



Current Use Valuation and Tax Incentives for Urban Areas:

State Law Comparisons and Possible Applications in New England States


American Farmland Trust
SAVING THE LAND THAT SUSTAINS US

clf
conservation law foundation

Land For Good
Gaining ground for farmers

Produced through The New England Land Access Policy Project

**Current Use Valuation and Tax Incentives for
Urban Areas:
State Law Comparisons and Possible Applications in
New England States**

Conservation Law Foundation

***THIS PAPER IS ONE IN A SERIES PRODUCED THROUGH THE
LAND ACCESS POLICY PROJECT***

A collaboration between American Farmland Trust (AFT), Conservation Law Foundation (CLF) and Land For Good (LFG), the New England Land Access Policy Project facilitated dialogue in each New England state to identify policy barriers and opportunities around land access and farm transfer.

Stakeholders across New England identified tax incentives for urban agriculture as a potential strategy to make urban land more accessible for agriculture.

Acknowledgements

Cris Coffin and Kathy Ruhf with Land For Good contributed thoughts and edits to this paper.

The Land Access Policy Project is supported in part by a grant from the John Merck Fund.

Table of Contents

| | |
|---|----|
| I. INTRODUCTION | 1 |
| II. CURRENT USE LAWS IN NEW ENGLAND | 2 |
| A. Connecticut | 2 |
| B. Maine | 3 |
| C. Massachusetts | 3 |
| D. New Hampshire | 5 |
| E. Rhode Island | 5 |
| F. Vermont | 6 |
| III. URBAN AGRICULTURE FOCUS IN OTHER STATES | 6 |
| A. California | 7 |
| B. Missouri | 7 |
| C. Maryland | 8 |
| D. New Jersey | 9 |
| E. Utah | 10 |
| IV. WEIGHING THE MERITS | 10 |
| A. Current Use Property Tax | 11 |
| B. Minimum Parcel Size | 11 |
| C. Minimum Gross Income | 12 |
| D. Previous Years of Qualifying Use | 12 |
| E. Land Use Change Taxes | 12 |
| G. Cities' Discretion to Opt-In or Pursue Independently | 12 |
| V. CONCLUSION | 14 |
| VI. APPENDIX | 15 |

I. INTRODUCTION

This white paper explores opportunities to incentivize the use of land for urban agriculture through tax incentives. For purposes of this paper, unless otherwise specified, “urban agriculture” means commercial production of food for human consumption within cities (in contrast to peri-urban, suburban, or rural settings). That being said, different areas define “urban” and “agriculture” uniquely, and this paper does not prescribe a universal definition.

Property taxes for a given plot of land are generally assessed on the land’s “Fair Market Value.” Although the precise definition of FMV varies depending on the state, “most definitions incorporate the notion that the fair market value is that which a willing buyer would pay to a willing seller in an arm’s length transaction.”¹ This type of definition favors the “best” or “highest value” use of the land, which in New England tends to be commercial or residential development. Most states carve out exceptions to this default property tax calculation for land uses favored by public policy, such as agriculture, forestry, or habitat reservations. These exceptions typically manifest as a “Current Use” value assessment, which aims to value the land for tax purposes according to its actual use, rather than its highest potential use, in order to discourage conversion of land from these uses to an otherwise more “profitable” one.

As mentioned, agriculture is one type of land use that is commonly covered by a state’s current use law and recently some states have expanded the reduced tax assessments to *urban* agriculture. Every New England state has a current use law on the books for agriculture in general, but all of them either do not explicitly purport to promote urban agriculture, or else exclude it categorically through parcel size requirements. Several states outside New England - California, Missouri, Maryland, Utah, and New Jersey in particular - have each passed laws that

¹ 2-19 Bender's State Taxation: Principles and Practice § 19.08.

specifically aim to promote urban agriculture in their states by offering financial incentives either through direct tax credits or reduced taxes through current use valuation. See the appendix for tables summarizing current use laws in New England and urban agriculture tax incentives in effect in other states. This paper will detail each of the aforementioned states' existing laws and compare the relative merits of their provisions. This analysis seeks to provide policy makers and advocates in the New England region with tools to tailor policies in their states for urban agriculture.

II. CURRENT USE LAWS IN NEW ENGLAND

A. *Connecticut*:

In its declaration of policy for farmland property tax assessment, Connecticut expressed goals “to maintain a readily available source of food and farm products close to the *metropolitan areas*” and “to prevent the forced conversion of farm land . . . to more intensive uses as the result of economic pressures.”² In furtherance of this goal, the section dictates that farmland be valued according to its use, as opposed to the value it would have if converted to an alternative use. The law defines farmland as that land which is determined by an assessor to be farmland after taking into account, “among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous.”³ This definition affords local assessors some discretion, as the guidelines included in the statute are loose. Because the declared goal of the State specifically mentions metropolitan areas and does not explicitly restrict the size of the parcel, there is a potential application to urban agriculture in Connecticut,

² Conn. Gen. Stat. §12-107a (emphasis added).

³ Conn. Gen. Stat. §12-107c.

however it is somewhat ambiguous whether the State would actually allow current use valuation for urban farms. The law provides a penalty for withdrawal of land from current use through a conveyance tax that is imposed if land is sold for purposes other than those covered by the provision within 10 years of first being classified as farmland.⁴

B. *Maine:*

Maine's statement of purpose for their Farm and Open Space Tax Law is nearly identical to Connecticut's, without any material changes in the expressed intent.⁵ However, Maine is more specific in the requirements a farm must meet in order to qualify for the current use tax assessment. Farmland must be at least five contiguous acres and agricultural activities must have contributed to a gross annual farming income of at least \$2,000 per year in either one of the two, or three of the five, preceding years.⁶ Maine's acreage requirement precludes the application of its tax incentive to most plots of urban land, which typically do not exceed one acre. Should the land be converted to a non-qualifying use within 10 years of receiving the benefit, the owner is liable for a penalty assessed at 30% of the difference between the land's open space valuation and 100% of the FMV of the property on the date of withdrawal, with 1% reductions for each year thereafter.⁷

C. *Massachusetts:*

Massachusetts' current use law⁸ extends the tax benefit only to land five acres or greater that produces at least \$500 per year, plus an additional \$5 for each acre above five, or alternatively that the use is clearly proven to be for the purpose of achieving that annual gross

⁴ Conn. Gen. Stat. §12-504a(b) (noting also that the severity of the tax decreases each year from the first to the tenth).

⁵ The only difference is that Maine does not include, as Connecticut does, forestry and maritime heritage land in their tax provision. 36 M.R.S. § 1101.

⁶ 36 M.R.S. § 1102.

⁷ *Id.*

⁸ M.G.L. ch. 61A, § 4 (declaring the value of agricultural or horticultural land for tax purposes to be "that value which such land has for [those specified] purposes").

production value.⁹ Additionally, the agricultural use must meet the size and income requirements for at least the two years prior to application for exemption under this provision.¹⁰ As in Connecticut, a conveyance tax is imposed if agricultural land is sold for purposes other than those covered by Massachusetts' provision within ten years of being enrolled in the tax program.¹¹ Any conversion of the land from agricultural use will result in roll-back taxes for the amount equal to the difference between the current use value and the FMV that would otherwise have been assessed for the preceding five years from conversion.¹² However, any conversion or sale of agricultural land must first be communicated to the city or town, which holds a right of first refusal to purchase the land for any bona fide sale offer or conversion plan.¹³

This year, two pieces of legislation have been filed in Massachusetts that would amend the Commonwealth's Chapter 61A program. One bill, HB 3296, would extend the tax benefit to agricultural land of no less than two acres, instead of the current five acres.¹⁴ Further, the amendment would leave it open to individual municipalities to extend the benefit to agricultural operations less than two acres.¹⁵ A second bill, SB 2171, would allow land devoted to agricultural or horticultural use under Chapter 61A to include non-contiguous parcels, so long as the land is under the same ownership, not previously committed to other use, and within a half mile of and utilized together with other land for a unified agricultural purpose; this item was included in a recent Agriculture Omnibus Bill, SB 2171. The latter legislation is unlikely to be useful for urban farms, which generally consist of small parcels; the five acre threshold would be difficult for urban farmers to meet even with the accounting of non-contiguous parcels.

⁹ M.G.L. ch. 61A, § 3.

¹⁰ M.G.L. ch. 61A, § 4.

¹¹ The conveyance tax decreases over time just as Connecticut's. M.G.L. ch. 61A, § 12; *see infra* note 4.

¹² M.G.L. ch. 61A, § 13.

¹³ M.G.L. ch. 61A, § 14.

¹⁴ *Id.*

¹⁵ *Id.*

D. *New Hampshire:*

The New Hampshire legislature established a Current Use Board to administer select portions of their current use provisions.¹⁶ The statute provides the Board latitude to set the minimum acreage requirement for the lower tax valuations at 10 or fewer acres.¹⁷ At this time, the Board has established a 10 acre minimum, which generally would preclude urban farms from the benefit.¹⁸ The farmland can, however, be of mixed use with forest or unproductive land.¹⁹ Additionally, the farm must demonstrate an annual gross income of at least \$2,500, from the sale of crops “normally produced.”²⁰ Should the land be converted to a non-qualifying use, the landowner must pay a tax penalty equal to 10% of the annual FMV of the land.²¹

E. *Rhode Island:*

Similar to New Hampshire’s scheme, Rhode Island’s current use statute delegates authority to an agency to adopt rules defining the characteristics of qualifying farmland, such as minimum acreage.²² The Department of Environmental Management’s promulgated rules require a minimum of 5 acres, with annual income of \$2,500 for at least one of two years prior to application.²³ These rules effectively preclude urban farming; however, the rules build in exceptions both for any size subsistence farm and for any farm the Director believes has adequate annual income, crop production, and acreage to be included.²⁴ Should the land be converted to a non-qualifying use within the first 6 years of receiving the benefit, the owner is

¹⁶ N.H. Rev. Stat. Ann. §§79-A:3–4.

¹⁷ N.H. Rev. Stat. Ann. §79-A:4.

¹⁸ N.H. Admin. Rules, Cub 304.01.

¹⁹ *Id.*

²⁰ *Id.*

²¹ N.H. Rev. Stat. Ann. §79-A:7.

²² The Department of Environmental Management, in Rhode Island’s case. RIGL § 44-27-2(1)(iii).

²³ *Rules and Regulations of for Enforcement of the Farm, Forest, and Open Space Act*, Rule 5(k), available at <http://www.dem.ri.gov/pubs/regs/regs/agric/ffosimp.pdf>.

²⁴ *Id.*

liable for taxes assessed at 10% of the land's FMV in the first year, with 1% reductions for each year thereafter.²⁵

F. *Vermont:*

A plot of agricultural land in Vermont qualifies for a current use assessment if it is in active use to grow hay or cultivate crops, pasture livestock or to cultivate trees bearing edible fruit or produce an annual maple product, and is 25 acres or more in size.²⁶ Land less than 25 acres, possibly including urban agriculture, can still qualify if: (1) it is owned by a farmer²⁷ and is part of the overall farm unit; (2) it is used by a farmer as part of his or her farming operation under written lease for at least three years; or (3) it has produced an annual gross income of at least \$2,000 from the sale of farm crops in one of two, or three of the five, preceding years.²⁸ If the landowner develops²⁹ the land, converting it to a non-qualifying use, they must pay 10% of the FMV as a land use change tax.³⁰

III. URBAN AGRICULTURE TAX INCENTIVE POLICIES - OTHER STATES

Outside of New England, several states have adopted laws allowing reduced taxation rates for properties used for urban agriculture. These policies may be models that could be adopted in New England to incentivize the use of urban land for agricultural purposes.

A. *California:*

In contrast to the New England states detailed above, California passed the Urban Agriculture Incentive Zones Act with the specific intention and declaration that “it is in the

²⁵ RIGL § 44-5-39.

²⁶ 32 V.S.A §3752(1).

²⁷ A person that earns at least half of gross income from farming and produces at least 75% of the crops processed in the farm facility. 32 V.S.A §3752(7).

²⁸ 32 V.S.A §3752(1)(A)–(C)

²⁹ Development means the construction of any building, road, or other structure, or any mining, excavation, or landfill activity. 32 V.S.A §3752(5).

³⁰ 32 V.S.A §3757, amended by Vt. H. 489 §48 (2015).

public interest to promote sustainable urban farm enterprise sectors.”³¹ The tax incentive gives discretion to cities with populations of 250,000 or greater to hold public hearings and enact ordinances to implement the Act in their city.³² The parcel must be between 0.10 and 3 acres,³³ and must be contracted for agricultural purposes for a minimum of five years.³⁴ If the contract is cancelled before its completion, the landowner must pay back 100% of the tax benefit received before the cancellation.³⁵ There is no penalty if the land ceases to be used for agricultural purposes after the completion of the initial contract term. As the Act restricts land use to uses consistent with urban agriculture, personal dwellings are prohibited but structures that support agricultural activity, such as toolsheds and greenhouses, are permitted.³⁶ The parcel can be used for either commercial or non-commercial farming, but not both.³⁷ There is no minimum gross income requirement for a qualifying urban farm. Several areas have implemented this tax incentive, including San Francisco, San Diego, Sacramento, and Santa Clara County.

B. *Missouri:*

Missouri has also specifically recognized *urban* agriculture in its current use laws by allowing a metropolitan area³⁸ to designate an Urban Agricultural Zone once it has established a UAZ Board for administration thereof.³⁹ The UAZ must contain at least one qualifying small business,⁴⁰ which can be a grower, vendor, or processor of livestock or produce.⁴¹ If the business

³¹ Cal. Gov’t Code §51040.1.

³² Cal. Gov’t Code §51040.3; Cal. Gov’t Code §51042(a)(1)(A).

³³ Cal. Gov’t Code §51042(b)(2).

³⁴ Cal. Gov’t Code §51042(b)(1).

³⁵ Cal. Gov’t Code §51042(a)(2)(B).

³⁶ Cal. Gov’t Code §51042(b)(4); Cal. Gov’t Code §51042(c).

³⁷ Cal. Gov’t Code §51042(b)(3).

³⁸ Requires an urban core of 50,000 people, as defined by U.S. OMB. Mo. Ann. Stat. §262.900.1(15).

³⁹ Mo. Ann. Stat. §262.900.3.

⁴⁰ As defined by 13 CFR 121.201, which carries annual income requirements depending on the specific crop or livestock grown. Mo. Ann. Stat. §262.900.1(15).

⁴¹ *Id.*

is a vending UAZ, they must accept SNAP and sell at least 75% locally grown food.⁴² After there is one qualifying business in a UAZ, the remaining agricultural activities need not meet the income requirements. There is neither a minimum parcel size requirement, nor required years of prior use to establish a UAZ. All sales taxes on products sold in a UAZ go into a UAZ fund that is directed at school curriculum on urban farming practices and for improvements within the UAZs of a city.⁴³ For an example of a city implementing this statute, see Kansas City's ordinance.⁴⁴

C. Maryland:

Maryland has a dedicated section in its property tax code credits for urban agriculture.⁴⁵ Under the statute, the governing bodies of Baltimore City,⁴⁶ a county, or of a municipal corporation may grant a property tax credit for "Urban Agricultural purposes" in an amount of their choosing and may add additional qualifications.⁴⁷ The statute provides a broad definition of potentially qualifying urban agricultural purposes including: crop production; environmental mitigation activities, like stormwater abatement; food related community development activities; food related employment and training development activities; and produce stands.⁴⁸ The qualifying land must be between 0.125 and 5 acres and must stay in use for 5 years, or else the entirety of the benefit received must be reimbursed.⁴⁹ After 3 years of qualifying use, the city or county must evaluate whether the credit has been effective in promoting urban agriculture, or

⁴² Mo. Ann. Stat. §262.900.1(16).

⁴³ Mo. Ann. Stat. §262.900.12.

⁴⁴ Kansas City Ordinance 74-201.

⁴⁵ Md. Tax-Property Code Ann. §9-253.

⁴⁶ The code section singles out Baltimore City, and Baltimore has already made motions toward passing an ordinance.

⁴⁷ Md. Tax-Property Code Ann. §9-253(b). However, some exceptions to areas that may receive the credit are those that are not priority funding areas, according to Md. State Finance and Procurement Code Ann. § 5-7B-02. Md. Tax-Property Code Ann. §9-253(a)(2)(ii).

⁴⁸ Md. Tax-Property Code Ann. §9-253(a)(3).

⁴⁹ Md. Tax-Property Code Ann. §9-253(a)(2)(i); Md. Tax-Property Code Ann. §9-253(e).

else they may terminate the credit.⁵⁰ At the time of evaluation, the city or county may also extend the credit for 5 more years.⁵¹

D. *New Jersey:*

New Jersey is unique in that it allows a 100% property tax exemption for a qualifying agricultural purpose, but only to non-profit organizations.⁵² A municipality may grant the exemption to public lands of less than 5 acres,⁵³ leased for up to 50 years for agricultural purposes to a non-profit organization, so long as the production of fruits and vegetables is among the organization's principal purposes.⁵⁴ The municipality may also sell the public land and grant the exemption, even if sold for nominal consideration, so long as it meets the same requirements as the leased land—less than 5 acres, to a non-profit organization, which has as one of its principal purposes the cultivation and sale of fruits and vegetables.⁵⁵ The proceeds from these sales must be used to further the non-profit purposes of the organization.⁵⁶

E. *Utah:*

Despite naming its agricultural current use statutes the “Urban Farming Assessment Act,” Utah limits the parcel size to between 2 and 5 acres, not counting animal or animal byproduct operations.⁵⁷ The parcel must be in a *county* with a population of 125,000, if 98% urban, or

⁵⁰ Md. Tax-Property Code Ann. §9-253(c).

⁵¹ *Id.*

⁵² In general, non-profit organizations are exempt from property taxes. In New Jersey, several court cases have successfully challenged the property tax exemptions of non-profit organizations that, due to structural complexity, appear to have blended the lines between non-profit and for-profit activities. While these cases have mainly concerned large and complex institutions such as hospitals, universities, and schools, they raise the concern that the property tax exemptions of non-profit organizations with agricultural purposes may also be scrutinized.

⁵³ N.J. Stat. § 40A:12-21.

⁵⁴ N.J. Stat. § 40A:12-15; N.J. Stat. § 54:4-3.6 (the farming of livestock is not included).

⁵⁵ *Id.*; N.J. Stat. § 40A:12-21 (listing other tax exemption qualifying land uses, in addition to agricultural purposes).

⁵⁶ *Id.*

⁵⁷ Utah Code Ann. §59-2-1701; Utah Code Ann. §59-2-1703(1)(a)(ii); Utah Code Ann. §59-2-1702(3)(b).

700,000 otherwise.⁵⁸ The parcel must meet the production levels prescribed in one of three possible sets of criteria prescribed in the statute and have a reasonable expectation of profits for two previous years.⁵⁹ If the land changes to a non-qualifying use within 10 years, the previous 5 years of tax reductions must be paid back.⁶⁰

IV. WEIGHING THE MERITS

Urban agriculture advocates have long identified the cost of urban land as the primary barrier to land acquisition for urban agriculture. With land value connected to development potential, land in urban settings is generally substantially more expensive than in rural settings; and yet, it remains the case that urban communities desire the food independence, access to healthy food and open space, connection to the land, and educational opportunities afforded by having agricultural production in their neighborhoods. As such, communities seek creative ways to reduce the costs of land acquisition in order to increase the presence of urban agriculture in their neighborhoods. Incentives to reduce property tax burden are one means of making land acquisition and access for urban agriculture more affordable.

While the cultural benefits are substantial, the challenges associated with such tax incentives must also be considered. Cities, especially those challenged by blight, are generally eager to increase their tax base; offering reduced tax rates can run counter to this goal. The question for municipalities is whether the relative goals of advancing urban agriculture outweigh the (likely relatively minor) financial loss from reducing tax income from these properties.

A. *Current Use Property Tax:*

⁵⁸ Utah Code Ann. §59-2-1702(3)(a)(ii).

⁵⁹ Utah Code Ann. §59-2-1703(2)(a); Utah Code Ann. §59-2-1702(3)(a)(i); Utah Code Ann. §59-2-1703(1)(a)(iii).

⁶⁰ Utah Code Ann. §59-2-1705.

Property taxation is the primary revenue source for local governments.⁶¹ Property taxes create local control as municipalities have discretion to use the funds for their choice of operations and services.⁶² While tax exemptions serve laudable public policy goals, if overdone they may hinder the operations and services of the local governments by decreasing available revenue.⁶³ Nevertheless, public policy has compelled numerous exceptions, exemptions, and incentives to property taxation. The degree of tax relief and state reimbursement for the subsequent loss of tax revenue for municipalities varies.⁶⁴ For example, while 48 states have homestead exemptions, only one quarter of the states reimburse local governments for some or all of the lost revenue.⁶⁵

B. Minimum Parcel Size:

The size requirement should be as small as possible to increase the amount of tax-benefit eligible parcels in a state, preferably between 0 and 0.125 acres. However, each state should assess the typical size of urban plots in their cities and can tailor their laws accordingly. For example, Utah's average urban parcel size may intuitively be larger than a denser region like Boston, Massachusetts. If a state is concerned about being over-inclusive with a small size requirement, it could be offset by a higher income requirement.

C. Minimum Gross Income:

Because newer urban farms have small or inconsistent income, a state that wants to increase the economic viability of starting a new farm should have a little to zero income requirement.

⁶¹ Clifford H. Goodall & Seth A. Goodall, Property Tax: A Primer and A Modest Proposal for Maine, 57 Me. L. Rev. 585, 586 (2005).

⁶² *Id.* at 589.

⁶³ *Id.*

⁶⁴ *Id.* at 586.

⁶⁵ *Id.*

D. Previous Years of Qualifying Use:

One possible goal of a prior use requirement is to avoid providing the benefit to an operation without a realistic business future, thereby squandering tax benefits. However, as long as there is a back-taxes penalty, a prior use requirement becomes less important. If one is included it should be no more than a year, otherwise start-up costs during that pre-qualifying period could be crippling while developing the business. Any requirement should make explicit that soil remediation efforts in preparation for growing should count toward the prior use period.

E. Land Use Change Taxes:

Tax penalties serve to discourage conversion and reimburse the city if conversion does happen. The duration of the required window can vary depending on the city's priorities and the content of the remaining provisions of their current use policy. The penalty can be softened by allowing it to decrease proportional to the duration of qualifying use before conversion, as is currently done in Rhode Island and Maine.

F. Cities' Discretion to Opt-In or Pursue Independently:

Giving the city discretion to implement a current use policy creates an additional hurdle before a farm can qualify, which can frustrate the state's ultimate policy goals of promoting urban agriculture. However, including the discretion could increase legislative buy-in by ensuring the cities will ultimately be able to decide if their city can accommodate the loss of tax revenue. As mentioned above, this could alleviate the need for a minimum population requirement. For even more security, a state could include language like Maryland, which structurally schedules a city evaluation of the tax benefit's efficacy in promoting urban agriculture and terminate the credit if it has not.

Cities may wonder whether they have the authority to independently implement urban agriculture tax incentives. This depends on whether the state has authorized the local government to act in this manner, as local governments only have the powers that are granted to them from the state's constitution or statutes.⁶⁶ As such, the extent of local authority varies widely across the nation (and the region). Some states are Dillon's Rule states, meaning local governments only have powers that are expressly granted or directly implied from another power.⁶⁷ Other states are Home Rule states, where a broad grant of power from the state's constitution or statutes allows municipalities to control local matters without the need for special legislation by the state.⁶⁸ In Home Rule states, the municipality is usually limited to enacting municipal laws that do not conflict with state laws.⁶⁹ In New England, municipal authority is largely limited to municipal organization.⁷⁰ As such, the authorizing language granting municipalities power and its interpretation would determine whether a city has the authority to implement urban agriculture tax incentives without further action by the state.

IV. CONCLUSION

Existing current use policies in New England generally are not designed to support urban agriculture. Of the six states in the region, the policies in Connecticut and Rhode Island have the

⁶⁶ Harvard Law School Food Law and Policy Clinic, *Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities*, July 2012 at 6.

⁶⁷ *Id.* at 7.

⁶⁸ *Id.*

⁶⁹ Some Home Rule municipalities have the power to supersede state laws regarding the evaluation of property for property taxation purposes while others have discretion to implement property tax collection procedures that are inconsistent with the state's general property tax act. 56 Am. Jur. 2d Municipal Corporations, Etc. § 118.

⁷⁰ Harvard Law School Food Law and Policy Clinic, *supra*, at 94.

greatest potential for application to urban agriculture parcels simply because of the discretion allowed to the local assessor (in Connecticut) and Department of Environmental Management (in Rhode Island) to determine whether a particular parcel could qualify under the current use program. However, some may find it to be a strained interpretation of the current use laws to apply them in this way.

A clearer approach to reduce the tax burden for urban agriculture properties, and thus incentivize this land use, is the adoption of a specific urban agriculture policy in the New England states. The policy adopted in California is perhaps the best model for our region, given its focus on small parcels without a minimum income requirement. This model is also attractive in that it sets up a clear framework that has already been vetted statewide, but does not *require* the participation of any city. This way, areas that are motivated to pursue this policy have a clear path for doing so, but cities that are concerned about losing tax income are not forced to participate.

Appendix

Table A: Current Use Laws in New England

| <u>State:</u> | Connecticut | Maine | Massachusetts | New Hampshire | Rhode Island | Vermont |
|----------------------------------|------------------------------------|------------------|---------------------------------|---------------|---|---|
| <u>Category:</u> | | | | | | |
| Urban Ag Allowed | Unclear. At discretion of Assessor | No | No, but see pending legislation | No | At discretion of Director of RIDEM. | Most likely, but not explicitly |
| Minimum Parcel Size | None* | 5 acres | 5 acres | 10 acres | 5 acres, or subsistence of any size, or Director's discretion | 25 acres, unless owned or leased by a "farmer", or if income and other requirements met |
| Minimum Gross Income | None* | \$2,000 | \$500 + \$5/acre over 5 | \$2,500 | \$2,500, or subsistence, or at Director's discretion | \$2,000 + \$75/acre over 25. Special exception for farmers |
| Previous Years of Qualifying Use | None | 1 of 2 or 3 of 5 | 2 | 1 | 1 of 2 | 1 of 2 or 3 of 5 |

| | | | | | | |
|-------------------------|--|------|--|--|--|-------------------------|
| Land Use Change Tax | Conveyance tax for sale only. Decreases each year up to 10 years | None | Conveyance tax, if sold for conversion, which decreases each year up to 10 years. Back-taxes of 5 prior years for any conversion. City has right of first refusal to purchase land if converting use | Landowner pays 10% of current year's FMV if conversion | 10% of FMV if converted within 6 years; 1% less for each year thereafter | 10% of FMV, no end date |
| Minimum City Population | None | None | None | None | None | None |

Table B: Urban Agriculture Tax Incentives in Five States

| <u>State:</u> | California | Missouri | Maryland | New Jersey | Utah |
|---------------------|-----------------|-----------------|-----------------|--|--|
| <u>Category:</u> | | | | | |
| Urban Ag Allowed | Yes, explicitly | Yes, explicitly | Yes, explicitly | Yes, but only for non-profit organizations and not explicitly referenced | Yes, but only relatively large parcels |
| Minimum Parcel Size | 0.10–3.0 acres | None | 0.125–5 acres | No minimum, but a maximum of 5 acres | 2–5 acres |

| | | | | | |
|----------------------------------|---|--|---|---|--|
| Minimum Gross Income | None | UAZ must have at least 1 qualifying small business; thereafter, no one else needs to meet income requirement | None, but a city/county may implement one of their choosing | None, and must be non-profit | Must meet criteria of UAS, UAU, or FAA. Must also have a reasonable expectation of profits |
| Previous Years of Qualifying Use | 0 | 0 | 0, but a city may implement one | 0 | 2 years |
| Land Use Change Tax | 100% penalty of tax benefit if converted within 5 years of qualifying | None | 100% penalty of tax benefit if converted within 5 years of qualifying | None | Tax benefit of 5 previous years must be repaid if converted within 10 years of qualifying |
| Minimum City Population | 250,000 | 50,000 / Metropolitan area | Must be a county or municipal corporation, and must meet density requirements | Must be in a "municipality" | County of 125,000 (if 98% urban) or else 700,000 |
| State Mandate or City Discretion | City discretion to pass ordinance | City discretion to pass ordinance | City discretion to pass ordinance | City discretion to lease or sell public lands for specified use | Mandate |

This paper is one in a series produced through the **New England Land Access Policy Project**. A collaboration between American Farmland Trust, Conservation Law Foundation, and Land For Good, the **New England Land Access Policy Project** facilitated dialogue in each New England state to identify policy barriers and opportunities around land access and farm transfer.

For more information please contact:

Land For Good

39 Central Square, Suite 306

Keene, NH 03431

(603)357-1600

landforgood.org