

Chapter 6

Jurisdictional

Exceptions

Section 6.1 – Introduction

RSA 75:1 requires that municipalities [appraise](#) all [property](#) at [market value](#) for property tax purposes, with the exception of the following:

[Community Revitalization Tax Relief](#)
[Conservation Restriction Assessment](#)
[Current Use Land](#)
[Discretionary Easements](#)
[Discretionary Preservation Easements](#)
[Earth and Excavation as defined in RSA 72-B](#)
[Farm Structures and Land Under Farm Structures](#)
[Low-Income Housing Tax Credit](#)
[Public Utilities](#)
[Qualifying Historic Buildings](#)
[Residences in Commercial or Industrial Zone Land](#)
[Timber Tax and Determination of Stumpage Value](#)



Arbitrary power is like most other things which are very hard, very liable to be broken.
-Abigail Adams

Section 6.2 – 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.

The Current Use Advisory Board (CUB) consists of 14 appointed members. The Board meets annually to establish current use values for farm land, forest land, unproductive land and wetlands to be effective the following tax year. Before any proposed rule changes are adopted, the Board is required to hold at least three public forums throughout the state to receive general comments through verbal and written testimony.

The CUB has established a minimum acreage requirement of 10 acres for the forestland, farmland, and unproductive categories. Exceptions to the minimum 10-acre requirement can be found under Cub 304.01, including a tract of unimproved wetland of any size and a tract of undeveloped land of any size, actively devoted to the growing of agricultural or horticultural crops.

Applying for Current Use

Owners of land may request current use [classification](#) by filing form A-10, [Application for Current Use Assessment](#), with the local assessing officials on or before April 15 of said year. Assessing officials shall notify the owner no later than July 1 of their decision whether or not to classify the lands. Once approved, the owner does not have to reapply. If the local assessing officials deny [classification](#), owners may, within 6 months after any such action by the assessing officials, [appeal](#) to the Board of Tax and Land Appeals (BTLA) or the Superior Court.



Current Use land must generally be 10 acres, or more, and can be categorized as Forestland, Farmland, or Unproductive.

Click on the link below to view the [Current Use Booklet](#)

[Land](#) classified as current use, which has been changed to a use that does not qualify for current use [assessment](#) shall be subject to a land use change tax. Pursuant to RSA 79-A:7 I, the tax shall be at a rate of 10 percent of the full and true value determined as of the actual date of change in use.

The current use program has been a huge success in the State of New Hampshire. The latest 2018 figures show that 51% of New Hampshire land is enrolled in current use and another 22% of New Hampshire is either state or federal forest. Most of this land is open to recreational use, which includes hunting, fishing, camping and other outdoor activities.

Section 6.3 - RSA 79-B Conservation Restriction Assessment

Conservation restriction is a permanent restriction of open space land granted in perpetuity to a federal, state, county, local or other government body or to a charitable, educational, or other non-profit corporation. A conservation restriction assessment must provide a public benefit by protecting at least one of the following: land for outdoor recreation, a relatively natural habitat for fish, wildlife, plants or similar ecosystem, scenic enjoyment from a public way or waters, or historic land areas.

Conservation Restriction Assessment is an agreement to preserve open space land in perpetuity – or forever.

Applying for Conservation Restriction Assessment

Owners of land may request conservation restriction classification of land in this category by filing form PA-60, [Conservation Restriction Assessment Application](#), with the local assessing officials on or before April 15 of said year. Assessing officials shall notify the owner no later than July 1 of their decision whether or not to classify the lands. Once approved, the owner does not have to reapply. If the local assessing officials deny classification, owners may, within 6 months after any such action by the assessing officials, appeal to the Board of Tax and Land Appeals (BTLA) or the Superior Court.

In valuing land classified with a municipality approved conservation restriction, selectmen or assessing officials must assess the land at values based upon the permanent restrictions, but in no case greater than the fair [market value](#) for open space land, as determined by the Current Use Board.

Section 6.4 - RSA 79-C Discretionary Easements

Discretionary Easements prevent the loss of open space, are an agreement for 10 years or more and must be for a public benefit.

A discretionary easement is an acquisition of development rights by town or city governments on open space land, which provides a demonstrated public benefit, for a term of 10 or more years. The intent of this chapter is to encourage the preservation of open space land, which is potentially subject to development, and to conserve the land, water, forest, agricultural, recreational and wildlife resources of the State.

To qualify for a discretionary easement, the land must demonstrate at least one of the following public benefits: preservation of land for outdoor recreation or education, is a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem, provides scenic enjoyment from a public way or waters, preservation of an historically important land area, the preservation of an airport excluding the value of buildings, runways or other structures, or the preservation of a golf course which meets any of the aforementioned benefits and is open to the general public.

Applying for a Discretionary Easement

An owner of land may request a discretionary easement by filing form PA-36, Discretionary Easement Application, with the governing body on or before April 15 of the tax year. The governing body must weigh the public benefit to be obtained versus the tax revenue to be lost, and notify the applicant of their decision within 60 days. If the governing body denies the application, owners may appeal to the BTLA or the Superior Court.

The method of assessment of a discretionary easement must be included in the terms of the agreement and must fall within the following range of values: the value such land would have been assigned under the current use values established by the Current Use Board had the land met the criteria for current use assessment and 75% of the land's fair market value multiplied by the municipality's current equalization rate.

The local governing body shall have the authority to set the value of the discretionary easement at any level within the above range which they believe reflects the public benefit conferred by the property.

Section 6.5 – RSA 79-D Discretionary Preservation Easements

In 2002, the New Hampshire Legislature passed legislation to create a discretionary preservation easement to encourage the preservation of historic agricultural structures, including the land, currently or formerly used for agricultural purposes. A discretionary preservation easement is an easement of an historic agricultural structure, including the land necessary for the function of the building, granted to a city or town for a term of 10 or more years which provides a demonstrated public benefit.

Discretionary Preservation Easements are also known as Barn Preservation – helping to save some of NH treasured features.

Applying for a Discretionary Preservation Easement

To qualify for a discretionary preservation easement, the structure must demonstrate at least one of the following public benefits: scenic enjoyment from a public way or waters, is historically

important on a local, regional, state, or national level, independently or within an historic district or the structure's physical features contribute to the historic or cultural integrity of a property eligible for listing on the national or state registers of historic places or locally designated historic district.

An owner may apply for a discretionary preservation easement by filing form PA-36A, Discretionary Preservation Easement Application, with the governing body on or before April 15 of the tax year. After a duly noted public hearing, the governing body must weigh the public benefit to be obtained versus the tax revenue to be lost if the easement is granted. The governing body shall have no more than 60 days to act upon the application. If the application is denied, the owner may appeal to the BTLA or the Superior Court.

The method of assessment of discretionary preservation easement structures shall be included in the terms of agreement for any discretionary preservation easement acquired by a municipality. The assessment must fall within the range of 25% to 75% of the full value assessment. The governing body has the discretion to set the value at a level within this range that it believes reflects the public benefit conferred by the property. The assessment shall not be increased as a result of maintenance and repairs to preserve the structure.

However, the assessment can be increased if the municipality undergoes a full revaluation or statistical update. The new assessment should reflect the updated value of the structure as though repairs and maintenance had not been completed.

The assessed value may also be increased if improvements are made. The new assessment should reflect the value of the building plus the new improvements. It should not include the value of repairs and maintenance conducted after the easement is put in place.

Section 6.6 – RSA 79-E Community Revitalization Tax Relief Incentive

In 2006, the Community Revitalization Tax Relief Incentive was passed by the legislature to encourage the revitalization of downtowns, town centers, central business districts, or village centers. The rehabilitation of a qualifying structure must provide at least one of the following public benefits:

- Enhancement of the economic vitality of the downtown.
- Enhance and improve a structure that is culturally or historically important.
- Promotes the preservation and reuse of existing building stock by the rehabilitation of historic structures.
- Promote the development of municipal centers, providing for efficiency, safety, and greater sense of community.
- Increases residential housing in urban or town centers.

When filing an application, a property owner shall also file a covenant with the municipality ensuring the structure will be maintained and used in a manner that further provides for and maintains its public benefit for which the tax relief was granted. If approved, the covenant will be filed with the registry of deeds placing a burden upon the property and shall bind all transferee and assignees of such properties.

The governing body shall hold a duly noted public hearing no later than 60 days from receipt of the application to determine if the structure qualifies; if the rehabilitation qualifies as substantial and if it provides a public benefit. The governing body shall render a decision no later than 45 days after the public hearing. If denied, the denial shall be accompanied by a written explanation. The tax relief shall pertain only to assessment increases due to the substantial rehabilitation.

The duration of the property tax relief period may be extended for:

- A period of up to 5 years, beginning with the completion of the substantial rehabilitation;
- At the governing body's discretion, an additional 2 years for a project resulting in new residential units or 4 years for a project including affordable housing;
- At the governing body's discretion an additional 4 years for the substantial rehabilitation of a qualifying [structure](#) with historic qualifications.

In 2017, coastal resilience incentive zones (CRIZ) were also established to encourage investment as a public benefit by allowing tax relief incentive. Storm surge, sea level rise, and extreme precipitation projections from the 2016 report of the New Hampshire Coastal Risk and Hazards Commission, "Preparing New Hampshire for Projected Storm Surge, Sea-Level Rise, and Extreme Precipitation" and its successor projections may be used by municipalities to identify potentially impacted structures.

When implementing a CRIZ the municipality will determine the resilience measures it considers qualifying, such as but not limited to:

- Elevation and free-board renovations, elevation of mechanicals,
- Elevation of private driveways and sidewalks,
- Construction of resilient natural features, enhancement or creation of tidal marshes,
- Construction or enlargement of private culverts and other structures to enable increased water flow and storm surge,
- Movement of property to higher elevation on the property or to a newly acquired property at a higher elevation within the municipality.

Municipalities may grant tax relief to the qualifying structure and property. Other relief may be provided to properties in a CRIZ that are subject to repeated inundation by acquiring preservation or water control easements or establishing tax increment financing districts.

Section 6.7 – RSA 79-F Taxation of Farm Structures and Land Under Farm Structures

RSA 79-F was established in 2008 to encourage the preservation of the State's productive farms and farm structures that provide a local food supply as well as an attractive environment for recreation, tourism and wildlife. To qualify, the [land](#) under the farm structure must be [contiguous](#) to a minimum of 10 acres of open space land and [appraised](#) at no more than 10 percent of its [market value](#); the qualifying farm structure(s) appraised for no more than their replacement cost less [depreciation](#).

Application to qualify for this assessment must be filed by April 15 with the local assessing officials, in the year the assessment is to be granted on form PA-48, Farm Structures & Land Under Farm Structures Assessment Application, provided by the Department of Revenue Administration.

Prior to July 1 each year, assessing officials shall verify whether previously classified structures and lands have undergone any change in use to the extent they no longer meet the qualifying definitions. If a change in use has occurred, a use change tax of 10 percent of the full value assessment, determined as of the actual date of the use change if such date is not April, shall be billed to the owner.

Section 6.8 - RSA 75:11 Appraisal of Residences (in a Commercial or Industrial Zone)

RSA 75:11 permits the owner of any residence located in an industrial or commercial zone to file Form PA-42, Application for Exemption Residence in An Industrial or Commercial Zone, on or before April 15 of each year, to selectmen or [assessors](#) for a special [appraisal](#) based upon its current use as a residence. The selectmen or assessors shall notify the owner no later than July 1, or within 15 days if filed after July 1, of their decision to accept or reject the application.

If an owner has been granted this special appraisal, but fails to reapply in a future year, the property shall be assessed at its full market value pursuant to [RSA 75:1](#).

Section 6.9 - RSA 72-B Excavation Tax (Earth and Excavation)

Earth”, as defined in [RSA 155-E](#), is exempt from taxation as [real property](#) under [RSA 72:6](#) Real Estate and RSA 72:13 Mines, Sand, Gravel, Loam, or Other Similar Substances. Excavated earth is subject to the excavation tax at a per cubic yard rate as established by [RSA 72-B:1](#). The land upon which the earth is excavated is taxed as real property pursuant to RSA 72:6 without consideration of the value of the “earth” contained therein.

When RSA 72-B was enacted, the legislature made it clear that the statute must be read in conjunction with RSA 155-E to provide a “statewide comprehensive regulatory framework to regulate the excavation of earth.” RSA 155-E is the local regulation of earth excavation and RSA 72-B is the taxation of the excavated earth.

Pursuant to RSA 72-B:8, every tax year and prior to excavating, any owner who intends to excavate must file a form PA-38, Intent to Excavate, for each [parcel](#) that is to be excavated. An administration and enforcement fee of \$100 is required for each parcel estimated to excavate more than 1,000 cubic yards. Exemptions from the enforcement fee and excavation tax can be found under RSA 72-B:1. Excavation cannot be started before the intent has been signed by the assessing officials. **Please note:** Unlike the PA-7, Intent to Cut Wood or Timber, the PA-38, Intent to Excavate, cannot receive an extension.

General Excavation Tax & Gravel Tax Appraiser Information

Approximately 800 Intents & Reports Filed Annually

Assists & Provides Training to Municipalities

Issues Cease & Desist Orders

Makes Court Appearances

An Estimated \$350,000 Collected Statewide

It should also be noted that an “incidental” excavation, which is the result of a construction project, must file a form PA-38 if more than 1,000 cubic yards of earth will leave the property or be stockpiled and not used on the property for alteration or reclamation of the property within the tax year. Earth that is bartered or given away is not exempt from taxation.

Incidental Excavation is one that the municipal regulator of earth excavations or the municipal excavation regulations, have determined to be an exception from an excavation permit pursuant to [RSA 155-E:2-a](#).

At the end of the excavation or the tax year (March 31), whichever comes first, and no later than April 15, Form PA-39, Report of Excavated Material must be filed with the assessing officials and the DRA pursuant to RSA 72-B:9. Upon receipt of the PA-39, the assessing officials have 30 days in which to assess the excavation tax.

Section 6.10 - RSA 79 Forest Conservation and Taxation

By definition, timber is considered to be [real estate](#) and is, therefore, taxable. Timber is taxed at the time it is cut and at a rate which encourages the growing of timber. Timber on all land [ownership](#) is taxable at 10% of the [stumpage value](#).

Stumpage Value is the value of wood at the time of the timber cut.

There are exemptions to the timber tax and for those, a PA-7, Notice of Intent to Cut, is not required. The exemptions are summarized below:

1. Up to 10 MBF saw logs and 20 cords of fuel wood for personal use by the owner;
2. Up to 10 MBF of saw logs and 20 cords of wood for land conversion purposes when all permits have been received;
3. Shade and ornamental trees (usually considered to be within striking distance of a building);
4. Christmas trees, fruit trees and nursery stock and short rotation tree fiber;
5. Any amount of firewood for maple syrup production;
6. Government and utilities not selling the wood.

An owner, who does not qualify for one of the exemptions above, is required to file form PA-7, Notice of Intent to Cut, with the assessing officials either at the beginning of a new tax year or prior to beginning a cutting operation. The assessing officials shall, within 30 days of receiving the intent either approve and sign the intent or send a letter to the owner explaining why the intent was not signed. The assessing officials may not sign the Intent if:

- a. The form has been improperly filled out.
- b. Land is enrolled in the unproductive current use category that does not allow timber harvesting.
- c. A timber tax bond is required but has not been posted.
- d. All owners of record have not signed the intent to cut.

A cutting operation cannot begin until the assessing officials have signed the intent. A supplemental intent is required to be filed for any additional volume to be cut in excess of the

original estimate. Once the intent has been signed by the assessing officials, copies are sent to the DRA and to the Division of Forests and Lands. Once received by the DRA, form PA-8, Report of Wood and Timber Cut and PA-6, Certificate, are mailed to the landowner. The certificate must be posted at the operation [site](#).

Every owner who has filed a PA-7, Notice of Intent to Cut, must then file a form PA-8, Report of Wood and Timber Cut with the local assessing officials and the DRA, within 60 days of completion of the operation or by May 15, whichever comes first. If an extension of the cut has been granted prior to March 31, the operation must be completed by June 30 and the report of cut filed by August 15.

The assessing officials must assess the full and true [stumpage value](#) at the time of the cut and in the same manner as other property values pursuant to [RSA 75:1](#). A yield tax of 10% of the stumpage value is then calculated taking into consideration the quality and location of the timber and the size of the sale.

The following factors should be considered when assessing the stumpage value:

1. Value is based on the most probable price that would be paid, not the average, highest, or lowest price;
2. Value recognizes both the highest and best use of the wood and timber;
3. Value is expressed in terms of money;
4. Value recognizes that the timber was exposed for sale to the [open market](#) for a reasonable time;
5. Value recognizes that both the buyer and seller are informed of the uses to which the wood and timber may be used;
6. Value assumes an arm's length transaction in the open market; in other words, there is no special relationship or collusion between the buyer and seller;
7. Value assumes a willing buyer and willing seller, with no advantage being taken by either party.

If an owner neglects or fails to file a report of cut, or willfully makes any false statement on a notice of intent to cut or report of cut, the assessing officials must determine the volume and stumpage value of the wood and timber actually cut and assess the property owner twice as much as the tax would have been had the report of cut been reported timely and correctly. This penalty is known as [doomage](#).

An owner may [appeal](#) his yield tax in writing to the town within 90 days of the notice of tax from the municipality. If the local assessing officials neglect or refuse to grant an [abatement](#) within 6 months of the notice of tax, the owner can petition the BTLA or the Superior Court of the county where the cutting took place.



*Because things are
the way they are, things will
not stay the way they are.*
Bertolt Brecht

General Timber & Timber Tax Appraiser Information

Approximately 4,000 Intents & Reports Filed Annually

Assists & Provides Training to Municipalities

Issues Cease & Desist Orders

Assists in the Calculation of Stumpage Values

An Estimated \$4 million is Collected Statewide

Section 6.11 – RSA 75:1-a Residential Property Subject to Housing Covenant Under the Low-income Housing Tax Credit Program

Properties subject to housing covenants under the low-income housing tax credit program have the ability to be assessed under [RSA 75:1-a](#). The [assessed value](#) of these properties is determined by the formula given in this statute. See Statute for more detailed information.

Section 6.12 – RSA 82 Railroads and RSA 83-F Public Utilities

Under [RSA 82:2](#), the DRA has long been responsible for the annual assessment of railroads and railroad cars. In 1999, legislation was passed that requires the DRA to determine the value of all utility properties for taxation under [RSA 83-F](#). Municipalities are still responsible for the [valuation](#) of utilities for taxation under RSA 72. RSA 83-F:1 IV, defines a utility as any entity engaged in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas, crude petroleum and refined petroleum products, water, or sewage. RSA 83-F:1 V, defines utility property as all [real estate](#), buildings and structures, machinery, dynamos, apparatus, poles, wires, [fixtures](#) of all kinds and descriptions, and pipelines located in New Hampshire.

As with all other property assessed for property tax purposes, railroad and utility property is assessed at [market value](#) as of April 1 of each year. Railroads, railroad car companies, and utilities file an annual declaration of estimated taxes, and pay quarterly to the DRA. The [tax rate](#) applied to railroad property is calculated each year by the DRA at the average rate of taxation at that time for all other properties throughout the State annually. After receipt of the railroad taxes, the DRA apportions those taxes for distribution as follows:

1. $\frac{1}{4}$ of the taxes paid to the municipality in which any railroad is located.
2. $\frac{1}{4}$ of the taxes paid to a special railroad fund established by [RSA 228:68](#).
3. The remainder for use by the State of New Hampshire.

For utility property, the DRA determines [market value](#) annually by December 1. Notice is sent to the utility on December 15 of each year, and the utilities must remit payment by the next January 15. The billing by the DRA is only for the education tax, and is taxed at the rate of \$6.60 per \$1,000 of assessed [valuation](#).

Utilities are assessed and billed by the DRA for the education tax. However, municipalities can choose to use the DRA assessed value or one determined on their own for local taxation.

Utilities remain liable for local school, municipal, village district/precinct, and county taxes through billing by each municipality. For [equalization](#) purposes, the DRA apportions the total utility value among the individual municipalities where that utility has taxable property. In 2019 HB 700 was enacted by the New Hampshire legislature and signed into law. This new law

establishes a uniform methodology for local property tax purposes of utility company distribution assets. The methodology does not apply to generation or transmission assets. For electric and gas utility company distribution assets, excluding land rights, the value is a weighted average of 70 percent of each asset's original cost and 30 percent of each asset's net book cost. For water utility company distribution assets, it is 25 percent of each asset's original cost and 75 percent of each asset's net book cost. The value of public rights of way and private easements are formulaically estimated to be an additional 3 percent of that value to reflect total market value for these utility assets. There is a 5-year phase period for the implementation of this utility taxation methodology. Statutes added are [RSA 72:8-d](#) and [RSA 78:8-e](#). Statutes amended are [RSA 75:1](#) and [RSA 79-C:3, II](#). This reform was the product of the recommendations of a special legislative commission that was tasked with arriving at a practical solution, thus putting an end to decades of assessment litigation.

Section 6.13 – RSA 79-G Taxation of Qualifying Historic Buildings

RSA 79-G was established in 2013 to encourage the preservation of certain qualifying historic buildings owned and maintained by entities not organized for profit. To qualify, the building must be 100 years or older, listed on either the National Register of Historic Places or the New Hampshire state register of historic places, owned by a not-for-profit entity, have retained a minimum of 75 percent of its original external features and be free of major external alterations or additions, and be maintained for its historical purpose. The assessment for qualifying historic buildings shall be no more than 10 percent of its market value.

The provisions of this Chapter must be adopted by a town or city. Application to qualify for this assessment must be filed by April 15 with the local assessing officials, each year the assessment is to be granted on a form provided by the Department of Revenue Administration.