

**MEMO TO:** Governor Peter Shumlin  
Members of the Vermont Senate  
Members of the Vermont House of Representatives

**FROM:** Audubon Vermont  
Green Mountain Dairy Farmers Cooperative Federation  
NH/VT Christmas Tree Growers Association  
Rural Vermont  
Society of American Foresters, Green Mountain Division  
The Nature Conservancy, Vermont Chapter  
Vermont Assessors and Listers Association  
Vermont Association of Snow Travelers  
Vermont ATV Sportsman's Association  
Vermont Coverts: Woodlands for Wildlife  
Vermont Farm Bureau  
Vermont Forest Products Association  
Vermont Land Trust  
Vermont Natural Resources Council  
Vermont State Grange  
Vermont Traditions Coalition  
Vermont Woodlands Association

**RE:** Recommendations for 2012 Legislative Actions relative to Vermont's Use Value Assessment (Current Use) Program.

**DATE:** December 10, 2012

For the past four years, the Vermont Legislature has debated changes to Vermont's Current Use program to solve the problem of "parking" (short-term enrollment of land planned for development), strengthen the program's administrative efficiency, and address other issues. In 2010, the House and Senate adopted reform legislation (H.485), only to see it vetoed by the Governor. In 2011, the House passed H.237, only to see it die in committee in the Senate. Although some proposals were incorporated in other bills and will improve the efficiency of the program over time (e.g., funds to convert to electronic administration), still other changes have made its administration even more difficult. However, the principal structural defect in Current Use – the lack of an effective deterrent to the enrollment of land not intended for long-term agriculture and forest production – remains unresolved.

Over this period, agricultural and forestry groups, conservation organizations, and municipal officials have worked hard to craft a compromise that is fair to landowners and taxpayers, addresses the abuses seen by municipalities, and makes the program more efficient and effective. Now, at the beginning of the 2013 General Assembly, the organizations listed above have come together to support a four-pronged approach to reform. We believe fervently that the Current Use program is part of the foundation of Vermont's working landscape and essential to the agricultural, forestry, and tourism businesses that depend upon it. With the adoption of these proposals, we believe that the public can be assured of the program's effectiveness and stability, and that participants will have the confidence to make the investments in their farm and forest operations so vital to these industries over the long term.

We urge that the following actions be taken in 2013.

Action #1 – Adopt, in modified form, the Current Use legislation (H.237) passed by the House in 2011.

H.237 curbed “parking” and related problems by strengthening the penalty, or Land Use Change Tax (LUCT), when enrolled land is withdrawn for development. It re-engaged local officials in the administration of Current Use. And it provided landowners with two options to withdraw all or part of their enrolled land, if the change in the penalty was unacceptable. The Joint Fiscal Office estimated that H.237 would have resulted in additional State and local property tax revenues of \$1.46 million per year. After an initial decline, LUCT receipts could yield an estimated \$2.3-\$2.9 million annually, depending upon the LUCT formula used. The Current Use Tax Coalition supports a modified version of H.237 passed by the House in 2011, including a change in the Land Use Change Tax as follows:

- Beginning on October 2, 2013, the Land Use Change Tax would be based on the fair market value of the developed land, rather than on its pro-rated value. The Land Use Change tax would be tiered based on a holding period; continuously enrolled for less than 12 years, the applicable rate would be 10%; if continuously enrolled from 12 to 20 years, 5%; and if continuously enrolled for more than 20 years, 3%. A change in ownership triggers a new holding period, except that transfers to family members and changes in the form of ownership (e.g., personal to LLC) would not interrupt the holding period.
- The determination of the fair market value of the developed land would be based upon the local appraisal schedule adjusted by the Common Level of Appraisal. Local assessing officials will make the initial determination, subject to the landowner’s right of appeal.
- The LUCT would be paid to the Division of Property Valuation and Review, which will send 50% of the proceeds to the municipality in which the developed land is located.
- Because these proposals represent a significant change in the Current Use program, landowners must have the option to withdraw an entire enrolled parcel by October 1, 2013, and pay a LUCT at the old rate only to the extent the LUCT exceeds \$100,000. If they do withdraw the entire parcel, no portion of the parcel may be re-enrolled for five years, unless the entire parcel is re-enrolled. Alternately, landowners may withdraw a portion of their property by October 1, 2013, and pay the old, pro-rated penalty on the withdrawn land. Any land enrolled after October 1, 2013 will be subject to the new LUCT rates, if developed.

Action #2 – Repeal of the Westman Amendment

It is the understanding of the Current Use Tax Coalition that the Administration intends to propose complete repeal of the so-called Westman Amendment. We believe that if the tiered approach discussed in Action #1 is adopted by the Legislature, the Westman Amendment, and the “parking” problem it intended to address, would be solved.

Action #3 – The Role of the Vermont Agricultural and Forest Products Development Board

Section 5 of H.237 listed a number of other Current Use issues that suggested further study either by a legislatively constituted study committee or by volunteer citizen organizations interested in the subjects. The Current Use Tax Coalition is a volunteer organization that has participated in every study and examination of the issues surrounding Current Use taxation. In addition, since H.237 passed the House,

the Vermont Agricultural Development Board has been expanded to include representatives of the forest industry and has been renamed as the Vermont Agricultural and Forest Products Development Board (VAFPDB). The role of the Board is to advise the Governor and State agencies, as well as the Legislature, on policies and programs affecting Vermont's agricultural and forest industries. The Board's sixteen members, appointed by the Governor, House Speaker and Senate Committee on Committees, come from all sectors of the agricultural and forest economy. Recognizing the fundamental importance of Current Use to Vermont's working landscape, the Board also established a subcommittee to look at Current Use issues. Some of the issues that the Board Subcommittee should examine are listed below. These issues have been discussed extensively by the Current Use Tax Coalition without specific resolution at this time. We would encourage collaboration with the VAFPD Board Subcommittee, and offer our expertise on any of these questions.

- The eligibility of agricultural parcels of fewer than 25 acres and the feasibility of developing productivity standards for such parcels;
- The application of the land use change tax to timber harvesting operations after the approved forest management plan has expired and the land is no longer enrolled in use value appraisal;
- The effect of allowing an owner to relocate an undeveloped withdrawn site of two acres or less once within an enrolled parcel without incurring the land use change tax, provided there is no net reduction in the area of enrolled land;
- Creating a system of oversight for agricultural land that is comparable and consistent with the oversight of forestland;
- Deferral of the land use change tax payment for development of on-farm housing.
- Expanding the "hardship" provisions pertaining to the sale of enrolled agricultural land to include enrolled forest land;
- Developing a program for public education about the Current Use program and its importance in retaining Vermont's working landscape;
- Methods by which the state can enhance the long-term financial sustainability of the program without damaging its long-term effectiveness in maintaining working farms, forests, and open space.

#### Action #4 – Provide Guidelines to Towns on Assessment of Conserved Land

One continuing problem that the Coalition has identified is the over-assessment of properties which are restricted by permanent conservation easement. This creates problems for owners whose land is not enrolled in the Current Use program, but increases the cost of the State's reimbursement fund to municipalities when the land is enrolled. The Tax Department has investigated this issue and based on available information did not find that this problem was widespread. At the same time, there do appear to be a number of instances where the Department's analysis suggests that towns should have, but failed to adjust the grand list value to reflect a loss of value associated with the application of a conservation easement.

The Coalition believes that this problem could be alleviated if the Division of Property Valuation and Review provided better guidelines to towns on the assessment of conserved lands. We request that the Legislature direct the Division to develop a consistent methodology or approach for the assessment of land permanently encumbered by a conservation easement.

The organizations listed above are happy to respond to any questions about the four proposed actions. Thank you for your consideration.