

FROM: Representative Charlie Kimbell
TO: Representative David Durfee, Chair, House Agriculture
RE: H.134

Introduction

Disclaimer: I am not an expert in Current Use. It is an extensive chapter in Title 32 of Vermont Statutes, with many nuances, definitions. There have been many initiatives over the years to amend Current Use. H. 134 seeks to make two changes:

1. Make it easier to calculate the Land Use Change Tax that is charged a property owner when a portion of a parcel enrolled in Current Use is withdrawn for development.
2. Exempt withdrawals of land from Current Use for the development of Affordable Housing provided the land is close to a developed area and does not contribute to forest fragmentation.

A constituent of mine reached out to me when he was looking to withdraw 11 acres of his land from current use because he had to sell his land for financial reasons and because he could no longer physically farm the property, and hoping that there was some way to lower the land use change tax. In digging in deeper, I discovered what many of you already know: the process of determining the value of the parcel being withdrawn is complex and takes too long, causing delays in real estate transactions and adding to confusion. Withdrawing land from current use can sometimes impose a penalty that sometimes exceeds the savings in property taxes realized by the owner during the time that he or she has the land in current use. There have been proposals from the Vermont Department of Tax as recently as two years ago, and also from a working group of organizations back in 2009. This is not new.

While I believed that the primary purpose of the current use program was to relieve the financial pressure of high property taxes on farmers and foresters (agriculture and silviculture), I did not fully appreciate the dual charge of the Use Value Appraisal System:

Statutory Purpose of Use Value Appraisal System 32 VSA 3750

The statutory purpose of the Vermont Use Value Appraisal Program in chapter 124 of this title is to preserve the working landscape, preserve the rural character of Vermont, and protect the natural ecological systems and natural resources of the forestland of Vermont.

...and that the Land Use Change Tax is intended, in part, to discourage withdrawals from current use in service to the preservation of the natural ecological systems and natural resources in Vermont.

After introducing H. 134, I was contacted by a local vintner, who has been maintaining a vineyard on a 13 acre parcel of land which he leased from the owner. When he purchased the property from the owner and maintained his vineyard, it was considered to be "developed" and he was assessed a Land Use Change Tax because it was not a minimum of 25 acres. Same land, same use, new tax.

It is cases like these that can fall through the cracks and cause undue burden on the seller or the farmer. H. 134 does not address that, but it is something that your committee may consider if you take up this bill.

The second section of the bill is to encourage development of affordable housing in areas close to growth centers, village centers or neighborhood development areas. We continue to have a housing shortage, and it is common sense that where parcels are well situated, on a public road, close to town, where development won't lead to forest fragmentation, that we encourage the development of housing there. Removing the Land Use Change Tax on the portion of a parcel that is withdrawn for that use removes another barrier from development.

What is fragmentation?

Hardest part may be to determine how to administer a policy of developing housing that doesn't contribute to fragmentation of land that is enrolled in current use. By definition, it will "fragment" the parcel or the block of land. *Oxford Dictionary: the process or state of breaking or being broken into small or separate parts.*

Act 118 of 2014:

Commissioned a report "assessing the current and projected effects of fragmentation on Vermont's forestlands, and providing recommendations, including regulatory and nonregulatory mechanisms, and legislation if appropriate, for how to best protect the integrity of Vermont's forestlands and preserve large blocks of contiguous forestland."

2015 Vermont Forest Fragmentation Report: The rate of development (measured in housing units and developed acres) in Vermont is increasing twice as fast as the state's population. This problem is compounded by the fact that population growth is occurring mostly in rural areas (defined as communities with fewer than 2,500 residents), where forestland and other working and undeveloped lands are concentrated.

Forest fragmentation is the breaking of large, contiguous forested areas into smaller pieces of forest, typically by roads, agriculture, utility corridors, subdivisions or other human development.

Act 171 of 1016

What is forest fragmentation?

(35) "Forest fragmentation" means the division or conversion of a forest block by land development other than by a recreational trail or use exempt from regulation under subsection 4413(d) of this title.

Perhaps it is better to consider putting limits on the degree to which the parcel is fragmented.

An early construct of this bill applied only to land that was “adjacent to” growth centers, village centers, NDAs, designated downtowns and New Town Centers. Turns out that only three of the designated areas have CU-enrolled adjacent parcels, and that there were only 190 parcels across the State that were adjacent. While one could creatively interpret “adjacent” to mean “nearby,” it really does mean abutting.

To increase the number of parcels to consider, we changed the boundary to 3 miles from those centers. Well, that was a little much. 14.7 thousand parcels, out of 19 thousand in the state. Too much. That is what is currently in the bill, and I am confident that in your good committee process you will come to a distance that is more acceptable. I suggest ½ mile, the same as what was contained in Act 181 of 2024 when defining Tier 1a and 1b development areas for the development of priority housing projects.

ADJACENT

Program	CU-Enrolled Adjacent Parcels	Enrolled Acreage
Growth Centers	6	564.7 acres
Village Centers	170	20,724.7 acres
Neighborhood Development Areas	14	789.2 acres
TOTAL	190	22,078.6 acres

So that is the substance of H. 134. I’ve spoken with folks at the Agency of Natural Resources, the Department of Taxes, and the Vermont Natural Resources Council. There seems to be agreement that the process of determining the LUCT needs to be simplified, and both the Department of Tax and VNRC have some ideas around that, if the current proposal is not acceptable.

Thank you for your consideration, I’d be happy to answer any questions you may have about this particular proposal.