

Current Use Questions

By:

Norm Bernaiche

CUB Member and Director of Assessing-Hanover

11-16-2022

This is a joint effort of the Current Use Board (CUB), the NH Department of Revenue Administration (DRA) and the NH Association of Assessing Officials (NHAAO).

The purpose of this presentation is to provide answers to commonly asked questions about the current use program. This is a working document and once complete, will be available on the Department of Revenue website's Current Use page.

Current Use Questions

Q. Can a property owner post current use land against mechanized and off-road vehicles and still qualify for the recreation adjustment?

A. **Yes. Pursuant to RSA 79 A:4 II., the only activities you cannot prohibit to receive the recreation adjustment are:**

- ✓ **Skiing**
- ✓ **Snowshoeing**
- ✓ **Fishing**
- ✓ **Hunting**
- ✓ **Hiking**
- ✓ **Nature Observation**

Note: Property enrolled in current use may be posted against all activities if not receiving the recreational discount.

Current Use Questions

Q1. How can someone tell if a parcel of land is receiving the 20% recreation adjustment?

Q2. Who manages and enforces the current use categories?

A1. This information is maintained in the municipality's assessing software; some property records cards reflect this information, some do not. You may request this information from the town's assessing office or assessor.

A2. The municipal assessing officials and the assessor are responsible for maintaining current use records and categories.

Current Use Questions

Q. We are looking to purchase an 11-acre property with 10-acres in current use. If we were to purchase the property, would we be able to build a home on the 1-acre that is not in current use, or would we have to pay the land use change tax to remove the 10-acres from current use before we can build?

A. Yes, you can build on the 1-acre if the improvements and development area (curtilage *Cub 301.05*) remain within the 1-acre identified as not in current use.

However, if the improvements and development area exceed the 1-acre not in current use, the entire 11-acre property would be disqualified.

The land use change tax is issued at the time of the change in use (when the blade hits the ground), when the owner notifies the town, or when the Town discovers the change.

Current Use Questions

- Q. How do we know if a portion of a current use property is not in current use? Or could it be anywhere?
- A. There should be a map on file for the property at the Town Office that identifies the acre(s) not in current use. The not in current use acres cannot “float.”
(See Cub 301.11 “Map”)**

Current Use Questions

- Q. A current use property, categorized as wetland, sold. The new owner had a survey performed and found that the tract, including land designated as not in current use (NICU), was less than 10-acres.
- A. **The Town should remove the property from current use without issuing a land use change tax penalty and release the lien.**

Current Use Questions

Q. What should I do if an original A-10, Application for Current Use, was filed for 5-acres of wetland but the subsequent delineation indicates 3-acres?

A. **Form CU-18, Notice of Change to Current Use Assessment, should be completed and filed with the Town to correct the acreage size.**

Current Use Questions

Q. How does the Current Use Board interpret RSA 79-F:4 I.(a) regarding farm building depreciation in the town's annual assessment?

A. RSA 79-F is a locally adopted exemption and is not under the purview of the Current Use Board.

Current Use Questions

Q. I am looking to purchase a parcel of land in NH that is in current use. Is the 10% tax based on the value of the entire 16-acres or just the number of acres we would be taking out of current use?

A. The 10% land use change tax applies only to the portion of land that is considered changed. (RSA 79-A:7 IV. (a)-(c))

Current Use Questions

Q. I am interested in buying a property that is being subdivided from a 14-acre current use farmland. I am looking to put a temporary structure, a tiny house, on the land. The land is 3.2 acres. I was wondering who normally pays the 10% penalty, the buyer or seller.

A. The owner of the property at the time of the change in use is responsible for paying the 10% land use change tax. In this case, the buyer. (See RSA 79-A:7 II. and Cub 308.01 "Owner at the time of the change")

Current Use Questions

Q. What is the timeframe in which I would receive a land use change tax bill?

A. A land use change tax bill is due and payable at the time of the change in use. The town has 18-months from the date the assessing officials receive written notice of the change of use from the landowner or from the date of the discovery of the change by the local assessing officials, to mail the bill. (RSA 79-A:7 II. (c))

Current Use Questions

Q. Are there any other fees associated with the land use change tax?

A. There is a recording fee associated with the County Registry of Deeds for the lien release. The fee is typically between \$15-\$25, payable by the owner.

Current Use Questions

A 43-acre property in current use clear cuts approximately 20-acres.

Q1. How long does the property owner have to notify the Town of a change in current use category?

A1. If the purpose of the clear cut was to convert forest land to farmland, the owner shall notify the Town, in writing or by filing form CU-18, Notice of Change in Current Use Assessment, with an updated map, at the time the change in use occurs.

However, if the purposes was to promote further forest growth, there would not be a change to report.

Q2. With this type of change, at what point would this come out of current use?

A2. A clear cut does not disqualify a property from current use.

Current Use Questions

Q1. When a property has an approved subdivision plan that requires “open space”, does the open space stay in current use or is it considered open space with no land use change tax (LUCT)?

A1. The open space required for a subdivision’s common area or land required to satisfy the density, setback, or other conditions, should come out of current use and issued a land use change tax.

(See Cub 307.02 Development Other Than Condominiums and Cub 307.03 Condominium Developments)

Current Use Questions

Q. If a property is transferred to a municipality, does it remain classified as current use?

A. Yes. Current use is permanent unless there is a disqualifying change in use.

(RSA 79-A:7 and Cub 307.01 When Current Use Land is Changed)

Current Use Questions

Q1. Does placing a conservation easement on a property enrolled in current use disqualify it from current use and no land use change tax penalty is applied?

A1. No. A conservation easement does not disqualify a property from being enrolled in current use. A conservation easement simply encumbers land against development (reducing its bundle of rights).

Q2. Does placing a conservation restriction assessment (RSA 79-B) on a property enrolled in current use disqualify it from current use and no land use change tax penalty is applied?

A2. No. Pursuant to RSA 79-A:7 VI. (d), land under current use assessment is eligible for conservation restriction assessment (RSA 79-B) and may change from current use assessment to conservation restriction assessment with no land use change tax being applied.

However, if a conservation restriction assessment is violated, an inconsistent use penalty is imposed, and the land shall not longer qualify for this assessment.

Current Use Questions

Two current use properties have been merged into one property.

Q1. How do we make sure the land stays in current use?

Q2. Is a new and complete application since the property has been newly merged or can we just use the original applications for both the properties and just document the merger?

A1. Once land is enrolled in current use, only a disqualifying event can remove it. A merger of parcels is not considered a disqualifying event.

A2. The owner may complete and submit form CU-18, Notice of Change in Current Use Assessment and an updated map, to the Town to document the change.

Current Use Questions

Q. Does a purchaser of land subject to current use need to reapply for current use if there are no changes being made to the land by the purchaser?

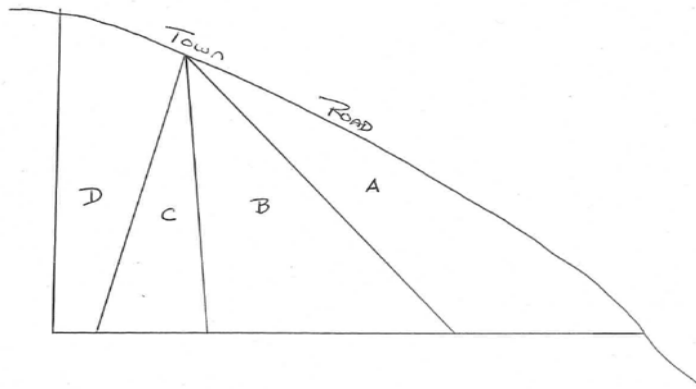
A. No.

Current Use Questions

Based on the illustration:

Q1. Would parcels A & C be considered contiguous?

Q2. Would parcels A & D be considered contiguous?



A. Cub 301.04 “Contiguous parcels” states in part, “means more than one parcel of land, having identical ownership, which is connected [...],” As all parcels meet at a “point,” both A & C and A & D, would be considered contiguous.

Current Use Questions

Q1. What is the process to remove 1-acre of land from current use to build on.

Q2. I am trying to find a copy of the current use information for this particular property. The town office is only open 1-day per week with a small window.

A1. Current use land cannot be removed. It comes out when a disqualifying event occurs such construction for a driveway, septic or house. A land use change tax will be issued for the portion of land needed for the structure and supporting areas (See Cub 301.05 “Curtilage”)

A2. All current use property record cards are maintained at the Municipal Office.

Current Use Questions

Q. My husband and I recently purchased a property that has 12 acres of forest. We would like to take out 2 acres so we can develop a small camp. What are the proper steps to take to do so please?

A. Apply for a building permit with the Town. This will notify the assessing office of the change. Only the area for the camp and supporting areas (*Cub 301.05 Curtilage*) will be removed from current use.

Note: In this case, if the improved or developed area exceeds 2-acres, the entire 12-acre parcel will be disqualified and a land use change tax issue for the 12-acres.

Current Use Questions

Q. If someone updates their current use assessment using form CU-18, Notice of Change in Current Use Assessment, does that have to be recorded at the Registry of Deeds?

A. Form CU-18 is not recorded at the registry. The form is used to document changes on current use property and is kept in the property file at the Town.

Current Use Questions

Q. Is it permissible to change where a section of “not in current use” land is?

A. **No, this is not allowed. This was known as the “floating acre theory.”** The details required on a current use map to identify not in current use land (NICU) include boundary dimensions and acreage. *(See Cub 301.11 “Map”)*

Current Use Questions

Q. How can a parcel under 10-acres be in current use?

- A1. Multiple, contiguous, smaller tracts (*Cub 301.20*) under the same ownership, that total 10-acres or more.**
- A2. Farmland that produces \$2,500 gross income from crops. *This must be documented. (See Cub 304.01 Current Use Acreage Requirement.)***
- A3. Wetlands (*As defined in RSA 79-A:2 XIV. and Cub 304.09 Current Use Assessment of Unproductive Land*)**

Current Use Questions

Q. When do you typically take land out of current use?

A. Current use land must undergo a change in use (disqualifying event) to come out of current use (See RSA 79-7 IV. And Cub 307.01 When Current Use Land is Changed)

Disqualifying events include:

- **Construction causing physical changes in the earth**
- **Excavation of topsoil, gravel or minerals (*with exceptions*)**
- **By reason of size**

Current Use Questions

Q1. Is camping in tents allowed on current use land?

A1. Camping in tents is allowed on current use land without the use of structures or improvements.

Current Use Questions

Q. We have a 300-acre property in current use, and it was suggested that we that place the property in an LLC to protect our family's personal property and finances in the event someone gets hurt on the land.

- Would that effect the current use status?
- Would it effect the discounted property taxes?

A. Changing the ownership to an LLC would have no effect on the current use status or current use assessment.

Landowner Liability. 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 with RSA 79-A:4, II, bear no additional liability other than the duty of care defined in RSA 212:34.

Current Use Questions

Q. Should new current use values be equalized?

A. Yes. New current use values should be entered into the assessing software (CAMA System). Once entered, the median ratio is applied.

Current Use Questions

Q. Is there a standard procedure for tracking current use history from original application through future ownership and/or subdivision history?

A. No, there is no standard process or procedure. Many municipalities have developed their own process to ensure a document trail in each current use file as a matter of best assessing practices.

Current Use Questions

Q. What are the requirements for having less than 10-acres in current use in the farmland category?

A. Cub 304.01 Acreage Requirement

(a)(5) Explains the requirement of demonstrating \$2,500 gross income was earned from the sale of crops grown on the land

Cub 307.05 When Farm Land Does Not Produce \$2,500 Annual Gross Income

Owner must demonstrate gross income of \$2,500 was earned from the sale of non-processed crops for 4 out of 5 previous years or land is considered changed and land use change tax imposed

Current Use Questions

Q. A landowner owns two 8-acre tracts separated by a road. An abutter with land in enrolled in current use buys one of the 8-acre parcels. Will a current use penalty be assessed?

A1. The buyer must notify the municipal assessing officials within 60 days of the purchase. If done, no land use change tax applies.

If the buyer fails to notify the municipal assessing officials within 60-days from the date of the sale, he will be charged a land use change tax for the 8-acres purchased. (*Cub 307.01 (c)(1)(b)*)

A2. The seller will be charged a land use change tax for his 8-acres as this parcel no longer qualifies for the 10-acre minimum.

Current Use Questions

Q. Can we cut and stump the trees in a potential building envelope and proposed septic system while keeping the property in current use?

A. Yes. Clearing and stumping the land does not necessarily change its use.

Current Use Questions

Q. What is the methodology used to calculate the current use assessment ranges per acre?

A. The Current Use Board (CUB) is charged with determining current use assessment ranges each year. The Department of Revenue Administration (DRA), in conjunction with the Department of Natural and Cultural Resources (DNCR), develop the annual current use assessment ranges, for approval by the CUB, using a forest land valuation model. The model incorporates industry data, discount rate and discounted cash flow.

The model is available upon request to the DRA.