



# A Layperson's Guide to New Hampshire Current Use

**SPACE • STATEWIDE PROGRAM OF ACTION TO CONSERVE OUR ENVIRONMENT**  
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# A Message from Governor John Lynch—2007:



*Current Use's greatest strength is its ability to preserve New Hampshire open space for a wide variety of users and uses.*



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**T**hank you for your interest in the current use law. As Governor of the State of New Hampshire, I want to ensure we are able to maintain a strong economy, while preserving the unique character of our state.

**In New Hampshire**, we know that our high quality of life depends on our breathtaking landscape and traditional land uses. That is why, in 1973, the New Hampshire General Court created the Current Use law to encourage the preservation of undeveloped farm and forested lands.

Since its inception, nearly 3 million acres have been enrolled in the Current Use program. Approximately half of that land is open to the public for hiking, fishing, hunting, nature observation, snowshoeing and skiing.



**Today, we continue to work hard** to balance growth and preservation. The Current Use program helps to ensure that the New Hampshire we all love will be preserved for generations to come.

**John H. Lynch**, Governor

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SPACE wishes to thank [Monadnock Paper Mills](#) of Bennington, NH for their generous assistance in providing their fine line of Astrolite printing papers for this brochure.



**There at the beginning:**

*Richard Kelley, Paul Bofinger, Miriam Jackson and Tudor Richards show off the original "Yes on 7" license plate.*

# The History & Importance of Current Use

## A Message from Former Governor Walter M. Peterson

Let me take you back over 40 years, to the late 1960's. New Hampshire's population was growing, and our mostly rural state was giving way to poorly-planned subdivisions, strip malls and roads. Land values were rising as never before. Increasing property taxes were forcing farmers and woodlot owners to sell their lands. Traditional industries of agriculture and forestry were threatened.

What commenced was one of the most successful citizen's campaigns to amend the state constitution in our history. "YES on 7" became the rally cry of a broad-based coalition known as SPACE (Statewide Program of Action to Conserve our Environment) intent on providing a constitutional mechanism to allow land to be taxed based upon its "current use value," and not its "highest and best use value," as the constitution then required.

**In 1968, on the same ballot** in which I was voted in as Governor, Proposition 7 was approved by the people of New Hampshire by the necessary two-thirds majority.

A short five years later, on July 1, 1973, the NH General Court enacted RSA 79-A, the current use taxation law, to meet the constitutional directive and ensure fair taxation of undeveloped farm and forest lands. New Hampshire was not alone in this effort; many other growing states were busy enacting similar statutes.

In 1998, New Hampshire landmark current use law celebrates 25 years as one of the nation's simplest and most effective open space taxation programs. As we've grown ever more dependent on the property tax to fund municipal services, the importance of current use has also grown.

**Today, nearly 3 million acres** (almost 60% of the state's taxable private land) are enrolled in the program by some 27,000 landowners. Contrary to popular notions, the average family with land in current use has below average median household income. For these and many other New Hampshire landowners, current use is the vital means by which they can afford to keep their lands.

Current use has worked well to achieve its original purpose. And, while not without occasional legislative tinkering, the law has remained remarkably similar to the original law passed in 1973. This is no accident; our lawmakers understand and have strongly supported current use taxation over the years.

In a state where tourism is an important component of the economy, it's important to reflect on the value of fair taxation of undeveloped land. The rural scenery—the farm vistas and forested country roads, appreciated by visitors and residents alike—is testament to the foresight of leading citizens and lawmakers a quarter century ago.

**Today, New Hampshire is growing** once again. And while a strong economy is good, so too is this visionary program that helps to retain the special character of the Granite State. Let's make sure current use is around for the future. For if we do, we can be sure that the New Hampshire we all love will be conserved for the benefits of future generations.



**Walter Peterson, Governor, State of NH, 1969-1973**



# Key Aspects of The Law

## Common Questions Answered

*"It is hereby declared to be in the public interest to encourage reservation 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."*

**NH Current Use Law RSA 79-A**



*Whether farm, forest or wetlands, Current Use protects and preserves New Hampshire's abundant natural resources.*



### **What is Current Use?**

Current use is a taxing strategy aimed at making it easier for landowners to keep their open space undeveloped. Instead of being taxed at its real estate market value, land is taxed on its income-producing capability. In other words, land is taxed as a woodlot, or a farm, not as a potential site for houses. Current use keeps property taxes at a lower, more predictable rate.

### **What kind of land is in Current Use?**

Undeveloped farm land, forest land, certified tree farms, and Christmas tree farms may all enroll in current use. Other land, such as wetlands and other sites unsuitable for agriculture or forest products are also covered by the law. Typically, land holdings must be at least 10 acres, but owners of smaller wetland parcels or land devoted to agriculture may also be eligible. Buildings and other improvements, such as driveways and septic systems, or "curtilage" land that is needed to support surrounding structures are excluded from current use.

### **How does land get into Current Use?**

No land automatically becomes enrolled in current use. Landowners must apply to their town, committing their land to open space conservation. The selectmen, town forester, or other assessing official appraises the land using criteria established by the state Current Use Board. Like other types of real estate, this valuation is equalized annually for the purpose of assessing taxes. Forms needed to enroll are the A-10 or CU-12.

### **What happens when there is a change in use?**

When land is developed, or an owner otherwise changes its use to one not qualifying for current use, a land use change tax (LUCT) is charged. Currently, the rate is at 10 percent of the "full and true value" (ad valorem) of the land, and is usually assessed at the time the physical change occurs.

### **What happens when land in Current Use is sold or transferred?**

Current use runs with the land. There is no buyout.

### **How are Current Use rates set?**

Every year, the state Current Use Board establishes the criteria and rates to be used for the following year. Public comment is solicited in forums held around the state. The Current Use Board carefully reviews market prices for agricultural and forest products to establish the land's income earning potential, and sets the current use assessment rates using this information.

### ***What is the Current Use Board?***

Membership on the board is established by state law. Three members represent towns and cities; two are legislators. Others include state commissioners, the director of Fish & Game, a representative of town conservation commissions, and three members of the public, two of whom must own farm or forest land. Each public member is appointed by the Governor, and approved by the Executive Council. For a current list of CU Board members, please call 603-271-2687.

### ***What happens if I apply for current use and I am turned down by the town assessing officials?***

If the assessing officials deny in whole 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 payment of a set filing fee, apply to such CU Board for a review of the action of the assessing officials. — *State of New Hampshire Current Use Criteria Booklet (page 6).*

### ***Where can I obtain a copy of the State of New Hampshire Current Use Criteria Booklet?***

Copies of this booklet can be downloaded at the website [www.nh.gov.revenue/currentuse.html](http://www.nh.gov.revenue/currentuse.html), or on a CD disc at no charge by sending a self-addressed stamped disc-envelope and a blank disc or CD to the NH Department of Revenue Administration, Current Use Board, PO Box 48, Concord, NH 03301, telephone 603-271-2239. Or, for a fee of \$5.00, SPACE would be happy to send you a copy.

### ***Does current use encourage good forest management?***

The Current Use Board recognizes that there are extra costs for well-managed land. Owners who meet criteria for responsible land stewardship may receive lower assessments. To qualify, owners must document their present forestry conditions, past accomplishments, and plans for forest improvement and harvest.

### ***Can land in current use be posted against trespassing?***

Yes, although very little actually is. Owners receive additional tax savings if they keep their land open and without fee all year for hunting, fishing, snowshoeing, hiking, skiing and nature observation. Please ask your town officials about filing for a recreational discount.





# Open Space Pays

## Value That Exceeds Cost

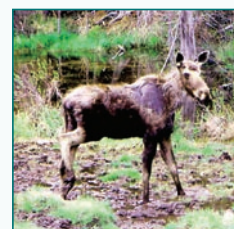
In New Hampshire, property taxes pay for the lion's share of government services. As the state grows, each public dollar at all levels of government is stretched further and further. Understandably, towns seek new and expanded sources of tax revenue.

The Current Use Program often comes under scrutiny because it taxes land at its income-earning capability, not its development value. However, recent studies of New Hampshire communities show that open space lands have a value that easily exceeds their costs.

**“Cost of Community Services” studies** compare the costs of residential, commercial/industrial, and open space land. The results are clear — *residential development often costs communities far more than they generate in revenues.* With more housing comes more demand for schools, water & sewer, landfills, roads, and other municipal services.

Open space, in comparison, more than pays for itself. The modest tax revenue generated by the working landscape of farms, forests and other undeveloped land consistently exceeds the cost of the minimal public services they require. The ratio of costs to services for open space and commercial/industrial land are often very similar. Of course, commercial/industrial land is assessed at a much higher rate than land in current use, but commercial/industrial properties demand far greater public services, such as fire and police protection.

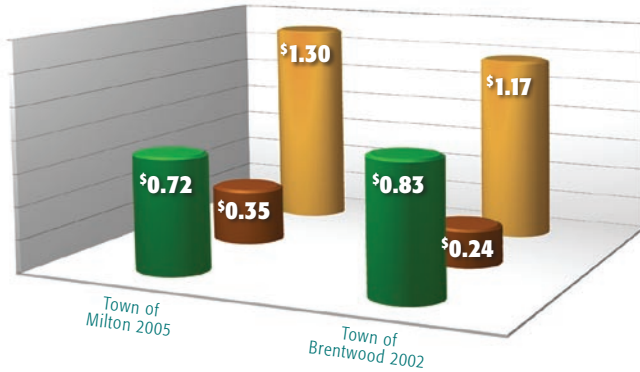
**The full value of open space** to communities goes beyond immediate tax revenues. There are values inherent in supporting the state's traditional forestry and agriculture industries; in keeping scenic rural landscape in attracting tourists; in maintaining habitat for game and non-game species of wildlife. There is emerging evidence that residential property near open space is more valuable. And, open space land helps stabilize property tax rates. It has been shown that tax bills for median-value homes are lower in communities with more undeveloped land per year-round resident.\*



\* Sources: UNH Cooperative Extension Service; Peterborough Conservation Commission; American Farmland Trust; Ad-Hoc Associates

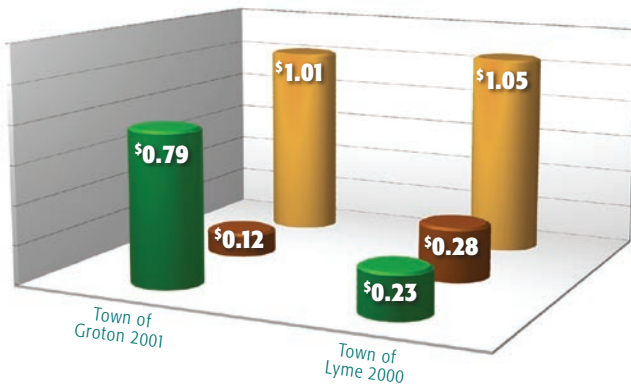
Services required per \$1 of tax revenue

■ = Open Space ■ = Commercial/Industrial Land ■ = Residential Land



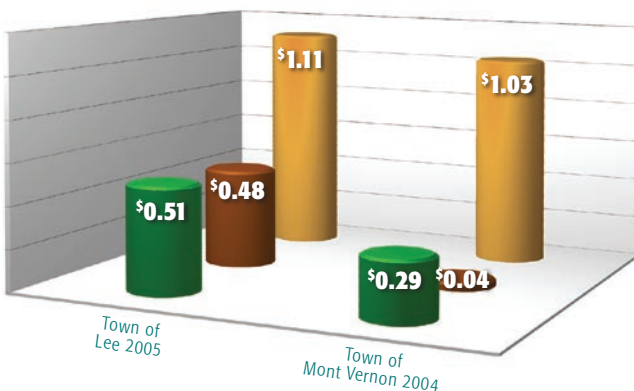
“Clearly, open space pays its way in Milton.”

– Town of Milton COCS Study (2005)



“Groton clearly benefits economically from the presence of a high percentage of land in privately owned open space.”

– Town of Groton COCS (2001)



“According to the American Farmland Trust, the median nationwide COCS were: Residential \$1.15, Commercial \$0.28, and Open Space \$0.36.”

– Town of Lee COCS Study (2005)

## “Cost of Community Services” Studies

help towns plan for and manage growth. They provide town officials and residents with a better understanding of the relation between land use and the demand for municipal services. Studies of six New Hampshire towns (see charts) indicate that, **for each dollar of tax revenues generated, open space land requires less than one dollar in public services.** The same cannot be said for residential development. These studies join others conducted in New England that show open space land returns more in property taxes than it costs in public services. These studies are not anti-development; they are simply a tool for local officials to understand their property tax situation more thoroughly, so informed decisions can be made.

**Towns interested in conducting a COCS study may contact SPACE for an application and consideration.**

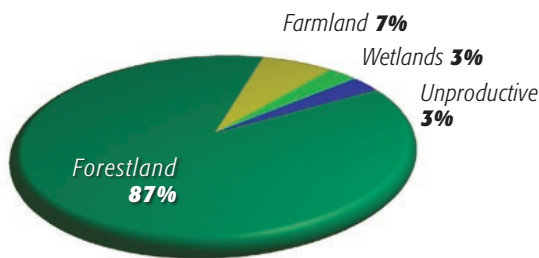
Source: S. MacFaden, *Cost of Community Services Study*, Peterborough Conservation Commission *Cost of Community Services*



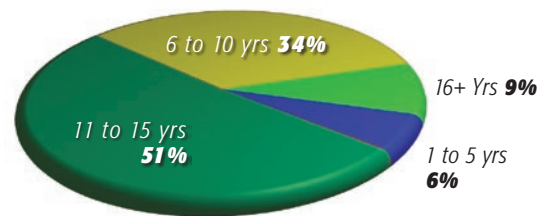
Over half of New Hampshire's 5.74 million acres are in current use. This land is owned by a representative cross section of the state's citizens. Most of it is owned by low- and middle-income families, many of whom have held it for many years. Large parcels make up a relatively small portion of current use ownerships. And, by far, state residents own the land.

# Land in Current Use

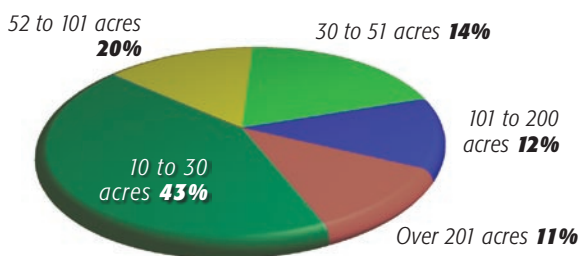
## Who Owns It?



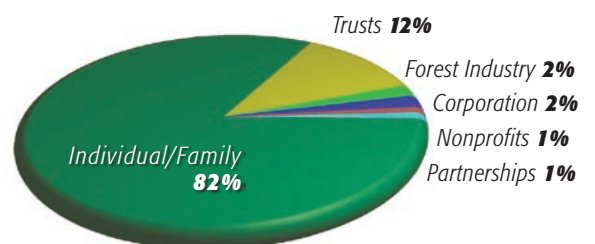
Land in Current Use



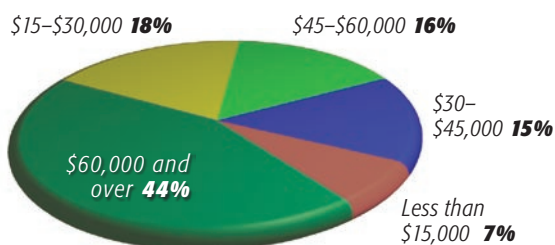
Years Land Enrolled in Current Use



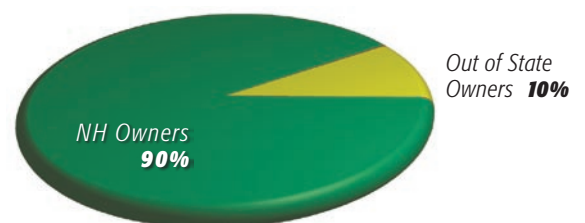
Acres of Land Enrolled



Distribution of Current Use Landowners



Annual Income of Households with Land Enrolled in Current Use



Current Use Ownership by Residency



**W**hen land is developed, do towns get back the taxes they forego when land was put into current use? The answer is an undeniable "yes." The mechanism is the Land Use Change Tax. This 10 percent tax is assessed on the full market value of land when it leaves the current use program.

Studies of the Land Use Change Tax (LUCT) show that when land comes out of current use, towns receive all of their foregone tax revenue, and then some. In 2005, 10,342.35 acres of land came out of current use in ten New Hampshire counties. The towns with acreage removed were able to collect over \$21.9 million through the Land Use Change Tax, and out of this \$21.9 million collected in LUCT, 58% went to the various towns' conservation funds and 42% to the towns' general fund. The amount varies from town to town.

*Source: State of NH Department of Revenue, 2006 Current Use Report, Acreage, Percentages & Other Stats (page 11)*



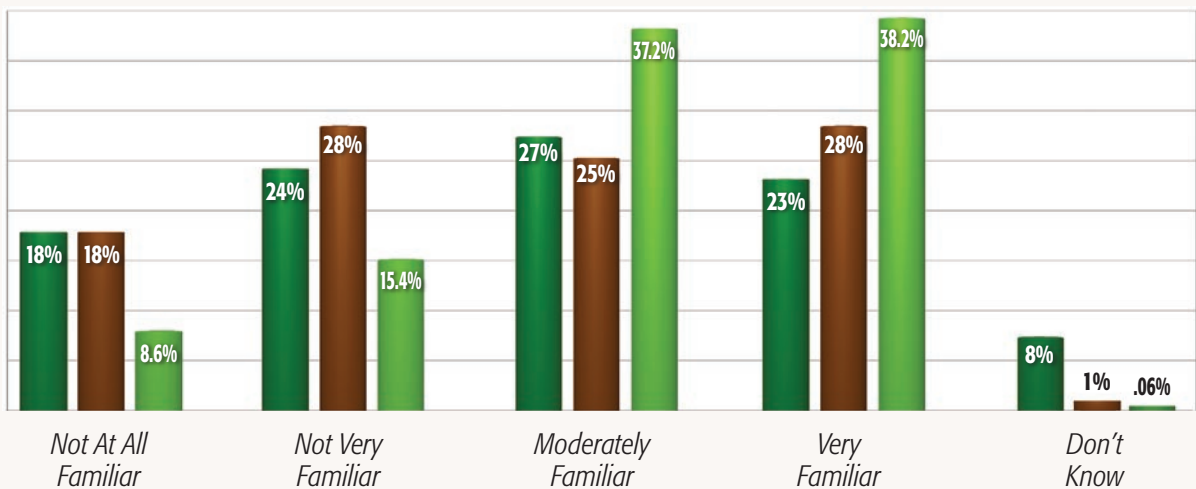
**"Taxpayers are adequately reimbursed for their investment in open space."**

*Dr. Douglas E. Morris, UNH Dept. of Resource Economics, 1989*

### Familiarity With Land Use Change Tax

*Pan Atlantic-SMS Group 2007 Survey Result*

■ = 1993 (N=400) ■ = 2001 (N=460) ■ = 2007 (N=500)



**"Studies indicate that as open space land appreciates in value, towns are more than able to recapture revenue through the Land Use Change Tax".**

*Dr. Douglas E. Morris, UNH Dept. of Resource Economics, 1989*

# Current Use A Legal History

*The Current Use Program is a legislative initiative that continues to be refined by the Legislature and the Current Use Board.*

*During its 35-year history, legal opinions have also served to shape and clarify the purpose, scope, and intent of the program.*



## *New Hampshire Board of Tax and Land Appeals—Order*

“The board rules the Town’s uniform practice of using the high end value of the CU forest land assessment ranges, without making any distinctions or adjustments for the physical characteristics of the land, is not in accordance with applicable law and must be corrected. The board orders the Town, beginning with tax year 2002, to reassess all CU forest land to comply with the applicable statute and the rules adopted by the Current Use Board (“CUB”).

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

“Regulations promulgated by an administrative agency, such as the CUB, have the force of law and are ‘binding on the town’ unless and until challenged by any town subject to those regulations. *Blue Mountain Forest Assn. v. Town of Croydon*, 119 N.H. 202, 204-05 (1979).”

*Town of Marlow, Docket #1847801RA, (7/30/01) at pages 2 & 3*

## ***New Hampshire Supreme Court Decision***

“First, the purpose of the current use system is not to facilitate development of land as the plaintiff suggests. To the contrary, the current use system was developed to encourage the preservation of open space in New Hampshire. See RSA 79-A:1.”

*Tyler Road Development Corp v.*

*Town of Londonderry, 145 N.H. 615 (2000) at page 618*

The Current Use Program has played a critical role in encouraging the conservation of open space since 1973. If anything, its place as a tool for maintaining forest and agricultural land will only grow in importance, as New Hampshire faces even greater pressures from growth resulting in urban and rural sprawl.

**New Hampshire's population has nearly doubled**

in the last 35 years. At approximately 13,240 new residents a year, the state's population continues to grow. The state Division of Forest and Lands estimates that annually, an average of 13,000 acres of forest land is lost to residential and commercial development. *2006 Population Estimates of NH Cities and Towns (NH OEP) (2007)*

In its "Agenda for Continued Economic Opportunity," the state Business and Industry Association asserts, "We want New Hampshire to continue to be a state where the physical elements of quality of life—environmental quality, historic architecture, and the visual aesthetics of the countryside—are important to us and are preserved."

**The Division of Forests and Lands** calls the current use law "the best tool currently available for conserving forest land." The Northern Forest Land Council, in its report "Finding Common Ground," called current use valuation "essential for helping landowners maintain their land in forest uses." It recommended that states strengthen their current use tax programs, and cited aspects of New Hampshire's program as a worthy model.

Our link with the past is through our future. An effective current use program, by encouraging the conservation of well-managed forests and agricultural land, helps maintain the identity of New Hampshire's history and heritage.

**SPACE and all of New Hampshire's** current use landowners have this opportunity to assist the State of New Hampshire in achieving this goal, so that in another thirty-five years, scenes such as these don't become archived into a historical photo journal, and reflect something we all lost sight of along the way.



# A Final Overview

## Current Use ... A Law that Works



**Current SPACE  
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*In Memory of* Michael Yatsevitch

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Printing by  
Sherwin-Dodge, Littleton NH

*The Statewide Program of Action to Conserve our Environment (SPACE) is New Hampshire's Current Use Coalition. It is a private, not-for-profit advocacy coalition of groups dedicated to conserving open space land. Formed in 1966, SPACE led the grassroots campaign to amend the state constitution to allow for current use valuation of real estate.*

*SPACE is active in all aspects of the Current Use law. Its work includes advocacy, education, supporting research, and working with the state and towns on the administration and monitoring of the New Hampshire Current Use Program.*

*Autumn 2007 rev*

**SPACE Organizational Members**

Audubon Society  
Of New Hampshire  
Harris Center For  
Conservation Education

New England  
Forestry Foundation  
New Hampshire Association  
Of Conservation Commissions

New Hampshire Farm  
Bureau Federation  
New Hampshire Fruit  
Growers Association  
New Hampshire Local  
Government Center

New Hampshire  
Snowmobile Association  
New Hampshire Timberland  
Owners Association  
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