



STATEWIDE PROGRAM OF ACTION TO CONSERVE OUR ENVIRONMENT

SPACE SUMMER NEWSLETTER

JULY 2010

Letter from the SPACE Board Chairman:

Dear Current Use Landowners:

The very first thing I would like to do is offer a big **THANK YOU** to all who have donated to SPACE during our annual drive. We are doing very, very well, especially considering the down economy, and are close to meeting our goal. The generosity of current use landowners, combined with the hard work of your Board of Directors to reduce budget expenses, puts us in a better financial position than anticipated.



One of the statistics of which I am most proud is that 28% of this year's donors are first-time givers. Three hundred and forty people, so far, have donated for the first time since the program began back in 1973. It is also gratifying to note that some 1,125 people continue to donate generously to support SPACE's work. Note that there are presently over 36,000 landowners in current use (DRA 2008).

One of your Board of Directors' actions to reduce expenses was the elimination of the annual mailing to all current use landowners of record who had not donated since the inception of the program 37 years ago. This reduced our expenditures by approximately \$9,000 and eliminated about 22,000 letters. We did, however, continue to place an envelope in each SPACE newsletter in hopes of attracting some new, first-time givers. We were excited by the response. Thanks to all that support our work. If all landowners gave something, we would be on very solid financial ground.

Your lobbyist, Tim O'Connell, did an exemplary job at the legislature again this year. One particularly complicated bill intended to extend the period that assessors/towns have to send out a Change of Use tax bill. This change would have done away with the indefinite look-back period, effectively meaning the town could not collect a Change of Use Tax if it were discovered more than 18 months from the date of the change. SPACE which advocates for the law itself and not just for the land owner or the town, felt that the towns deserved to be able to continue to collect the land use change tax for an indefinite period. We were successful in seeing that the change was not made.

During the past months we have seen assessing "gymnastics." This is not a complete list but it will give you an idea of some of our concerns: fences being considered structures and removed as curtilage; land being assessed at a higher value because it is next to current use property; and less than an acre being removed from current use and assessed an LUCT at the full acre house lot value. As advocates for the Current Use Law, SPACE appreciates and encourages landowners to give us a "heads up" when situations arise that could cause concern.

As the deficit problem increases at the State level, it is even more important that we keep a closer eye on events occurring at the end of a legislative session, the time of year when "things happen." A few years ago it was a surprise attack on the Change of Use Tax, which with quick notification of current use landowners we were able to kill. This type of attack is likely to continue as the needs of the state and towns to raise more revenue increases.

Thanks to your financial help we are in a position to fend off changes that threaten the current use law. We appreciate your continued generous support of SPACE.

David L. Babson

David L. Babson, SPACE Board Chair



LEGISLATIVE UPDATE: THE OUTCOME OF ALL CURRENT USE BILLS THAT WERE HEARD BY THE NH GENERAL COURT IN THE 2010 SESSION

by *Tim O'Connell*

2010 Legislative Summary

Overall the 2010 Legislative Session was relatively quiet but a successful one for the positions that the SPACE Board of Directors advocated for on bills that affect NH's Current Use Law. Such bills are listed below along with the House and Senate sponsors.

S B 400-Relative to assessment of the land use change tax. (Sen. DeVries, Reps. Patten, Theberge, Cooney)

The bill would remove the requirement that the Land Use Change Tax (LUCT) shall be due and payable when a site in current use no longer qualifies because of size. The bill therefore would remove the 10 acre minimum for undeveloped land in a development plan. The bill was strongly opposed by SPACE, and with support from the NH Home Builder's Association the Senate moved the bill to Interim Study, in effect killing the bill for this session.

HB 1250-Clarifying that a quorum of the current use board is not required to hold public forums. (Reps. Patten, Pilotte, Schmidt, Sen. Cilley)

SPACE feels that it is important to have a majority number of Current Use Board members in attendance at the three mandated public forums. The House agreed and voted the bill inexpedient to legislate.

HB 1609-Relative to current use and the land use change tax. (Rep. Owen)

A four part bill that (1) establishes one category for all unproductive land and that the assessed value not exceed the lowest value of any other land category; (2) that the LUCT is not a tax on the land itself but a tax on the change in use of the land; (3) establishes a five year look-back period to discover a non-qualifying change in land use, and (4) clarifies the use of open space land in condominium development sites. The SPACE Board of Directors voted to oppose limiting the look-back period of discovery to five years and in support of leaving the current indefinite look-back period. Ultimately after an initial amendment in the House, and subsequently another in the Senate adjusting the time limits, a final Senate amendment (with SPACE input) to remove any look-back restriction was passed by the Senate, and the House concurred.

HB 1689-Exempting certain non-regulatory boards, commissions, councils, advisory committees, and task forces from repeal on June 30, 2011. (Reps. Harding, Irwin, Sen. Downing)

This bill, which has passed both the House and Senate, removed the Current Use Board and others from a provision that would have eliminated them as of June 30, 2011. The legislative committee that was assigned to recommend exemptions recognized the importance of the Current Use Board in their deliberations.

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CURRENT USE BOARD UPDATE:

The latest minutes of the Current Use Board can be found online at [www.NHDepartment of Revenue Administration](http://www.NHDepartmentofRevenueAdministration) website by searching under **current use**. Any older copies of Current Use Board minutes or notes from past forums may also be downloaded from this site as well.



Photo courtesy: CJ White

Topics discussed were:

Setting the current use rates for 2010-2011

Determining white pine rates in particular, and the public's input on the grading of #3 boards at lumber mills

Possibility of holding a video-conference at one public forum this fall

Finalizing the proposed rule changes put forth to JLCAR for 2010-2011

can no longer afford to send these postcards to all 36,000 current use landowners, but will keep times and dates updated on our website under the NEWS section. Please check back after September 18th after the CU Board's fall board meeting for actual times and locations. Again, this is your opportunity to speak out- please use this opportunity and your voice— squeaking wheels do have an impact!

Friday, Sept 17, regular CUB meeting - time and location to be determined, but it will be during the day in Concord.

Tuesday, Oct 19, first Public Forum in the evening - location to be determined

Tuesday, Oct 26, second Public Forum in the evening - location to be determined

Monday, Nov 8, third Public Forum, in Concord, likely in the morning; followed by CUB meeting.

The CU Board will not determine final locations until their September meeting. They may try a video conference for one of them, depending on the results of the subcommittee's effort this summer. The Current Use Board encourages our readers to make note of the dates and check back with DRA or SPACE in late September for more details.

The CU Board will move forward with the final rule proposals to adopt the following:

Cub 301.05 Definition of "Development area";

Cub 304.07 Assessment Ranges for Forest Land Categories;

Cub 304.08 Assessment Ranges for Forest Land Categories with Documented Stewardship;

Cub 304.13 Assessment Range for Unproductive Land;

Cub 304.14 Assessment Range for Wetland;

Cub 307.02 Development Other Than Condominiums.

Please mark your calendars if you want to attend one or all of the Current Use Board fall forums or meetings. At this time the dates have been selected but locations and times have not yet been confirmed. They will be posted when they become available on the SPACE website. This is the public's opportunity to address issues and concerns directly to members of the Current Use Board, who have the rule making authority to address potential problems.

In the past, the attendance has fluctuated so that the CU Board considered doing away with a quorum of its members at these public forums. Fortunately, that legislation did not pass this year. In the past, SPACE has issued postcards announcing the dates and the times, but due to financial constraints SPACE



Photo courtesy of Donna Robie

Congratulations to Clark & Patricia Page from Loudon, New Hampshire! They were the winners of the SPACE Spring 2010 Kayak Special Promotion. Any contribution of \$100.00 or more made between January 1- May 31, 2010 was eligible.

Pictured is Patricia Clark of Loudon picking up here new kayak package at Eastern Mountain Sports in Concord, NH. They plan to start using it this weekend.

SPACE would like to once again thank Eastern Mountain Sports for their support and for allowing SPACE to fundraise during their special Club Day this past April 2010.

LETTER FROM THE EDITOR: PROPERLY IDENTIFYING “WETLANDS” ON YOUR PROPERTY *by: Donna Marie Robie*

Over the past year, I have been asked several times about how a town determines if a property owner is eligible to enroll their wetlands, especially if those owners own less than the required ten acres for current use enrollment. However, there are several exceptions to that ten acre minimum; among them, **wetlands of any sized may be enrolled.** The section of the current use law that pertains to wetland is cited below.

RSA 79-A: 2, XIV: “Wetland— 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. Assessing officials shall allow a buffer up to 100 feet in depth provided that the land within the buffer is: unimproved and is being left in its natural state without interference with the natural ecological processes.”

Wetlands can be put in current use even if less than the standard 10 acre requirement. As per RSA 79-A:4- “the Current Use Board shall have the following powers and duties: It shall have the power to establish minimum acreage requirement of 10 acres or less.” As is the case in the rule below (CUB 304.01 (b) (5)):



*Sample of wetland marsh.
Photo courtesy of US
Wetlands Delineation
Manual 1987*

**PART Cub 304
ASSESSMENT OF OPEN
SPACE LAND Cub 304.01
Acreage Requirement.**
(b) “Open space land shall consist of: (5) **A tract of unimproved wetland of any size.**”

Thus, the only statute involved in determining what is wetland for current use assessment purposes is the definition used in RSA 79-A:2, XIV. There are no other references in this statute that give precedence to any other statutes dealing with wetlands.

In order to determine how individual towns defined wetlands, I spent many days going through the State of New Hampshire 2008 Current Use Stats report and focused on what each town listed as “wetlands”, and compared them to the individual current use town reports and local town zoning ordinances that I had on hand, where the current use land categories

had been broken down. Again, a vast majority of these town reports gave little clue as to what type of land was enrolled, and therefore I could not extract the information. So, I used those towns that had wetlands listed not only on the State report but at the town level report. I was surprised to see that there were thirty towns which had absolutely “Zero” amount of wetlands listed on the State report. This could mean one of four things: (1) they do not have any wetland; (2) they are only using the RSA 79-A:2, XIII definition and interpretation which states “Unproductive land” means land, including wetlands...,” thus the towns are classifying and grouping all wetland solely as unproductive and therefore enforcing the ten acre minimum requirement to be enrolled so any smaller wetland parcels are being disallowed enrollment into current use; (3) they do not distinguish between the two separate land categories (Unproductive and Wetland) and therefore it does not get broken down on the State of NH Current Use Stats report; or (4) the landowner did not feel compelled or know that his small parcel of wetland was eligible to be enrolled in current use.

I also found many inconsistencies regarding each town’s definition of wetland and what they used as their guideline. Citing other statutes (such as RSA 674:55 or RSA 482-2 definitions of wetlands) for determining enrollment eligibility under RSA 79-A:2, XIV purposes should not take precedence; they are separate RSA’s and cannot be used when assessing current use. With towns where I could decipher the land type, very few had any enrolled parcels of under ten acres of wetland. Some towns had made use of the separate wetland category but had no recorded parcels under ten acres of wetland; where the landowner had at least ten acres or more of combined land types, wetlands were recorded as part of the total ownership. It appeared to me that those towns which allowed wetlands under ten acres had interpreted the enrollment of wetlands as it was intended — **wetlands of any size can be enrolled.**



*Floating Leaves Photo courtesy
of Corps of Engineers Wetlands
Delineation Manual (January 1987)*

Many towns identified all their wetlands in the “Unproductive” category. A potential problem could be that that town is determining that all wetlands must be unproductive, and therefore, one must have at least ten acres of current use land in order to enroll your wetlands based on the description under RSA 79-A-2, XIII.

RSA 79-A:2, XIII. “Unproductive land” means land, **including wetlands, which by its nature is incapable of producing agricultural or forest products due to poor soil or site**

characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products, as determined and classified by criteria developed by the board. The board shall develop only one category for all unproductive land, setting its current use value equal to that of the lowest current use value established by the board for any other category.”

Such unproductive land must consist of ten acres more or less. (See CUB 304.01 (b) (1).

To me, classifying wetlands by only using RSA 79-A:2, XIII when accepting a wetland enrollment means that there can be no viable forest or agricultural products anywhere where there is “wetland” conflicts with the Current Use Law. It specifically states in RSA -79-A:2, XIV that wetland can consist of farm or forest land, which very often is productive and can be of any size, to qualify as wetland. Some towns may literally interpret that there can be no trees in standing water, and are denying smaller parcels of forested wetland enrollment into current use, even though it has been identified by a certified soil or wetland scientist and delineated as wetland. One only has to look at some of these delineation manuals many of the towns use to see that there are quite a few species of trees and plants that in fact do grow in saturated soil conditions.

Again, I refer back to RSA 79-A:2, XIV. **“Wetlands”** means those areas of **farm, forest...**

SPACE believes that the problem lies within the **CU Board Rule 304.12** because it does not establish or state that unimproved wetland may also be productive in some instances. Surely few would deny that a marsh is definitely classified as wetland, but it has the ability to be productive with such products as bedding that is used in stables, etc. There is unimproved, unproductive wetland (CUB 304.12 (a) (2) (a) in that there is virtually nothing being produced, but there is also a lot of unimproved, productive wetland and by law — RSA 79-A:2,



Photo courtesy: CJ White



Photo courtesy of Donna Robie- Crystal Lake –Eaton, NH

XIV. **“Wetlands”** means those areas of **farm, forest...** — is allowed enrollment into current use even if the particular parcel has less than ten acres. The word “productive” should be added under CUB Rule 304.12 (b) (1) and therefore any unimproved, productive wetland should not be grouped with a town’s “Unproductive” category and subject to the interpretation that “by its nature is incapable of producing agricultural or forest crops.” The law provides for the category “wetland” to stand as a separate category.

Here is the rule as it currently appears:

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:** -2008.054jpp

- 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.”

This regulation classifying all wetlands as “Unproductive” is clearly inconsistent with the authorizing statute. It becomes confusing to those trying to enroll and for landowners to know what each town uses as its guideline to determine what actually is eligible for wetland.

Many refer to a state-certified soil or wetland scientist to make that determination, or contact the New Hampshire Department of Environmental Services Wetlands Bureau, or utilize several popular delineations manuals such as the Corps of Engineers Wetlands Delineation Manual (January 1987) or the Classification of Wetlands and Deepwater Habitats of the US (December 1979; reprinted 1992).

The point is that unimproved wetland of any size qualifies for assessment under the Current Use Law. Arguably portions of agricultural land that qualify as wetland under

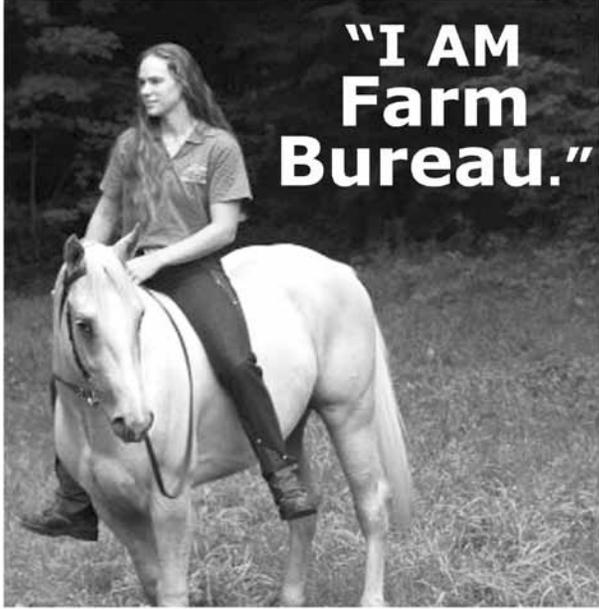
RSA 79-A:2, XIV that are improved do not qualify for current use if under ten acres. However, it is clear that forest land that qualifies as wetlands and are not improved, whether under ten acres or not, qualify for assessment as wetlands. **It is not a matter of whether such lands are also unproductive; they need only be unimproved wetlands to qualify.**

The CU Board rule 301.11 definition of unimproved is: "**Unimproved land** means any land, left in its natural state, which is devoid of structures or other improvements."

SPACE's goal is to make sure that wetlands of any size, when qualified and determined by State guidelines and thus deemed eligible to qualify as "wetlands", are allowed to be enrolled properly across all towns in the State of New Hampshire. Perhaps a rules or legislative clarification should be added.

NOTE from Northam Parr, SPACE Vice-chairman: "No matter the size of "Wetlands" or "Unproductive" land, when enrolled in either category they must be left in their natural states. The low assessment for such land reflects either low economic capacity or inaccessibility, or both, and the "hands-off" dictum must be adhered to by statute. If an owner wants to manage, harvest or exploit lands enrolled as either wetland or unproductive, the category must be changed to either farmland or forestland before such use." See Cub 305.02 (a).

Donna M. Robie



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Please note that in this edition, SPACE has included a donor form and envelope for your convenience if you wish to contribute to SPACE at this time. We apologize for any redundancy to those who have already mailed in their donations. SPACE greatly appreciates those of you who have already sent in a 2010 donation! You may also contribute on our website www.nhspace.org under ABOUT SPACE- Online Donations.

In 2010 with your help, **SPACE** plans to:

Have the best informational website possible;

Start an email 'tree' with collected member emails sent to **SPACE**, for quick notification when something urgent comes up, and the ability to receive electronic copies of newsletters, etc.;

Step up our legislative presence, with our independent lobbyist to better inform legislators and protect your interests;

Hold more informational workshops on current use for tow officials and landowners;





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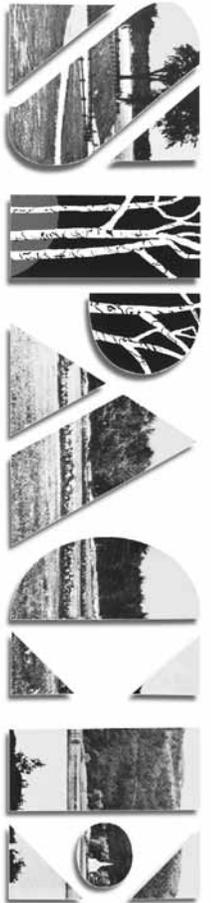
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