State Of New Hampshire Current Use Criteria Booklet

for

April 1, 2015 to March 31, 2016

Current Use Law (RSA 79-A)	Pages 1 – 12
Current Use Rules (Cub 300)	Pages 13 – 25
Current Use Handbook	Pages 26 – 31
Supplemental Information	Pages 27– 40

Additional copies of the Current Use Booklet can be obtained:

On the department web site at: http://revenue.nh.gov/current-use/booklets.htm

On CD at no charge by sending a self-addressed stamped disc-envelope and a blank CD to

NH Dept of Revenue Administration
Current Use Board
PO Box 487, Concord, NH 03302-0487.

For a fee at the NH State Library, Reference and Information Bureau,
20 Park Street, Concord, NH 03301. Telephone: (603) 271-2144.

MESSAGE FROM THE CURRENT USE BOARD

Dear Current Use Constituent:

This CURRENT USE CRITERIA BOOKLET contains laws (RSA's), administrative rules (referred to as Cub's), and a Current Use handbook section that summarizes the current use laws and rules and provides taxpayers and municipal officials the steps to follow to enroll land in current use.

The Current Use Board held three public forums across the State in the fall of 2014 in Albany, North Haverhill and Concord. The public forums provide taxpayers and municipal officials the opportunity to hear and comment on any changes the Current Use Board is proposing to the Cub rules. The forums provide the Board members the opportunity to hear questions, comments and concerns about the current use program from taxpayers and municipal officials. Participation from taxpayers and municipal officials is essential in the administration of the current use program.

For the 2015 tax year, the Current Use Board adjusted the assessment ranges for forest land based on the output of 100% of the new forest land assessment model. The new model is easier to understand and provides a defendable methodology. The model incorporates current data on timber acre types, volume and growth rates, product volumes, stumpage values, and forest land management costs. The Current Use Board will continue to refine the inputs to the model as additional information becomes available. The 2015 forest land values can be found in this booklet in Cub 304.07, Assessment Ranges for Forest Land Categories and Cub 304.08, Assessment Ranges for Forest Land Categories with Documented Stewardship.

The Current Use Board will hold the 2015 public forums in the fall. Once the dates, times and locations of the public forums are set, the information will be posted on the Department of Revenue website, the House and Senate Legislative Calendars, in the local municipalities and in as many newspapers as possible. The members of the Board appreciate the time and input taxpayers and municipal officials offer.

Questions pertaining to the current use program can be directed to any of the Current Use Board members, by mail to the Current Use Board, PO Box 487, Concord, NH 03302-0487, in person at 109 Pleasant Street Concord, by e-mail at cub@dra.nh.gov or by calling (603) 230-5096.

Sincerely,

The Current Use Board

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NOTE: The statutes provided in this booklet, while believed to be accurate, are provided for informational purposes only. The statutes, taken from the State of New Hampshire website, are based on updates as of January 1, 2015. For the official version of any statute, please consult the bound volumes and supplements of the New Hampshire Revised Statutes Annotated, published by West, a Thomson business. Complete copies of RSA 79-A and RSA 212:34 with source notes can be found on the State of New Hampshire website at www.nh.gov/government/laws.html.

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.

In this chapter:

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 solely for growing forest or agricultural crops, 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 not to exceed 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.

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 or her position as assessing official or for 2 years, whichever is shorter, and until a 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 or have been certified under RSA 21-J:14-f, except for the commissioner of the department of revenue administration or the commissioner's designee.

(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 director of the New Hampshire association of conservation commissions, or designee.

(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.

The board shall have the following powers and duties:

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.

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.

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. The tax imposed by this section is a tax on the change of use of the land and not a tax on the land itself. The property tax exemptions under RSA 72:23 shall not apply to the land use change tax and no person or entity shall be exempt from payment of the land use change tax.

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, or by the responsible party pursuant to RSA 79-A:7.VI(e), 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 or responsible party 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 18 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 18 months of the date the local assessing officials actually discover that the land use change tax is due and payable. Upon receipt of payment, but except for proceedings under RSA 79-A:7, VI(e), 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 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-g, I.

(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 or against the responsible party pursuant to RSA 79-A:7, VI(e). Furthermore, such liens shall continue for a period of 24 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 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 shown thereon which are under the same ownership, and large enough to remain qualified for current use assessment; 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 the land is required to remain undeveloped to satisfy density, setback, or other local, state, or federal requirements as part of the approval of a plan of a contiguous development area, such land shall be considered changed to a use which does not qualify for current use assessment at the time any portion of such development area is physically changed to a non-qualifying use. However, application of the land use change tax to such development area shall continue to be in accordance with subparagraph (a).

(c) When a road is constructed or utilities installed pursuant to a condominium development plan, only the development area shall be removed from current use along with the percentage interest in the open space land assigned to the unit or units within that development area.

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.

(e) A road is constructed on an existing right-of-way on current use land solely for the purpose of access to an adjoining lot where the owner of the land in current use does no other activity changing the use of the land under this section and does not share any ownership interest in the adjoining lot. Provided, however, and notwithstanding any other provision of law to the contrary, that if such road construction on an existing right-of-way would constitute a change in use if done by the owner of the land in current use, then the owner of such adjoining property utilizing the road for access shall be responsible for and shall be assessed the land use change tax penalty on such land as provided for in this section, although such land in current use shall remain in current use. Enforcement and collection proceedings shall be applied to the party responsible for the payment of the penalty under this subparagraph.

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.

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:

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 to 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.

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.

(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.

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 to 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.

RSA 212:34 - Duty of Care

212:34 Duty of Care. –

I. In this section:

(a) "Charge" means a payment or fee paid by a person to the landowner for entry upon, or use of the premises, for outdoor recreational activity.

(b) "Landowner" means an owner, lessee, holder of an easement, occupant of the premises, or person managing, controlling, or overseeing the premises on behalf of such owner, lessee, holder of an easement, or occupant of the premises.

(c) "Outdoor recreational activity" means outdoor recreational pursuits including, but not limited to, hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling as defined in RSA 215-C:1, XV, operating an OHRV as defined in RSA 215-A:1, V, hiking, ice and rock climbing or bouldering, or sightseeing upon or removing fuel wood from the premises.

(d) "Premises" means the land owned, managed, controlled, or overseen by the landowner upon which the outdoor recreational activity subject to this section occurs.

(e) "Ancillary facilities" means facilities commonly associated with outdoor recreational activities, including but not limited to, parking lots, warming shelters, restrooms, outhouses, bridges, and culverts.

II. A landowner owes no duty of care to keep the premises safe for entry or use by others for outdoor recreational activity 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 V.

II-a. Except as provided in paragraph V, a landowner who permits the use of his or her land for outdoor recreational activity pursuant to this section and who does not charge a fee or seek any other consideration in exchange for allowing such use, owes no duty of care to persons on the premises who are engaged in the construction, maintenance, or expansion of trails or ancillary facilities for outdoor recreational activity.

III. A landowner who gives permission to another to enter or use the premises for outdoor recreational activity does not thereby:

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

(b) Confer to 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 V.

IV. Any warning given by a landowner, whether oral or by sign, guard, or issued by other means, shall not be the basis of liability for a claim that such warning was inadequate or insufficient unless otherwise required under subparagraph V(a).

V. 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;

(b) For injury suffered in any case where permission to enter or use the premises for outdoor recreational activity was granted for a charge other than the consideration if any, paid to said landowner by the state;

(c) When the injury was caused by acts of persons to whom permission to enter or use the premises for outdoor recreational activity was granted, to third persons as to whom the landowner

owed a duty to keep the premises safe or to warn of danger; or

(d) When the injury suffered was caused by the intentional act of the landowner.

VI. Except as provided in paragraph V, no cause of action shall exist for a person injured using the premises as provided in paragraph II, engaged in the construction, maintenance, or expansion of trails or ancillary facilities as provided in paragraph II-a, or given permission as provided in paragraph III.

VII. If, as to any action against a landowner, the court finds against the claimant because of the application of this section, it shall determine whether the claimant had a reasonable basis for bringing the action, and if no reasonable basis is found, shall order the claimant to pay for the reasonable attorneys' fees and costs incurred by the landowner in defending against the action.

Effective January 14, 2014

NOTE: Complete copies of Cub 100, Cub 200, and Cub 300 rules with source notes, effective March 10, 2010, can be found at Administrative Rules, 25 Capitol Street, Room 217, Concord, NH 03301 or on the Department of Revenue website at www.nh.gov/revenue.

CHAPTER Cub 100 ORGANIZATIONAL RULES

CHAPTER Cub 200 PRACTICES AND PROCEDURES

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 area" means that area within a development plan which is undergoing physical changes as referenced in Cub 301.01.

Cub 301.06 "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 301.07 "Highest and best use" means that use which will most likely produce the highest market value, greatest financial return, or the most profit.

Cub 301.08 "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 301.09 "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 301.10 "Undeveloped land" means any land which is not used for residential, commercial, or industrial purposes, other than the growing of farm and forest products.

Cub 301.11 "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(b)(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).

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 304.16 and Cub 304.17, 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;

(12) Oilseeds; or

(13) Short rotation tree fiber farming.

(b) Land containing roads constructed in support of agricultural or horticultural activities, as defined in RSA 21:34-a, shall remain in current use.

(c) Land containing roads to provide access to non-agricultural or non-horticultural structures or residences shall not remain in current use.

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 farmland.

(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 the soil;

b. The climate and elevation;

c. Physical geography; or

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

(5) "Type", as referenced in RSA 79-A:2, V, means the mix of tree species, as listed in Cub 304.06(a).

(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.

(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(b)(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.

Cub 304.13 Assessment Range for Unproductive Land. The assessment for unproductive land shall be $18 per acre.

Cub 304.14 Assessment Range for Wetland. The assessment for wetland shall be $18 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 or responsible party at the time of change by completing Form A-5, "Land Use Change Tax", as described in Cub 309.02.

(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.

(c) 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; or

(2) Development occurs which changes the condition of the land so as to disqualify it from open space assessment.

(d) If the purchaser in (c)(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.

(e) An adjoining property owner who constructs a right-of-way road pursuant to RSA 79-A:7 VI, (e), on a parcel of current use land shall be subject to the land use change tax.

Cub 307.02 Development Other Than Condominiums.

(a) 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 and any land in the development area shall be removed from current use.

(b) Any lot or site, or combination of adjacent lots or sites shown thereon, which are under identical ownership 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, the entire development parcel shall be considered changed at the time any construction of the road or development begins.

(b) When individual land use change tax bills are issued, they shall be assessed at the time any construction of the road or development begins.

(c) The percentage of ownership interest in the condominium declaration language shall be used to calculate the amount of land value attributed to each unit when individual land use change tax bills are issued.

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.

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 complied 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, "Land Use Change Tax", 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 or, pursuant to RSA 79-A:7, II, the responsible party.

(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", as approved by the board, by April 15 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 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 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;

(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.

(c) A copy of Form A-10 shall be retained by the landowner or the landowner's agent at the time the application is submitted.

(d) 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.

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

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

(a) Assessing officials shall assess the use change tax on current use land by completing, Form A-5, "Land Use Change Tax", as approved by the board, and in compliance with the New Hampshire county registry of deeds requirements.

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

(c) 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 owner or responsible party for the tax;

(3) Retained by tax collector; and

(4) Retained by local assessing officials.

(d) The copies in Cub 309.02 (c)(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 A-5W, Current Use: Land Use Change Tax Collector's Warrant. Assessing officials shall submit Form A-5W, Current Use: Land Use Change Tax Collectors Warrant, as approved by the board, to the tax collector to serve as a warrant with which the tax collector shall collect the tax.

Cub 309.04 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)c. 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," "Revised 02/2014," as approved by the board, with the local assessing officials in the municipality where the land is located.

(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(b)(1); and

(3) A summary of all information required by Cub 304.09(a)(3)c.

(c) The local assessing officials shall:

(1) Approve or deny the plan;

(2) Provide the reason for denial, if applicable; and

(3) Date sign 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 79A:11; or

(b) The superior court, pursuant to RSA 79-A:11, in the county in which the property is located.

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. The application is available from the local assessing officials, on the web at www.revenue.nh.gov, or by contacting the Department of Revenue Administration, PO Box 487, Concord, NH 03302-0487. See Cub 309.01 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.

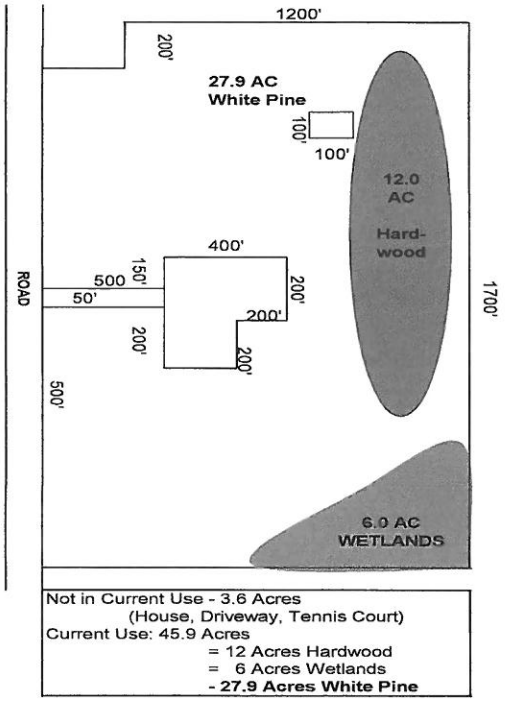
See RSA 79-A:5,I, Cub 301.07, and Cub 304.04 for further details.

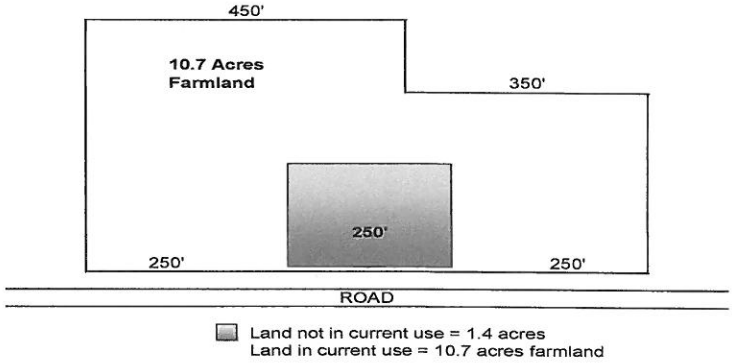
(4) For forest land, which is under the "Forest Land with Documented Stewardship" category, the landowner must submit the items listed under Cub 304.09(a). In lieu of a forest stewardship plan, the landowner may submit a completed Form CU-12 "Summary of Forest Stewardship Plan for Current Use Assessment."

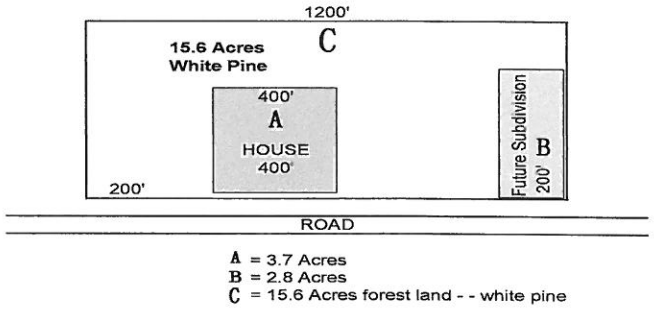
(5) An applicant may withdraw the application in the same year in which it was submitted, provided the municipality has not recorded the application with the County Registry of Deeds (Cub 302.04).

EXAMPLES OF THE TYPE OF MAP TO BE SUBMITTED

FOR CURRENT USE ASSESSMENT







B. <u>Assessing Officials' Responsibilities</u>.

(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(d)(2)b.).

(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(d)(2)a.).

C. <u>Contingent Lien</u>.

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. <u>Farmland</u>

(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.

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	$400
Sample SPI of .60	X .60
Subtotal	$240
Low end of range added back	+ $25
Per acre assessed value	**$ 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. he 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(a) 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(a) 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, Summary of Forest

Stewardship Plan for Current Use Assessment, 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 that 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 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. A copy of one type of current use assessment matrix is included on page 31 to help assessors determine the valuation in accordance with the "class, grade, type, and location of the land."

If a landowner is dissatisfied with the assessor's determination and wishes to challenge the forest land assessment, Cub 304.11 (a) provides two 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 on page 29-30 under IV-E Appeal Procedures.

(3) Clear Cutting.

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

C. <u>Unproductive Land</u>

(1) Assessment.

Unproductive land is land that 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. <u>Buildings in Current Use</u>.

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 303.02). Buildings, appurtenances and other improvements shall be assessed at ad valorem value (RSA 75:1).

B. <u>Equalization of Current Use Land</u>.

The 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 median 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 that 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

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 that 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 308.02 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).

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. For land that is developed as condominiums and planned unit/cluster developments where common land is used to satisfy density requirements, other specific rules apply. See RSA 79-A:7, V(b), Cub 307.02, and Cub 307.03.

D. Land Use Change Tax Bill.

The land use change tax bill shall be assessed and mailed within 18 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 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 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, Municipal and Property Division by mail at PO Box 487, Concord, NH 03302-0487, or by phone at (603) 230-5950. Forms can also be obtained by visiting the department's website at http://www.revenue.nh.gov/forms

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

Property Owner's Signature_____ Date _____