified pursuant to RSA 79-A:7, shall be based upon the highest and best use of the land, including the value of all betterments to the land.

CURRENT USE ADMINISTRATIVE RULES

Cub 308.03 The Use Change Tax.

- (a) The use change tax shall not be assessed until the extent of the change in use becomes determinable.
- (b) For purposes of this section, one tax year shall be April 1 to March 31.
- (c) The use change tax shall be assessed as of the date the development began.
- (d) If the change in use is completed within one tax year, the full and true value shall be determined and the use change tax assessed when the change in use is completed to a point that the selectmen or assessing officials are satisfied that the development plan, as originally submitted or as subsequently amended, has been compiled with and they are able to determine the number of acres on which the use has changed.
- (e) If the change in use extends into 2 or more tax years, the following shall apply:
 - (1) The full and true value shall be determined;
 - (2) The land use change tax shall be assessed on that portion of land considered by the selectmen or assessing officials as being changed in use, as of April 1;
 - (3) That land thus disqualified from current use shall be assessed at the value specified in RSA 75:1 beginning with that tax year; and
 - (4) The remaining land shall continue to be assessed as current use land until such time as it becomes disqualified.
- (f) The full and true value for gravel pits shall be determined and the use change tax assessed in accordance with Cub 308.02, above, as follows:
 - (1) On the portion of land being excavated, at the time the excavation begins; and
 - (2) Based on the development plan submitted to the local assessing officials prior to commencing excavation.
- (g) The local assessing officials shall complete their portion of Form A-5 and submit it to the tax collector.
- (h) The tax collector shall:
 - (1) Complete his or her portion of Form A-5; and
 - (2) Bill the property owner.
- (i) Upon receipt of payment, the tax collector shall:
 - (1) Sign Form A-5; and
 - (2) Remit the original Form A-5 to the county registry of deeds with the recording fee.

PART Cub 309 FORMS

Cub 309.01 Form A-10, Application for Current Use.

- (a) Landowners shall complete and file Form A-10, "Application for Current Use", by April 15 with the local assessing officials of the municipality in which the land is located by providing:
 - (1) The property owner's name and mailing address;
 - (2) Geographical location of the land being classified;
 - (3) The local tax map and lot number(s) of the land being classified;
 - (4) The volume and page number of the present recorded deed or survey as recorded at the county register of deeds office;
 - (5) The total number of acres in the parcel;
 - (6) The number of acres being requested to be put in current use;
 - (7) The names of the categories of open space assessment applied for with the number of acres in each assessment;

CURRENT USE ADMINISTRATIVE RULES

- (8) An indication whether the additional 20% recreation adjustment, pursuant to RSA 79-A:4,II, is requested;
- (9) A statement certifying:
 - a. That the land indicated above qualifies for assessment under the New Hampshire Statutes and the Code of Administrative Rules, and that all requirements will continue to be performed; and
 - b. That, should the use of the above described land be changed to a non-qualifying use, that the owner of record at the time of the change in use is liable for the land use change tax;
- (10) The signature(s) written in black permanent ink of:
 - a. All owners of record; or
 - b. An agent with a power of attorney; and
- (11) An indication whether the following documentation has been attached:
 - a. An SPI percentage for farm land, if applicable;
 - b. Documentation of forest land stewardship and the type of documentation, if applicable; and
 - c. Map(s) of:
 - 1. Each parcel going into current use; and
 - 2. The entire property showing current use land and non-current use land;
- (b) The information entered on Form A-10 shall be typewritten or printed in black ink.
- (c) Form A-10 shall be accompanied by:
 - (1) A map or drawing of the entire parcel that includes:
 - a. Current use and non-current use land, clearly identified, oriented to establish its location, and sufficiently accurate to permit computation of acreage;
 - b. The interior boundaries;
 - c. The acreage of farm, forest, and unimproved land which the applicant is seeking current use assessment;
 - d. The forest type category for any forest land; and
 - e. All portions of land not to be classified under current use;
 - (2) SPI percentage for farmland, if applicable;
 - (3) Stewardship documentation, if applicable;
 - (4) A copy of the power of attorney if an agent signs, in accordance with (10)b., above; and
 - (5) The filing fee, in accordance with RSA 478:17-g, I, to the assessing officials; and
 - (6) Any information regarding the class, grade, location and site quality.
- (d) A copy of Form A-10 shall be retained by the landowner or the landowner's agent at the time the application is submitted.
- (e) The local assessing officials shall approve the application by:
 - (1) Obtaining the signature of the majority of such officials; and
 - (2) Distributing the remaining copies as follows:
 - a. A copy to the county register of deeds with recording fee; and
 - b. A copy to the land owner, for purposes of notification pursuant to RSA 79-A:5,III.
- (f) If the assessing officials deny the application, the filing fee shall be refunded to the applicant.

Cub 309.02 Form A-5, Current Use Change Tax.

CURRENT USE ADMINISTRATIVE RULES

(a) Assessing officials shall assess the use change tax on current use land by completing, either in typewritten form or printed in black ink, Form A-5, "Current Use Change Tax", by providing the following information:

- (1) Whether it is for a partial or full release;
- (2) The name of the owner of record when the land was first classified under current use;
- (3) The city or town where the land is located;
- (4) The number of acres in the parcel which were;
 - a. Originally classified under current use;
 - b. Previously released from current use;
 - c. Changed under this assessment; and
 - d. Remaining in current use;
- (5) The local map and lot number;
- (6) A narrative description of the change taking place;
- (7) The actual date of the change in use;
- (8) The name and address of the present owner;
- (9) The calculation of the use change tax due;
- (10) The date of the tax bill;
- (11) To whom checks shall be made payable;
- (12) Where to mail the payment; and
- (13) The address and office hours of the tax collector.

(b) Assessing officials shall submit Form A-5 to the tax collector to serve as a warrant with which the tax collector shall collect the tax.

(c) When the use change tax is paid, Form A-5 shall be signed and dated by the tax collector.

(d) Copies of Form A-5 shall be distributed as follows:

- (1) Forwarded by the tax collector to the register of deeds when the use change tax has been paid;
- (2) Forwarded by the tax collector to the land owner responsible for the tax;
- (3) Retained by tax collector; and
- (4) Retained by local assessing officials.

(e) The white copy in Cub 309.02(d)(1), above, shall serve as a notice to the register of deeds that the lien against the property has been satisfied.

Cub 309.03 Form CU-12, Summary of Forest Stewardship Plan for Current Use Assessment.

(a) A landowner without a NH Tree Farm confirmation letter, documentation of a certified tree farm or a forest stewardship plan that meets the requirements of Cub 304.09(a)(3)b. but who is applying for documented stewardship shall complete and file their portion of Form CU-12, "Summary of Forest Stewardship Plan for Current Use Assessment" with the local assessing officials in the municipality where the land is located by providing:

- (1) Property owner(s) name(s) and address(es);
- (2) Land or street location;
- (3) Tax map and lot numbers;
- (4) Total number of acres:
 - a. In parcel;

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- b. In current use assessment; and
 - c. To be classified with documented stewardship;
- (5) A statement certifying:
- a. That the land indicated above qualifies for Current Use assessment under the New Hampshire statutes RSA 79-A and the New Hampshire Code of Administrative Rules, Cub 300; and
 - b. That, should the use of the above described land be changed to a non-qualifying use, that the owner of record at the time of the change in use shall be liable for the Land Use Change Tax pursuant to RSA 79-A and the Criteria for Current Use Cub 300;
- (6) Landowners dated signatures; and
- (7) Forester's dated signature and license number.
- (b) Form CU-12 shall be accompanied by:
- (1) A statement of past forestry accomplishments with an explanation of deviations from past plans submitted;
 - (2) Updated map as required by Cub 309.01(c)(1);
 - (3) A summary of all information required by Cub 304.09(a)(3)b.;
- (c) The local assessing officials shall complete their portion of Form CU-12 by:
- (1) Indicating approval or denial;
 - (2) The reason for denial, if applicable; and
 - (3) Date signing the form.

PART Cub 310 APPEALS

Cub 310.01 Appeals. Appeals may be filed, within 6 months of notification of denial, with:

- (a) The board of tax and land appeals, pursuant to RSA 79-A:10 and RSA 79-A:11; or
- (b) The superior court, pursuant to RSA 79-A:11, in the county in which the property is located.

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I. APPLICATION PROCEDURES

A. Landowner's Responsibilities.

- (1) To apply for current use assessment, the landowner must complete Form A-10, Current Use Application and submit it to the local assessing officials by April 15th. (see RSA 79-A:5, II). The application is available from the local assessing officials or the Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301. See Cub 102 for more information regarding the application.
- (2) The landowner must submit with the application:
 - (a) The filing fee in accordance with Cub 302.02 which will be refunded if the application is denied or withdrawn; and
 - (b) A map of each parcel of property going into current use. The map need not be a survey map, and may be as simple as the examples shown below. However, the map must include the following information:
 1. A drawing of the entire parcel showing both the current use land and non-current use land, adequately identified and oriented to establish its location;
 2. The overall boundaries including the frontage and computation of acreage for both current use land and non-current use land;
 3. The interior boundaries of different current use classifications;
 4. The acreage of land and forest type categories for which the applicant is seeking current use assessment;
 5. The land classification within each category; and
 6. All portions of the land not to be classified under current use.

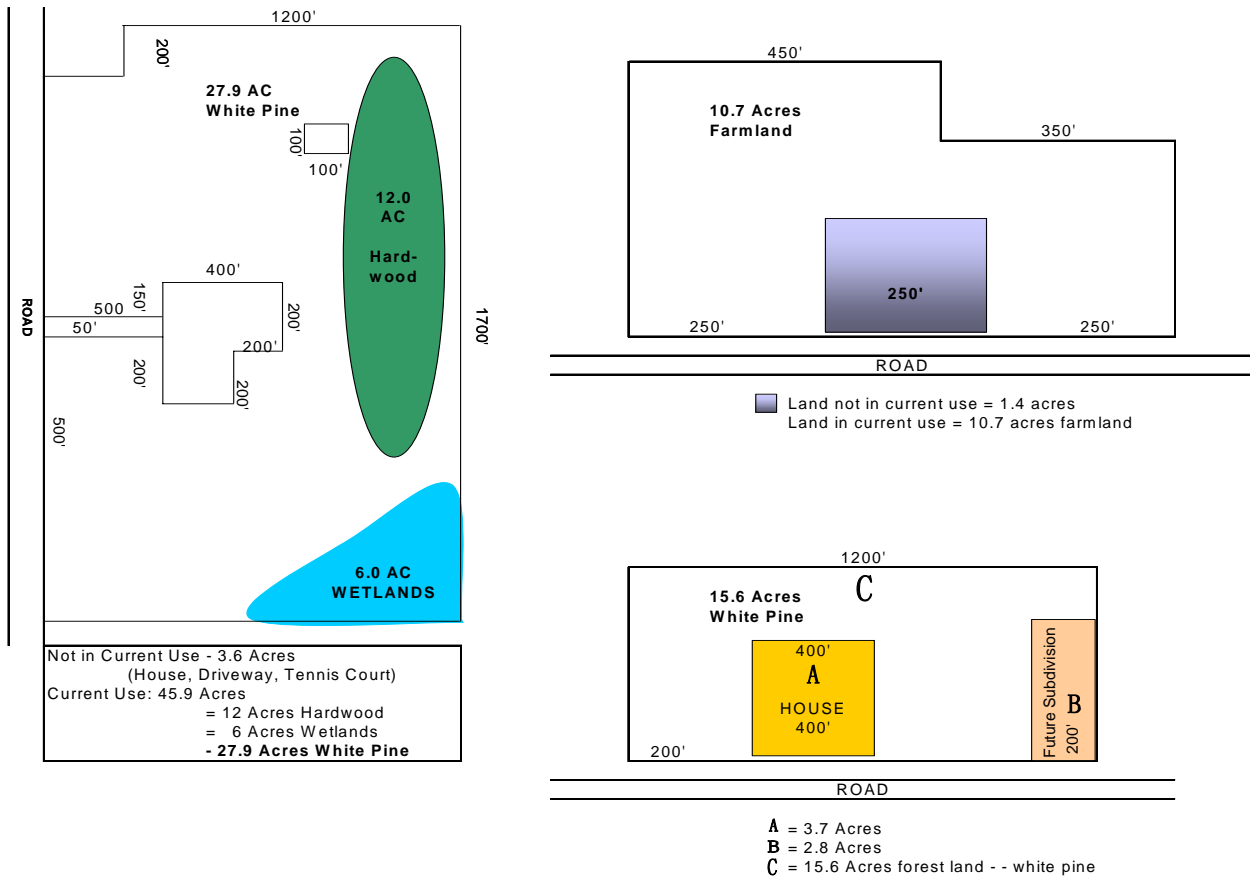
Note:

The acreage, frontage, and other information provided on the applicant's map should agree with the municipality's tax map. (A copy of the town's tax map may be used). If the information does not agree, the landowner should provide documentation such as a deed or survey, to prove that the information on the map submitted is correct.

- (3) For farmland, if the landowner is going to require the assessing officials to use the Soil Potential Index in the assessment calculation, the landowner must supply the Soil Potential Index. See RSA 79-A:5,I, Cub 301.09 and Cub 304.04 for further details.
- (4) For forest land which is under the "Forest Land with Documented Stewardship" category, the landowner must submit the items listed under Cub 304.09. In lieu of a forest stewardship plan, the landowner may submit a completed Form CU-12 "Summary of Forest Stewardship Plan for Current Use Assessment."
- (5) An applicant may withdraw the application in the same year in which it was submitted, provided the municipality has not recorded the application with the County Registry of Deeds (Cub 302.04).

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EXAMPLES OF THE TYPE OF MAP TO BE SUBMITTED FOR CURRENT USE ASSESSMENT



B. Assessing Officials' Responsibilities.

(1) The assessing officials shall notify the applicant no later than July 1st, or within 15 days if the application is filed after July 1st, of their decision to classify or refusal to classify that parcel of land. The notification shall be delivered to the applicant in person, or by mailing such notification to his last and usual place of abode (RSA 79-A:5, III). A photocopy of the original application form shall be returned to the landowner for the purpose of this notification (Cub 309.01 (e)).

(2) By August 1st, the assessing officials shall file with the County Registry of Deeds the notice of contingent lien describing all parcels of land classified under current use (RSA 79-A:5, VI) and the original application form. (Cub 309.01(e)(2)(a)).

C. Contingent Lien. The notice of contingent lien serves as a notice to all interested parties that a lien on the land will be created if and when the land is changed to a non-qualifying use.

II. LAND CLASSIFICATIONS

A. FARMLAND

(1) **Soil Potential Index.** The Soil Potential Index (SPI) is a tool to be used by the assessing officials to determine where in the farmland range of values a specific property should be assessed.

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The landowner must provide the SPI to the assessing officials in order for the assessors to apply it. Otherwise, the assessing officials may use their own discretion when assigning a valuation within the farmland assessment range.

The SPI may be obtained from the county conservation district offices. If the county conservation district office is unable to immediately provide the SPI for a particular parcel of land, they will provide a letter to the landowner stating that the SPI will be forthcoming. The landowner should give this letter to the assessing officials as notification that an SPI will be provided for this land. When the landowner receives the SPI, he should forward it to the assessing officials so it may be applied in the farmland assessment calculation. Once the landowner has provided the SPI, the assessing officials will apply the SPI to the assessment calculation until such time as a revised SPI is provided. Cub 304.04(b) provides the formula for assessing farmland. Assuming an SPI of .60, the formula would calculate as follows:

High end of farmland range	\$ 425
Low end of farmland range	- 25
Difference	<hr/> 400
Sample SPI of .60	x .60
Subtotal	<hr/> 240
Low end of range added back	+ 25
Per acre assessed value	<hr/> \$ 265

(2) **Agricultural Buildings.** The assessing officials shall apply Cub 303.02, the definition of building lot, when determining how much land must be left out of current use or removed from current use due to the presence of a building for agricultural purposes. The assessing officials must determine:

- (a) How much land is actually taken up by the building (the footprint of the building), and
- (b) How much contiguous land around the building is groomed, maintained or needed to support the building.

B. FOREST LAND

(1) **Assessment Ranges.** Forest land has 3 classifications of land: White Pine, Hardwood and All Other. Each of the 3 classifications has 2 ranges of values: one range which reflects the cost of stewardship, and one range which does not reflect the cost of stewardship.

If forest land is to be assessed within the ranges under "Forest Land with Documented Stewardship," then the landowner must provide documentation in Cub 304.09 supporting the assessment within this range. If the forest land is to be assessed within the ranges not reflecting the cost of stewardship, the documentation listed under Cub 304.09 is not necessary. Note: After an original application for current use has been approved, local assessing officials may require the landowner to justify assessments within the "Forest Land with Documented Stewardship" category at intervals of 5 years or more. Form CU-12, summarizing the contents of the forest stewardship plan, may be submitted at such time in lieu of the forest stewardship plan.

(2) **Assessment Within the Range.** Each of the forest land classifications has a per acre range of value. Not all forest land should be assessed at the high end of the range, or at the low end. Factors which influence the value of forest land include the location of the land, accessibility of the forest products and the severity of the terrain. Under the definition of "current use value", the assessor is required to determine the valuation in accordance with the "class, grade, type and location of the land." (RSA 79-A:2,V). Cub 304.05 provides

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definitions of these terms, and a definition of "site quality." The assessor must consider all these factors when determining where, within the forest land range of values, a particular parcel of land falls (Cub 304.10 (a)). In the case of Town of Marlow, the Board of Tax and Land Appeals specifically addressed the requirement that municipal officials consider these characteristics to justify the assessment within the forest land ranges. In their decision, the BTLA suggested several methods to justify these assessments including the use of a simple matrix or the use of county soil and topographical maps.

If a landowner is dissatisfied with the assessor's determination and wishes to challenge the forest land assessment, Cub 304.11 provides 2 methods of providing additional information to support their challenge to the assessors. If the landowner is still dissatisfied with their assessment, the property tax appeal procedures under RSA 76:16, 76:16-a, 76:16-d, II and 76:17 should be followed. These procedures are described under IV-E Appeal Procedures, in the Current Use Handbook.

(3) **Clear Cutting**. Forest land that has been subjected to clear cutting still qualifies as forest land (Cub 304.05(d)).

C. UNPRODUCTIVE LAND

(1) **Assessment**. Unproductive land is land which does not meet the definition of forest land or farmland. Unproductive land is "incapable of producing agricultural or forest products due to poor soil or site characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products." Wetland is included in the unproductive land classification.

(2) **Reclassification**. Land classified as unproductive land must be reclassified to forest and/or farmland if the land becomes accessible or practical to harvest (Cub 305.02(a)).

III. OTHER ASSESSMENT ISSUES

A. **Buildings in Current Use**. Buildings, appurtenances, or other improvements on current use land shall not be assessed at current use values. (RSA 79-A:5,I). Appurtenances and improvements include driveways, groomed areas, wells, septic systems and utility lines for the landowner's own use (Cub 303.05). Buildings, appurtenances and other improvements shall be assessed at ad valorem value (RSA 75:1).

B. **Equalization of Current Use Land**. An equalization median ratio must be applied to all farm, forest and unproductive land assessments (RSA 79-A:5,I). To calculate the equalized current use value, the current use assessment is multiplied by the equalization ratio.

C. **Gravel Pits**. The removal of topsoil, gravel or minerals is prohibited on land in current use; such activity would constitute a change in land use and would subject the land to the land use change tax (RSA 79-A:7,IV(b)). The only exceptions to this rule are:

- (1) Removal of topsoil in the process of harvesting a sod farm crop in amounts which would not deplete the topsoil,
- (2) Removal of gravel and other material for construction and maintenance of roads and land for agricultural or forestry purposes within the qualifying property of the owner, or with the approval of local authorities, to other qualifying property of the owner.

D. **Posting of Current Use Land**. Land assessed under current use may be posted. Receiving current use assessment does not require a landowner to open the property to public use.

E. **20% Recreational Adjustment**. If a landowner decides not to post, and opens the property to public use without an entrance fee for 12 months a year, the land is entitled to a 20% reduction in the current use assessment of the acres opened to public recreational use. To receive the 20% recreation adjustment, the landowner must allow all of the following activities:

Hunting	Skiing	Fishing
Snowshoeing	Hiking	Nature Observation

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If any of these activities are detrimental to a specific agricultural or forest crop, that activity may be prohibited. If the 20% recreational adjustment has been granted, posting to prohibit any activity listed above requires approval of the local assessing officials. See Cub 305.03 for further explanation.

The landowner may prohibit trespass upon his property for all other activities, including use of mechanized and off-highway vehicles (such as snowmobiles and three-wheelers), camping, cutting down trees, etc. Posting land to prohibit these activities will not affect the 20% recreation adjustment.

F. **Zoning Requirements.** For all classifications of current use land, the dimensions of a building lot shall not be governed by any local zoning or planning ordinances. For example, an 11 acre parcel of forest land in a municipality which requires a minimum of 2 acres for a building lot, may still qualify for current use assessment. If the building lot, as defined under Cub 303.02, occupies ½ an acre, then 10 ½ acres would qualify for current use assessment regardless of the 2 acre zoning requirement.

IV. THE LAND USE CHANGE TAX

A. **Rate.** The land use change tax rate is "10% of the full and true value" of the land that no longer qualifies for current use (RSA 79-A:7). The 10% land use change tax is not based upon the amount of taxes saved over the years in which the property was in current use. As with all ad valorem assessments, "full and true value" may or may not be the same as the selling price of the property.

The "full and true value" of the land is based on the highest and best use of the land as of the date the actual physical change was begun, as long as the requirements of RSA 79-A:7 V (a) are met. Otherwise, the local assessing officials may wait and base the land use change tax upon the land's full and true value at a later time after the requirements of RSA 79-A:7 V (a) have been met, regardless of the date of the actual physical change.

In the April 12, 2000, decision of the Appeal of the Estate of Richard Van Lunen, the New Hampshire Supreme Court interpreted Cub 308.02 to require that "...the value of any betterment to the land not be included in determining the lands full and true value when it is removed from current use." Because this interpretation was contrary to the intent of the rule, the Current Use Board amended Cub 308.01 to clarify that "The full and true value of the land being disqualified pursuant to RSA 79-A:7, shall be based upon the highest and best use of the land, including the value of all betterments serving the land." The Board also defined "betterment" to mean "the installation or construction of improvements which influence the value of land such as roads, water lines, utility lines or other physical improvements." (Cub 301.01).

The effective date of the amendment to Cub 308.02 was February 22, 2001. Any land disqualified from current use on or after February 22, 2001 is assessed in accordance with Cub 308.01. However, land disqualified between April 12, 2000, and February 21, 2001, should follow the interpretation set forth in the Van Lunen decision.

B. **Assessment.** Land may only be removed from current use for the reasons described in RSA 79-A:7 III, IV and V and Cub 307.01. Otherwise, land remains in current use. There are no buy-out options.

C. **Amount of Land to be Taxed.** When a parcel of land is being developed, only the amount of land that has been physically changed shall be removed from current use as long as the landowner retains enough land to meet the current use minimum acreage requirements in Cub 304.01.

D. **Land Use Change Tax Bill.** The land use change tax bill shall be assessed and mailed within 12 months of the date the local assessing officials are either notified by the landowner of a change in use or they discover that a change in use has occurred.

The assessment of the land use change tax **creates a lien** per RSA 79-A:7 II (e) upon the landowner's property and is subject to statutory collection proceedings against real estate as prescribed in RSA 80. Therefore, it is imperative that the land use change tax be paid in full even if the landowner intends to request an abatement of the tax. The tax is due 30 days from the date the bill was mailed. Interest of 18% per annum shall be due on any tax not paid within the 30 day period.

Upon payment of the land use change tax, the bill is forwarded to the County Registry of Deeds for recording. This recording releases the contingent lien placed upon the property when the current use

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application was recorded. The landowner is responsible for the recording fee as prescribed by RSA 478:17 in addition to the land use change tax.

E. **Appeal Procedures.** Any landowner who disagrees with the assessment of the land use change tax has the same rights of appeal as for real property taxes pursuant to RSA 76:16, 76:16-a, 76:16-d,II and 76:17. The landowner must apply in writing to the assessors within 2 months of the date of notice of the tax, for an abatement of the tax. If the assessors refuse or neglect to abate the tax, the landowner may apply for an abatement to either the Board of Tax and Land Appeals or to the County Superior Court. This appeal must be filed within 8 months of the notice of the tax.

For forms or further information concerning appeal of the Land Use Change Tax, contact the Department of Revenue Administration, Community Services Division, 57 Regional Drive, Concord, NH, 03301, (603) 271-2687

BT LA TOWN OF MARLOW DECISION

Town of Marlow

Docket No.: 18478-01RA

ORDER

The board held a hearing on June 7, 2001, pursuant to a show cause order, in order to receive evidence from the “Town” regarding its assessment practices pertaining to current use (“CU”) in the forest land classification. Attending and testifying at the hearing were the Town selectmen, Joseph N. Feuer, John A. Russell and Charles B. Strickland, and the Town counsel, Genienne A. Hockensmith, Esq. Also in attendance, as observers, were Robert Camp and Joanne Tramontozzi from the department of revenue administration (“DRA”).

The Town’s representatives characterized its CU assessment practices as a “good faith” effort to comply with relevant statutes and regulations using a “fair and objective” method. The Town also described these practices in some detail. The Town reviews each new CU application. If the taxpayer’s property has enough qualifying acres, the Town determines the “class” of CU land (farmland, forest land or unproductive) for the property. If forest land, then the “type” (white pine, hardwood and all other) is determined based upon the information submitted by the taxpayer.

The Town indicated it uniformly utilizes the upper limit of the assessment ranges for each of the forest land categories. In other words, the Town assigns the highest value in each range, without considering site quality, location or grade characteristics that may distinguish each property in CU. The Town defended this process of uniformly assigning the highest values to each CU property in the forest land category because the Town believes to do otherwise would involve too much ‘subjectivity’ and excessive ‘time and expense’ on the part of the selectmen/assessors.

The Town’s representatives indicated only two individuals have ever challenged this practice of assigning the highest value to each CU property. The Town argued that approximately 70% of the land area in the Town is in CU and the forest land is generally of high quality and is fairly homogeneous. The Town also stated its belief, which it apparently confirmed with DRA representatives, that ‘many’ towns follow a similar process in using the highest value in the range, rather than attempting to apply the entire range of values to the CU assessment process.

The Town requested that, if its approach is found to be invalid, the board provide some guidance regarding a practical way of administering the CU statutes and rules relative to forest land. The board’s ruling and reasoning, as well as suggestions for the Town, are presented below.

Board’s Rulings

The board rules the Town’s uniform practice of using the high-end value of the CU forest land assessment ranges, without making any distinctions or adjustments for the physical characteristics of the land, is not in accordance with applicable law and must be corrected. The board orders the Town, beginning with tax year 2002, to reassess all CU forest land to comply with the applicable statute and the rules adopted by the Current Use Board (“CUB”). The Town shall notify the board in writing every six months, commencing September 1, 2001, as to the progress it has made in carrying out this ordered reassessment of CU forest land.

In the remainder of this Order, the board will review the constitutional, statutory and regulatory provisions that should guide the Town. Then, because requested to do so by the Town, the board will provide some practical suggestions for achieving the required outcome in a reasonable amount of ‘time and expense,’ while at the same time furthering the Town’s stated goals of objectivity and fairness.

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Constitutional and Statutory Requirements

The Constitution and several tax statutes embody two distinct bases for assessing property taxes in New Hampshire: assessments proportional to market value; and assessments proportional to CU value. The first basis is governed by Pt. 2, Art. 5 of the Constitution (permitting general court to “impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and the residents within, said state; and upon all estates . . .”) and the second basis by a more specific provision added in 1968, Pt. 2, Art. 5-B (permitting general court to “provide for the assessment of any class of real estate at valuations based upon the current use thereof”).

The first basis is reflected by statutes contained in RSA Chapter 75. Specifically, RSA 75:1 requires assessments on real estate to be proportional to market value (“full and true value in money as they would appraise the same in payment of a just debt”). Under this ad valorem requirement, proportionality is a product of the market value of taxable real estate,” and the municipality’s level of assessment, and the cases have so held. In addition, “our constitution mandates that all taxpayers in a town be assessed at the same proportion of [market value].” Public Service Co. of New Hampshire v. Town of Seabrook, 133 N.H. 365, 377 (1998); Appeal of City of Nashua, 138 N.H. 261, 265 (1994); Appeal of Andrews, 136 N.H. 61, 64 (1992); Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 204 (1899).

In contrast to this ad valorem approach, Pt. 2, Art. 5-B of the New Hampshire Constitution authorizes a second basis for property taxation based upon “current use” rather than market value. This provision enabled the general court to enact RSA Chapter 79-A in 1973 to provide for the assessment “of open space land based upon the income-producing capability of the land in its current use, and not its real estate market value.” See RSA 79-A:2, V. One clearly-stated purpose for this form of taxation is to help maintain and preserve “open space . . . the land, water, forest, agricultural and wildlife resources” of the state and to protect them from excessive development pressures due to higher tax assessments. See RSA 79-A:1.

For property qualifying for “current use” taxation, proportionality is achieved, not by market value determinations, but by adhering to the statute and CUB regulations, which prescribe both a range of values and the criteria which must be used to assign values for specific property within each range. RSA 79-A:3 and 79-A:4 create the CUB and authorize it to establish CU values and criteria on an annual basis. RSA 79-A:5, I, requires the selectmen to appraise open space land “at valuations based upon the current use values established by the [current use] board.” RSA 79-A:2, V, requires that “[t]his valuation shall be determined by the assessor in accordance with the range of current use values established by the board in and accordance with the class, type, grade and location of land.”

CUB Requirements

With this constitutional and statutory background, the specific regulations governing CU assessments in the forest land category can be examined in more detail. Regulations promulgated by an administrative agency, such as the CUB, have the force of law and are “binding on the town” unless and until challenged by any town subject to those regulations. Blue Mountain Forest Assn. v. Town of Croydon, 119 N.H. 202, 204-05 (1979). As a result, the board will quote the relevant CUB regulations pertaining to “forest land” at some length:

Cub 304.03 FOREST LAND.

(a) For purposes of this section, the following definitions shall apply:

- (1) “Class”, as referenced in RSA 79-A:2, V, means land enrolled in current use as forest land;
- (2) “Grade”, as referenced in RSA 79-A:2, V, means land having a physical geography affecting timber harvesting costs by the presence or absence of the following:
 - a. Steep slopes;

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- b. The presence of boulders and rock outcrops;
 - c. Ravines;
 - d. Wetland or bodies of water; and
 - e. Any other physical qualifications;
- (3) “Location”, as referenced in RSA 79-A:2, V, means characteristics affecting accessibility to the land, by the presence or absence of the following:
- a. Legal restrictions to access;
 - b. Abutting a maintained public highway; or
 - c. Any other characteristics affecting accessibility;
- (4) “Site quality”, means the capacity of a parcel of land to produce wood, including factors that affect management, as follows:
- a. The quality of the soil;
 - b. The climate and elevation;
 - c. Physical geography; and
 - d. Any other factors that would affect the management of the land;
- (5) “Type”, as referenced in RSA 79-A:2, V, means the mix of tree species, as listed in Cub 304.03(e).

Cub 304.03 (k) further provides: “the local assessors shall consider the class, type, grade and location when determining where within the forest land range of assessments a particular parcel of land is placed.” In other words, the regulations place the responsibility for considering these criteria squarely on the local assessors.¹

It is eminently clear from the detail contained within the statutes and rules that for the constitutional requirement of proportionality to be met in the assessment of CU forest land, the selectmen must, as part

¹ Section 304.04(l) and (m) then provide:

“(l) If a land owners wishes to challenge where, within the forest land assessment ranges, a parcel of forest land has been placed, either of the 2 following methods shall be used:

(1) The land owner shall provide site quality, location and grade information to the local assessors to support an appeal of the assessment, indicating that:

- a. The grade, as defined in Cub 304.03 (a), (2), of the land has a positive or negative effect upon the accessibility of the land; or
- b. The location, as defined in Cub 304.03 (a), (3), of the land has a positive or negative effect upon the accessibility of the land; or

(2) In lieu of (1), above, the landowner shall engage a forester to determine the site quality, location and grade of the land.

(m) When a land owner provides the information listed in (1), above, for a parcel of forest land, the local assessing officials shall consider that information to determine the placement of that land within the forest land assessment ranges.”

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of their assessing responsibilities, consider any affect of “type” (tree species), “grade” (physical geography), “location” (accessibility) and “site quality” (soil, climate, etc.) in determining the proper assessment. Cub 304.03 (l) clearly places this responsibility initially with the assessors to determine, as best they can, how each qualifying piece of land should be assessed within the CU assessment ranges.

To do otherwise, as the Town acknowledges it has done with respect to all forest land with its uniform ‘highest value’ policy, is a violation of the above statutes and CUB rules. The rules, of course, were promulgated to carry out the intent of the statute and are not extraneous to proper assessment practice at the town level. See Blue Mountain, *supra*, 119 N.H. at 204-05; *accord*, Foster v. Henniker, 132 N.H. 75, 82 (1989) (CUB “regulatory criteria did not modify the statute, but served to effectuate its purpose.”)

Insofar as CU forest land is concerned, the Town’s present uniform practice of imposing the highest assessment on each property, even if arguably easier to administer, may result, to the extent it disregards key forest land characteristics specified in the regulations, in a “systemic pattern of disproportionate taxation.” Cf. Sirrell v. State of New Hampshire, No. 2001-003 (May 3, 2001), N.H., <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm>.

Notwithstanding these considerations, the board is also cognizant that the valuation differences between the low and high end of the forest land ranges are small relative to the overall magnitude of assessments the selectmen are required to undertake. Nonetheless, approval of the Town’s current practice would require the board to ignore the explicit requirements of the CUB regulations and the other authorities cited above. Consequently, the Town is ordered to change its assessment practices with respect to forest land in CU to consider and apply the criteria set forth above.

Suggestions for CU Forest Land Assessments

During the hearing, the Town requested that if the board were to require the Town to reassess its CU properties, some guidance be provided as to a practical, cost efficient way to do so. While the board is reluctant to mandate one specific approach over all others, because the Town can and should have discretion in how it complies with the law, the board is willing to propose what may be a useful approach for the Town’s consideration. This approach attempts to satisfy the need to obtain factual information from taxpayers as to each CU property’s grade, location and site quality in a manner that it is not overly burdensome to either the taxpayers or the Town selectmen/assessors.

When CUB 304.03 (a), (k) and (l) are considered together, it is clear CU assessments for forest land should reflect three key characteristics (grade, location and site quality) affecting the economic productivity of forest land, as well as its “type” and whether there is evidence of “documented stewardship.” For example, to the extent slopes or ravines, accessibility to a public highway and soil quality, climate and elevation affect the ability to manage forest land for productive uses, these factors should be considered in determining where within the value range the selectmen should place the forest land in CU assessment.

The board suggests one practical method is to utilize a matrix to gather information from taxpayers with CU forest land. The board is aware of at least one other municipality that employs a matrix approach to obtain information for CU assessments. Appendix A is an example of how a matrix could be used by the Town to obtain better information about the forest land it is obligated to assess within the value ranges, using the criteria specified in the CUB regulations. The Town may also consider requesting from each taxpayer with land in CU further information in the form of a county soil map and/or topographical map depicting the property. Scaling the land characteristics (good, average and poor) as 2, 1 and 0, with respect to each criterion, provides a relatively simple arithmetic basis for determining assessments within the CUB ranges, instead of always using the highest value.²

² For example, if the forest land type is “white pine” without “documented stewardship” (CUB range: \$112 to \$170 per acre in 2001) and the grade, location and site quality indications are average, poor and good, respectively, the

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This approach solicits voluntary information initially from taxpayers. If the selectmen receive inadequate or faulty responses, or if the taxpayer fails to respond in a timely fashion, then the selectmen can take whatever additional steps may be necessary to obtain adequate information or, on their own, determine or adjust where within the assessment range to place the forest land using other acceptable methods and information sources. Lack of response from a taxpayer does not relieve the selectmen of their initial obligation to assess the property as best

they can based on available public information. See Appeal of Gillin, 132 N.H. 311 (1989) (lack of cooperation on the part of a taxpayer should not be seen as a basis for punitive assessment).

Finally, the board has noted the testimony of the selectmen and representatives of the DRA which asserts the Town's CU assessing practices are similar to practices in certain other municipalities. If so, the board suggests the DRA, under the general supervisory authority contained in RSA 21-J:3, V,³ ensure proper compliance with this aspect of CU assessment throughout the state. Further, the CUB may wish to consider whether more detailed rules might be appropriate to regulate these aspects of the assessment process.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

I hereby certify that copies of the within Order have this date been mailed, postage prepaid, to: David and Linda Kinson, Taxpayers; Genienne A. Hockensmith, Esq., counsel for the Town; Chairman, Selectmen of Marlow; and Guy Petell, Director, Property Appraisal Division, Department of Revenue Administration.

Date: July 30, 2001

Lisa M. Moquin, Clerk

calculated scale would be 1 for grade, 0 for location, and 2 for site quality, for a total of 3 out of a maximum possible of 6, or 50%. 50% of the difference (\$58) between \$112 and \$170 is \$29 which, when added to the base of \$112, arrives at an assessment of \$141 per acre [$.50 \times (170-112) + 112 = 141$] for forest land with these specific attributes.

³ This statute provides: "[T]he commissioner of the department of revenue administration, . . . shall . . . V. [e]xercise general supervision over the administration of the assessment and taxation laws of the state and over all assessing officers in the performance of their duties, except the board of tax and land appeals, to the end that all assessments of property be made in compliance with the laws of the state."

CURRENT USE ASSESSMENT MATRIX

Property Owner _____

Address _____

Town records indicate you have the following parcels that are partially or fully assessed in forest land current use category. To assist the selectmen in determining where in the current use forest land assessment range each particular parcel should be assessed, please circle your best estimate of the "grade," "location" and "site quality" for each parcel in the grid below. Also, please attach a copy of a topographical map and/or soils map with the outline of your parcel(s) indicated on the maps. Factors affecting "Grade," "location" and "site quality" are specified in current use rule Cub 304.05 as follows:

Grade: (a) Steep slopes; (b) the presence of boulders and rock outcrops; (c) Ravines; (d) Wetland or bodies of water; and (e) Any other physical qualifications.

Location: (a) Legal restrictions to access; (b) Abutting a maintained public highway; or (c) Any other characteristics affecting accessibility.

Site Quality: (a) The quality of the soil; (b) The climate and elevation; (c) Physical geography; and (d) Any other factors that would affect the management of the land.

Parcel Location & Number of Acres	Characteristics of Land			
	Grade Location Site Quality	Good Good Good	Average Average Average	Poor Poor Poor
	Grade Location Site Quality	Good Good Good	Average Average Average	Poor Poor Poor
	Grade Location Site Quality	Good Good Good	Average Average Average	Poor Poor Poor
	Grade Location Site Quality	Good Good Good	Average Average Average	Poor Poor Poor
	Grade Location Site Quality	Good Good Good	Average Average Average	Poor Poor Poor

Property Owner's Signature _____

Date _____

CURRENT USE FORMS

FOR REGISTER OF DEEDS USE ONLY

FORM
A-10

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION APPLICATION FOR CURRENT USE

STEP 1 PROPERTY OWNER (S)

PLEASE TYPE OR PRINT	LAST NAME		FIRST NAME	
	LAST NAME		FIRST NAME	
	STREET ADDRESS			
	ADDRESS (continued)			
	TOWN/CITY		STATE	ZIP CODE

STEP 2 PROPERTY LOCATION

PLEASE TYPE OR PRINT	STREET					
	TOWN/CITY				COUNTY	
	ACRES IN PARCEL		ACRES IN CURRENT USE		ACRES OF THIS APPLICATION	
	BOOK #		PAGE #			
	MAP #	LOT #	MAP #	LOT #	MAP #	LOT #

NOTE: Lots must be contiguous. Non-contiguous lots must be submitted on a separate application.

STEP 3 DOCUMENTATION

(a) Is a Soil Potential Index (SPI) percentage for Farm Land submitted:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(b) Is documentation to support an assessment within the "Forestland with Documented Stewardship" category submitted:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(c) If yes, indicate the type of documentation:		
<input type="checkbox"/> Documentation of a Certified Tree Farm; <input type="checkbox"/> A Forest Stewardship plan signed by a licensed forester, or <input type="checkbox"/> Form CU-12 "Summary of Forest Stewardship Plan".		
(d) Did you submit a map of each parcel of property going into Current Use?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(e) Does your map show both the current use land and non-current use land and orientations of the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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Rev. 4/03

CURRENT USE FORMS

FORM
A-10

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
APPLICATION FOR CURRENT USE

(continued)

STEP 4 COMPLETE CHART BELOW

CATEGORY	# ACRES	20% RECREATIONAL ADJUSTMENT	
		YES	NO
FARM LAND			
FOREST LAND: WHITE PINE			
HARDWOOD			
ALL OTHER			
FOREST LAND with DOCUMENTED STEWARDSHIP:			
WHITE PINE			
HARDWOOD			
ALL OTHER			
UNPRODUCTIVE LAND			
WETLAND			
To be eligible for the 20% recreation adjustment, land must be open to the public for skiing, snowshoeing, fishing, hunting, hiking and nature observation. See RSA 79-A:4, II for further information.			

STEP 5 SIGNATURE OF ALL PROPERTY OWNERS OF RECORD

I/We certify that the land indicated above qualifies for assessment under the New Hampshire Statutes and the Code of Administrative Rules, and that all requirements will continue to be performed.

I/We do firmly understand that, should the use of the above described land be changed to a non-qualifying use, that the owner of record at the time of the change in use is liable for the land use change tax.

This form must be signed by all owners of record or agent with Power of Attorney. Submit a copy of the Power of Attorney form, if applicable.

TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

STEP 6 APPROVAL/DENIAL BY SELECTMEN/ASSESSORS

<input type="checkbox"/> APPROVED	<input type="checkbox"/> DENIED	Reason for denial:

STEP 7 SIGNATURES OF A MAJORITY OF SELECTMEN/ASSESSORS

TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

CURRENT USE FORMS

FORM
A-10

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION APPLICATION FOR CURRENT USE INSTRUCTIONS

GENERAL INSTRUCTIONS

WHO MUST FILE	Land owners wishing to apply for current use assessment under the provisions of RSA 79-A, shall prepare Form A-10 and file it with the local assessing officials of the municipality in which the subject land is located.
WHAT TO FILE	A completed Form A-10 and: (1) A Soil Potential Index (SPI) percentage of farm land, if applicable; (2) Documentation of forest land stewardship, if applicable; (3) A map or drawing of the entire parcel, which shall include: (a) Both current use and non-current use land, adequately identified and oriented to establish its location, and sufficiently accurate to permit computation of acreage; (b) The interior boundaries; (c) The acreage of farm, forest, and/or unproductive land which the applicant is seeking current use assessment; (d) The forest type category for any forest land; and (e) All portions of land not to be classified under current use.
WHERE TO FILE	Once completed and signed in black ink, this form and attachments shall be filed as follows: Original: Register of Deeds Copy: Local Assessing Officials Copy: Land Owner Copy: Tax Collector
WHEN TO FILE	Land owners must apply on or before April 15th of the tax year that the land owner wishes to have his land classified as current use pursuant to RSA 79-A:5, II.
APPEALS	If an application for Current Use is denied, the applicant may, on or before 6 months after any such action by the assessing officials, appeal to the Board of Tax and Land Appeals or to the County Superior Court in accordance with RSA 79-A:9 or RSA 79-A:11. Forms for appealing to the Board of Tax and Land Appeals may be obtained from the NH Board of Tax and Land Appeals, 107 Pleasant Street, Concord, NH 03301 or by calling (603) 271-2578 or by visiting their web site at www.state.nh.us/btla . Be sure to specify that you were denied an application for Current Use.
ADA	Individuals who need auxiliary aids for effective communication in programs and services of the department are invited to make their needs and preferences known to the NH Department of Revenue Administration.
NEED HELP	Contact your local municipality or the Community Services Division at (603) 271-2687.

LINE-BY-LINE INSTRUCTIONS

STEP 1	Print or type the name and address of the property owner(s) in the space(s) provided.
STEP 2	Enter the property location and street nearest the parcel of the land being classified as current use. Enter the book and page number where the land was most recently recorded at the County Registry of Deeds. Identify the total number of acres in the parcel, the number of acres currently classified as current use, and the number of acres that this application is requesting to be entered into current use. Identify the map and lot number of each contiguous lot in the spaces provided. NOTE: Lots must be contiguous. Non-contiguous lots must be submitted on a separate application.
STEP 3	(a) Check the box to indicate whether the Soil Potential Index is submitted. (b) Check the box to indicate whether there is documentation to support an assessment within the "Forestland with Documented Stewardship" category. (c) If the answer to Step 3(b) is yes, please check the boxes to indicate what type(s) of documentation. (d) Check the box to indicate whether you included the required map. (e) Check the box to indicate that your map identifies the location and orientation of the current use parcel (s).
STEP 4	Complete the chart provided to indicate the number of acres of land in each category and whether each qualifies for the 20% recreational adjustment pursuant to RSA 79-A:4, II.
STEP 5	All property owners of record must type or print their full name, sign and date in black ink in the spaces provided. If there are more than four owners, submit a supplemental list of names and signatures.
STEP 6	To be completed by the local assessing officials to recommend approval or denial of this application.
STEP 7	Signatures and dates in black ink of a majority of selectmen/assessors indicates confirmation of the approval or denial checked on Step 6.

CURRENT USE FORMS

FORM
CU-12

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION SUMMARY OF FOREST STEWARDSHIP PLAN FOR CURRENT USE ASSESSMENT

This form is NOT required if either of the following is provided to the Selectmen/Assessing officials:

- A Documentation of a Certified Tree Farm, or a copy of the letter from the New Hampshire Tree Farm Committee confirming Certified Tree Farm status; OR
- B A forest stewardship plan that meets the requirements of CUB 304.03(j)(3)(b).

PLEASE PRINT OR TYPE

NAME OF APPLICANT

ADDRESS

CITY/TOWN, STATE, ZIP CODE

- 1 Land located in the City/Town of: _____
- 2 Street location of the land being classified: _____
- 3 Local tax map and lot number(s) of the land being classified: _____
- 4 Total number of acres in parcel: _____ Total number of acres receiving current use assessment: _____
- 5 Total number of acres to be classified under the "Forestland with Documented Stewardship" category: _____
- 6 Attach a statement of past forestry accomplishments, including an explanation of deviations from the objectives of past plans submitted.
- 7 An updated map is required of the entire parcel(s) adequately identified and oriented to establish its location. Besides showing overall boundaries and computation of acreages, the map shall show interior boundaries and acreages of land categories for which the applicant is seeking qualification. Differentiating land uses within each category and all portions of the parcel(s) not bearing current use shall be clearly identified and the appropriate acreages shown.
- 8 Attach a summary of all information required by CUB 304.03(j)(3)(b). See the back of this form for requirements.

I/We certify that the land indicated above qualifies for Current Use assessment under the New Hampshire statutes RSA 79-A and the Code of Administrative Rules, CUB 300.

I/We understand that, should the use of the above described land be changed to a non-qualifying use, that the owner of record at the time of the change in use shall be liable for the Land Use Change Tax pursuant to RSA 79-A and the Criteria for Current Use, CUB 300.

LAND OWNER'S SIGNATURE(S)

FORESTER'S SIGNATURE

DATE

DATE

DATE

Forester's License Number _____

DATE

SELECTMEN'S SIGNATURES

APPROVED ☐

DENIED ☐

DATE: _____

DATE: _____

DATE: _____

Reason for Denial _____

CU-12
Rev 2/00

CURRENT USE FORMS

FORM
CU-12
Instructions

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION SUMMARY OF FOREST STEWARDSHIP PLAN FOR CURRENT USE ASSESSMENT INSTRUCTIONS

WHEN TO COMPLETE FORM CU-12	<p>A landowner making an original application for Current Use assessment should complete Form CU-12 at the time of application only if the landowner intends for land to be assessed under the "Forestland with Documented Stewardship" category. Form CU-12 does not need to be completed if the land is being placed in the "Forestland", "Farmland" or "Unproductive Land" categories. Also, Form CU-12 does not need to be completed if a forest stewardship plan, signed by a licensed forester, is submitted with the Current Use application.</p> <p>NOTE: After an original application for Current Use has been approved, local assessing officials may require the landowner to justify assessments within the "Forestland with Documented Stewardship" category at intervals of 5 years or more. Form CU-12, summarizing the contents of the forest stewardship plan, may be submitted at such time in lieu of the forest stewardship plan.</p>
WHAT MUST BE FILED	<p>In order to be assessed under the category "Forestland with Documented Stewardship", one of the following 3 items must be filed:</p> <ul style="list-style-type: none"> - Documentation of a Certified Tree Farm or a copy of a letter from the NH Tree Farm Committee confirming Certified Tree Farm status; OR - A forest stewardship plan; OR - A completed Form CU-12 summarizing the forest stewardship plan. <p>ADMINISTRATIVE RULE CUB 304.03 (j) (3) (b) requires that the forest stewardship plan, or the Form CU-12 summarizing the forest stewardship plan, include the following:</p> <ul style="list-style-type: none"> - The signature of a forester licensed in New Hampshire, or the signature of a person exempted from licensure under RSA 310-A:98 provided such person meets the qualifications for licence as specified in RSA 310-A:104; - A statement of forest stewardship objectives; - A description of current forest stands; - A description of current management prescriptions that address the following: <ul style="list-style-type: none"> (a) Timber; (b) Fish and Wildlife Habitat; (c) Soil; (d) Water Quality; (e) Recreational Resources; (f) Aesthetic Values; (g) Cultural Features; (h) Forest Protection; (i) Wetlands; and (j) Threatened and Endangered Species and Unique Natural Communities. - A boundary maintenance schedule; and - An access development and road maintenance plan, if applicable.
WHERE TO SUBMIT FORM CU-12	Form CU-12 must be submitted to the assessing officials in the municipality where the land is located.
APPEAL	Pursuant to RSA 79-A:9 and 79-A:11, if the assessing officials deny in whole or in part any application for Current Use, or grant a different Current Use classification than that applied for, the applicant may appeal to either the NH Board of Tax and Land Appeals or to the Superior Court. Applicants must appeal within 6 months after notification of such action by the assessing officials.
AMERICANS WITH DISABILITIES ACT	Services provided by the Department of Revenue Administration are compliant with Title II of the Americans with Disabilities Act. To contact the ADA coordinator call (603) 271-2318. TTY/TDD Relay Service for the deaf or speech impaired individuals call 1-800-735-2964.

CU-12
Instructions
Rev. 2/00

CURRENT USE FORMS

FOR REGISTER OF DEEDS USE ONLY

FORM

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

A-5

LAND USE CHANGE TAX

STEP 1 PROPERTY OWNER (S)

PLEASE TYPE OR PRINT	LAST NAME		FIRST NAME	
	LAST NAME		FIRST NAME	
	STREET ADDRESS			
	ADDRESS (continued)			
	TOWN/CITY		STATE	ZIP CODE

STEP 2 PROPERTY LOCATION

PLEASE TYPE OR PRINT	STREET					
	TOWN/CITY				COUNTY	
	NUMBER OF ACRES		CHECK ONE: PARTIAL RELEASE <input type="checkbox"/> FULL RELEASE <input type="checkbox"/>		BOOK #	PAGE #
	MAP #	LOT #	MAP #	LOT #	MAP #	LOT #

STEP 3 LOCAL IDENTIFICATION OF LAND BEING DISQUALIFIED

(a) Owners Name of Record When Land Was First Classified	Book #	Page #
(b) Number of Acres Originally Classified		
(c) Number of Acres Previously Disqualified		
(d) Acres Disqualified per this Assessment		
(e) Number of Acres Remaining in Current Use [3(b) minus 3(c) and 3(d)]		

STEP 4 ASSESSMENT OF LAND USE CHANGE TAX

(a) Narrative description of the disqualification:	
(b) Actual Date of Change in Use (MM/DD/YYYY)	
(c) Full and True value at Time of Change in Use	\$
(d) Land Use Change Tax (Step 4(c) x 10%)	\$

CURRENT USE FORMS

FORM

A-5

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

LAND USE CHANGE TAX

STEP 5 SIGNATURES OF A MAJORITY OF SELECTMEN/ASSESSORS

TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE
TYPE OR PRINT NAME (in black ink)	SIGNATURE (in black ink)	DATE

STEP 6 LAND USE CHANGE TAX NOTICE (TO BE COMPLETED BY LOCAL ASSESSING OFFICIALS)

PLEASE TYPE OR PRINT	LAST NAME	FIRST NAME
	ADDRESS	
	ADDRESS (continued)	
	TOWN/CITY	STATE ZIP CODE
(a) Date of Release (MM/DD/YYYY)		
(b) Date of Bill (MM/DD/YYYY)		
(c) Full and True Value at Time of Change in Use		\$
(d) Total Tax Due		\$

STEP 7 CHECKS PAYABLE TO AND MAILED TO (TO BE COMPLETED BY TAX COLLECTOR)

(a) Make Check Payable to:		
(b) Mail To:	NAME	
	ADDRESS	
	TOWN/CITY	STATE ZIP CODE
(c) Tax Collector's Office Location:		
(d) Tax Collector's Office Hours:		
(e) Include a separate check in the amount of \$ _____ Payable to _____ County Register of Deeds for recording fee.		
(f) Payment of this tax is due no later than 30 days after mailing of this bill. Interest, at the rate of 18% per annum, shall be due if this tax is not paid on or before _____		

STEP 8 ACKNOWLEDGMENT OF PAYMENT

SIGNATURE (in black ink) OF TAX COLLECTOR	DATE PAID
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CURRENT USE FORMS

FORM
A-5

NEWHAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION LAND USE CHANGE TAX INSTRUCTIONS

GENERAL INSTRUCTIONS

WHO MUST FILE	Local assessing officials shall complete Form A-5, Land Use Change Tax, to assess the use change tax on current use land where property previously classified as open space land and assessed at current use values on or after April 1, 1974 is changed to a use which does not qualify for current use assessment.
WHAT TO FILE	The Form A-5 shall be prepared by the local assessing officials and an original and two copies shall be submitted to the tax collector for collection of land use change tax. In accordance with Cub 308.03(e) Form A-5 shall serve as a warrant with which the tax collector shall collect the tax. The tax collector shall ensure that a copy of these instructions are provided to the land owner advising them of their appeal rights.
WHEN TO FILE	Pursuant to RSA 79-A:7,VI(d), payment of Land Use Change Tax, together with the recording fees due the Register of Deeds, is due within 30 days after mailing of the tax bill. Interest at a rate of 18% will accrue on any unpaid tax after 30 days.
WHERE TO FILE	Once completed and signed in black ink, this form and attachments shall be filed as follows: Original: Register of Deeds Copy: Local Assessing Officials Copy: Land Owner Copy: Local Tax Collector
APPEALS	Within 2 months of the notice of the tax date, and not afterwards, a land owner may apply in writing to the Selectmen or Assessors for an abatement of the Land Use Change Tax. If the Selectmen or Assessors neglect or refuse to abate the Land Use Change Tax, any person aggrieved may either apply in writing to the Board of Tax and Land Appeals or petition the County Superior Court within 8 months of the notice of the tax in accordance with RSA 79-A:10 or RSA 79-A:11. Forms for appealing to the Board of Tax and Land Appeals may be obtained from the NH Board of Tax and Land Appeals, 107 Pleasant Street, Concord, NH 03301 or by calling (603) 271-2578 or by visiting their web site at www.state.nh.us/btla . Be sure to specify that you are appealing the Land Use Change tax.
ADA	Individuals who need auxiliary aids for effective communication in programs and services of the department are invited to make their needs and preferences known to the NH Department of Revenue Administration.
NEED HELP	Contact your local municipality or the Community Services Division at (603) 271-2687.

LINE-BY-LINE INSTRUCTIONS

STEP 1	Enter the complete name(s), address, municipality, state and zip code of the present owner(s) being assessed the Land Use Change Tax in accordance with RSA 79-A:7. If there is more than two owners, submit a supplemental list of all owners names of record.
STEP 2	Enter the property location information of the land being disqualified in the spaces provided. Check whether this is a partial release or a full release.
STEP 3	(a) Enter name and address of the owners of record when the land was first classified under Current Use, including the Book and Page where it was recorded. (b) Enter the number of acres originally classified under Current Use Assessment. (c) Enter the number of acres previously disqualified from Current Use Assessment. (d) Enter the number of acres disqualified per this Assessment. (e) Enter the number of acres remaining in Current Use Assessment. [Steps 3(b) minus 3(c) and 3(d)].
STEP 4	(a) Provide a brief narrative description of the property subject to disqualification. (i.e. forest land converted to house lots.) (b) Enter the actual date of change in use in the following format: MM/DD/YYYY. (c) Enter the full and true value of the disqualified property at the time of the change in use. (d) Calculate the Land Use Change Tax by multiplying Step 4(c) by 10%. Enter the result on Step 4(d).
STEP 5	Signatures, in black ink, of a majority of the local selectmen/assessors in the spaces provided indicates approval.
STEP 6	Enter the name and mailing address of the present owners responsible for payment of tax. (a) Enter the actual date of the change in Use. [Same as Step 4(b)]. (b) Enter the date of the Current Use Change tax bill. (c) Enter the Full and True Value of the land subject to Current Use Change as provided in RSA 75:1. [Same as Step 4(d)]. (d) Enter the Land Use Change Tax Due as calculated on page 1 Step 4(d).
STEP 7	(a) Enter the municipality to which checks are to be made payable. This should be the municipality in which the disqualified property is located. (b) Enter the name of the tax collector and the applicable mailing address to which payments should be remitted. (c) Enter the tax collector's office location. (d) Enter the hours of operation for the local tax collector. (e) Enter the applicable lien release recording fee to be remitted to the County Registry of Deeds and the proper county to which the fee is due. (f) Enter the final date the taxpayer has to pay the bill to avoid penalties.
STEP 8	The tax collector must sign and date in black ink to indicate when the tax is paid and then shall remit the original Form A-5 with the recording fee to the County Registry of Deeds.

CURRENT USE BOARD MEMBERS

IF YOU HAVE QUESTIONS ABOUT CURRENT USE: You may contact your local assessing officials, a Current Use Board member listed below, or the NH Department of Revenue Administration at (603) 271-2687.

Member	Representing	Address	Term Length	Term
Sen. Richard Green	Senate	15 Nola Ave. Rochester, NH 03867	N/A	Coterminous w/ Senate term
Rep. Donald Philbrick	House of Representatives	PO Box 1 Conway, NH 03818	N/A	Coterminous w/ House term
Stephen Taylor	Dept. of Agriculture	PO Box 2042 Concord, NH 03302	N/A	Employment /Appointment
Philip Bryce	Dept. of Resources & Economic Development	PO Box 1856 Concord, NH 03302	N/A	Employment /Appointment
William Trumble	Life Science & Agric., UNH - Dean	UNH - Office of the Dean 59 College Rd. Durham, NH 03824	N/A	Employment /Appointment
Guy Petell	Dept. of Revenue Administration	PO Box 487 Concord, NH 03302	N/A	Employment /Appointment
Marjory Swope	NH Conservation Commission	54 Portsmouth St. Concord, NH 03301	N/A	Employment /Appointment
Charles Bridges	NH Fish & Game	2 Hazen Dr. Concord, NH 03301	N/A	Employment /Appointment
Robert Berti	Town < 5000 Population	PO Box 93 Rumney, NH 03266	2 Years	1/7/2004 - 12/23/2005
Normand Pelletier	Town > 5000 Population	Town of Salem 33 Geremonty Dr. Salem, NH 03079	2 Years	12/20/1989 - 12/23/2007
David Woodward	City Official	Milan, NH	2 Years	12/15/2004 - 3/15/2006
David Tellman	Public - Forest Land	122 The Lane Dr. Whitefield, NH 03598	N/A	12/20/2000 - 9/9/2007
Sheila Stone	Public - Farm Land	PO Box 335 Cornish Flat, NH 03746	N/A	9/8/2004 - 11/16/2006
Thomas Thomson	Public	RR 1 Box 94 Orford, NH 03777	N/A	12/20/1995 - 11/16/2006

SUMMARY OF 2006 CURRENT USE ASSESSMENT RANGES

FARMLAND	\$25 - \$425 per acre	*****
FOREST LAND	Forest Land <u>with</u> Documented Stewardship	Forest Land <u>without</u> Documented Stewardship
White Pine	\$73 - \$130 per acre	\$126 - \$191 per acre
Hardwood	\$15 - \$44 per acre	\$62 - \$94 per acre
All Other (Including Naturally Seeded Christmas Trees)	\$49 - \$94 per acre	\$99 - \$150 per acre
UNPRODUCTIVE LAND Including Wetland	\$15 per acre	*****