



Land Tenure Convening Report

**Center for Agriculture and Food Systems
Vermont Law School
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Summary

On Wednesday, February 25, 2015, Vermont Law School’s Center for Agriculture and Food Systems (CAFS) held a convening of stakeholders as an initial fact-finding step under its Farmland Tenure Legal Project (the project). The purpose of the project is to develop law-related tools and resources to help lower barriers to farmland access for farmers in New England.¹ Although much land tenure policy work has been done related to land access issues in New England, there is a dearth of legal information and resources related to farmland tenure. The project aims to address this critical legal resource gap. The project is three years in duration and is funded in partnership with the National Agriculture Library (NAL), an agency under the USDA. Resources developed under this project will be housed at NAL as well as the Vermont Law School. In addition, CAFS hopes that convening participants and other stakeholders will help disseminate the legal resources that arise out of this project. CAFS has two partners in this project: **BCM Environmental**, a law firm in New Hampshire with legal expertise in farm tenure issues, and **Land for Good**, a nonprofit that specializes in farmland access, tenure, and transfer in New England.

The project is also being used to teach law and policy students at VLS and consequently, students are involved in most aspects of project execution.

Convening Participants

CAFS conferred with its project partners in developing the invitee list for the convening. CAFS invited a range of stakeholders with land tenure expertise representing each New England state² and a diversity of perspectives (e.g. nonprofit, land trust, government, urban/rural). Fourteen invitees attended the convening:

Robert Aldrich	Director of Community Conservation for the Land Trust Alliance	DC
Cris Coffin	New England Director for American Farmland Trust	MA
Nancy Everhart	Agricultural Director for Vermont Housing and Conservation Board	VT
Andrew Marshall	Education and Field Director for Land for Good	NH

¹ “Land tenure is the perceived institutional arrangement of rules, principles, procedures, and practices, whereby a society or community defines control over, access to, management of, exploitation of, and use of means of existence and production.” Dekker, Henri. *In Pursuit of Land Tenure Security*, at 1. Amsterdam, NLD: Amsterdam University Press, 2006. ProQuest ebrary. Web. 24 February 2015. Copyright © 2006. Amsterdam University Press.

² Invitees from the states of Rhode Island and Maine were not able to attend the convening. CAFS will work with its project partners to secure input from land tenure stakeholders in those states through other means.

Nick Martinelli	Attorney for Land for Good/Agrarian Trust	MA
Ian McSweeney	Executive Director of Russell Farm and Forest Conservation Foundation	NH
Susan Mitchell	NCTFA Steering Committee Member for the New Connecticut Farmer Alliance	CT
Jim Oldham	Executive Director of Equity Trust	MA
Jon Ramsay	Farmland Access Program Director for Vermont Land Trust	VT
Holly Rippon-Butler	Land Access Campaign Manager for National Young Farmers Coalition	NY
Kathy Ruhf	Senior Program Director and Massachusetts Field Agent for Land for Good	MA
Jenny Rushlow	Staff attorney and Director of Farm & Food Initiative for the Conservation Law Foundation	MA
Ben Waterman	UVM Center for Sustainable Agriculture and Vermont Farmland Access Network	VT
Jason Reimers	Attorney at BCM Environmental & Land Law, PLLC ³	NH

The following VLS personnel attended the convening: student clinicians Kaitlyn Kachmarik, Katherine Michel, Michael Pottetti, Alison Uhrlass, and Madelyn Vital, in addition to Professors Laurie Ristino, Jamie Renner, Christine Cimini, CAFS Project Coordinator Rebecca Valentine, and LLM Fellow Carrie Scrufari. Professor Sean Nolon facilitated the convening.

CAFS developed and distributed a list of potential legal topics and priority issues related to land tenure as well as an agenda to the attendees prior to the day of the convening. The agenda and issues documents are attached at Appendix 1.

After welcoming remarks, Professor Nolon facilitated participant discussion to identify legal challenges to land access. Following this brainstorming session of issue identification, Professor Renner presented CAFS's Farmland Tenure Online Resources Guide (the Online Guide, available at www.farmlandtenure.org).

Student clinicians then led break-out discussions with participants to seek their feedback on the layout and design of the webpages and the quality and breadth of the resources included. These break-out sessions also resulted in a helpful broader discussion regarding the content and form of the toolkits and other resources that the project would generate. Some participants misconstrued the Online Guide as part of the ultimate toolkit to be created under the project. Subsequently, CAFS provided clarification to the

³ Mr. Reimers attended in place of Amy Manzelli (attorney and partner at BCM Environmental).

participants that the Online Guide is simply an additional resource created under the project to aggregate existing legal information on land tenure.

After the small group sessions, Professor Nolon queried participants about recommendations to address the identified challenges. Specifically, Professor Nolon asked participants what types of tools should be included in the project toolkit and how the toolkit could be organized to make it as informative and useful as possible. Professor Nolon recorded participants' comments, and participants were then asked to rank their recommendations in order of importance.

Professor Renner closed the convening by discussing the next steps involved in the project, including opportunities for continued engagement.

Key findings

Key land tenure legal issues that the participants identified were:

- New models of land ownership,
- Leases, and
- Easements, including amendment.

These particular areas of emphasis may reflect the areas of expertise of the convening participants. Next steps in the project will include due diligence to ground truth these priority land tenure issues before final project legal issue areas are selected for the toolkit.⁴

Challenges

A major challenge creating barriers to land access for new farmers is the high cost of land.⁵ In order to address that challenge, participants and farmers are interested in using cooperative or community models of farm ownership, innovative leases, and easements to ease the financial burden that beginning farmers experience and to facilitate succession from current farmers to the next farmers. Yet, these solutions invariably lead to new challenges. Participants and farmers do not know what types of models work or what legal steps are required to create such innovative forms of farm ownership. Lease terms are often not farmer-friendly and are short-term, resulting in unstable tenure. Conservation easements, which theoretically lower the fee cost of land, may also act as a barrier to land because deed terms may be inconsistent with small, diversified farming operations, which comprise a large portion of new farmer entrants in the region. Further, the ability to amend easements to allow for such operations may vary by state, deed terms, and easement holder, thereby adding complexity.

General Recommendations

In order to address these challenges, participants recommended that CAFS include various items in the legal toolkit, such as sample or model leases and operating agreements, along with glossaries defining key terms in each document. Participants were also interested in the creation of decision-trees and checklists that would help guide new farmers through the various steps of purchasing or renting land. Participants also recommended that the toolkit make readily available state statutes, if any, that govern cooperative forms of ownership, the types of leases that are available to farmers, and the different types of easements available and how to amend them.

⁴ The project partners do not necessarily share the observations, statements and conclusions in the report based on the convening participants' discussion.

⁵ We will distinguish, but not limit, our research and products to beginning farmers.

Convening Land Tenure Report

Over-arching challenges to land tenure

Generally, participants agreed that two central and related challenges to farming in New England are access to affordable farmland for new farmers and the aging demographic of existing farmers. For many farmers near the age of retirement, their land value may be their primary asset and, therefore, critical to funding their retirement. The need to seek maximum value for their land confounds the ability of new farmer entrants to acquire such property because of limited capital to fund new farming enterprises.

Some participants expressed that a key impediment to land access is the American private property system itself and valuation which emphasizes resources use and development. Thus, a tension exists between the short-term profits derived from the land versus the long-term sustainability of the land. Participants agreed that they struggled with how to preserve farmland to serve communities in the future.

Priority Key Issues: Challenges and Recommendations

Participants further identified and discussed the following priority issues, not listed in order of priority:

- 1) Farm succession
- 2) Complexity of land transactions
- 3) Innovative ownership models and financing
- 4) Leases
- 5) Easements
- 6) Tax
- 7) Liability
- 8) Insurance
- 9) Zoning
- 10) Urban agriculture
- 11) Environmental

To a lesser degree, participants also discussed the following issues:

- Labor and employment laws affecting farmers,
- Access to legal counsel, and
- Affordable housing for farmers.

Following this listening session, participants proposed recommendations for the legal toolkit based on the aforementioned challenges. To a large extent, participants requested legal tools to directly address the challenges discussed earlier in the day. However, participants did not suggest tools for every challenge. Below, we summarize the identified challenges and recommendations that the convening participants generated.

1. Farm succession

Challenges:

At the outset, participants agreed that access to land for new and beginning farmers is a priority land tenure issue. In addition to discussing the cost prohibitive nature of purchasing farmland, participants identified the following key barriers to land access:

- Parcel size: smaller parcel sizes and conservation easements could be a barrier to accessing land because they often conserve larger parcels, prohibit subdivision and are designed to preserve traditional farming operations, which is not the type of farming operations many of the new entrants are engaged in (for example, mixed fruit and vegetable operations or diversified small scale producers who directly market their products).
- Location: finding land that is appropriately located near opportunities for direct marketing is a challenge.
- Connecting key players: finding ways in which potential sellers and buyers of land and potential lessors and lessees can connect with each other is a challenge.

Recommendations:

- Researching the statutes in each state governing using an option to purchase land for agricultural value (OPAV).
- Clearly explaining whether OPAV was permitted and how it may be used in each state. Participants expressed that both Vermont and Massachusetts allow the use of OPAV and that in New Hampshire the first OPAV is in the process of being conveyed.

2. Complexity of land transactions

Challenges:

Several participants expressed repeatedly that land transactions were a challenge, especially:

- Complicated land transactions: those involving multiple parties to the transaction, such as intergenerational farm transfers within the same family. For example, a retiring farm couple wishes to transfer the family farm to their several children, only some of whom wish to continue farming. This common scenario often presents three, inter-related challenges:
 - How to make the farmland available for the next generation of family farmers,
 - How to provide non-farming siblings their share of the inheritance, and
 - How to provide the parents with sufficient funds for their retirement.
- The process of land transactions: farmers often lack awareness regarding the steps involved in real estate transactions (such as boundary surveys and title searches), which is exacerbated by a lack of transparency in the realty acquisition process itself. New farmers often do not anticipate the cost of these services and associated legal fees.

Recommendations:

- Create checklists for purchase contracts for both sellers and buyers that explain each step of the process involved in completing a sale. For example, the steps to obtaining and recording deeds and promissory notes should be explained.
- Create a document called “Things to Agree to Before Speaking to a Lawyer” that would serve as a guide for all parties involved in a real estate transaction to cut down on the amount of attorney’s fees the parties would pay for consulting a lawyer in any real estate transaction.
- Provide a suggested approach for handling familial land succession.

3. Innovative ownership models and financing

Challenges:

As a way to address the cost-prohibitive nature of purchasing farmland, participants were very interested in exploring the area of collaborative models of ownership and multi-farm ownership models as a way for new farmers to access land, but found it challenging that they lacked information on these forms of ownership. Participants asked:

- Whether different forms of community ownership models might be available.
- Are there ways for CSA members to provide ownership in a farm while sharing the financing burden but allowing farmers to control the decisions of the farming enterprise? In other words, what is the role of crowd sourcing?
- What sort of farm-sharing models already exist and are in use, how successful have they been, and what other opportunities might exist to create new models?
- What are the legal barriers to such models? For example, do some financial arrangements have the potential to run afoul of securities laws?
- What types of alternative financing are available for new farmers?
- Do license-lender laws prohibit direct loans to farmers?

Recommendations:

Participants recommended the creation and/or inclusion of models or mechanisms of community ownership in the toolkit,⁶ including information on how to legally organize and govern such cooperative models. To that end, participants recommended:

- Tools to help farmers make legally informed decisions on whether such a cooperative model should be formed as a co-op, a partnership, an LLC, or as a sole proprietorship.
- Tools providing information concerning the nuances of borrowing money in multi-ownership situations.
- Sample operating agreements for the formation of multi-owner, cooperative, LLC and related ownership arrangements.
- Checklists of key terms with definitions and explanations contained within each sample operating agreement.

⁶ Professor Ristino clarified that CAFS would not be creating new models of ownership, but likely would work with participants and others to identify examples and template them so others could access the information.

- A breakdown of each state’s laws to determine whether farmers were allowed to form farming cooperatives.
- Decision-trees to help new farmers navigate the pros and cons of different forms of multi-farm ownership models and to help farmers determine whether to create a farming cooperative. To that end, participants suggested that CAFS review a book that the Greenhorns organization created on cooperative farming and land ownership. Participants suggested that CAFS create a decision-tree based on the Greenhorns’ book to help farmers discern whether a cooperative model of farm ownership and operation was suitable for their purposes.
- Case studies of innovative models. Often landowners, land seekers, and their attorneys are creating innovative models “on the fly,” but few people would know about the solution they developed outside of the small group of people directly involved. Participants suggested that these innovations might be deduced by interviewing attorneys throughout the country who work with farmers to develop innovative models or land use agreements (CAFS notes that such interviews might implicate attorney-client issues and attorneys might be reluctant to share information regarding their work product).

To address the financing concerns posed by the high cost of land, participants recommended that the toolkit provide:

- Sample documents for mortgage/lending agreements.
- A list of key terms and definitions.
- A guide containing the different types of financing options available to farmers, especially alternative financing (for example, Slow Money Vermont), such as community or angel investor financing and CSA financing. Participants also asked that the toolkit address the securities issues involved with investor financing.

4. Leases

Challenges:

Participants discussed leasing at length, making it a key priority issue in land tenure.

Participants wanted to know:

- What is required of municipalities that lease land?
- What are the legal requirements in terms of bids or RFPs, and what is the process by which municipalities make land available?
- Are there any constraints to municipalities leasing land?
- Are there any constraints to states leasing land to farmers?
- With respect to Vermont, how should farmers navigate the specific requirements for current use in farm leases where “current use” was intended to keep land in production but conflicted with the owner or farmer’s proposed operation?
- What tax implications are involved when leasing land under “current use” requirements?
- How to determine fair leasing prices.
- How to create lease terms that would adequately reflect a farmer’s ability to build equity in the land over time, ensuring an investment return.

- Whether leases should provide for such equity or appreciation.
- How farmers could receive compensation for improvements to the land, buildings and structures, particularly if the lease is terminated early.
- How to create lease-to-own agreements and rolling leases that can encompass different farming enterprises.
- Information explaining the difference between having a lease for land and having a license to use land.
- Whether any incentives exist for landowners to lease land to farmers in high rent areas (especially those near urban centers).

Recommendations:

- Annotated examples, models, or templates of different types of leases with explanations for the various clauses included, particularly:
 - Lease-to-own leases.
 - Rolling-term lease documents.
 - Best practices for lease drafting.
- Sample clauses in the model leases, including:
 - Language providing for how removable and non-removable improvements made to the land will be handled upon the expiration of the lease term.
 - Sample successor provisions for leases and clauses specifying that the lease was binding if the land changed ownership before the expiration of the lease term.
 - Mediation provisions in the event of disagreement.
 - A provision providing for a means of regular communication between the lessor and lessee, especially in terms of outlining the process by which the landlord might approve installing improvements on the land.
 - Sample language allowing for non-cash consideration in leases.
 - Sample provisions requiring the lessor to adopt Accepted Agricultural Practices (AAPs), thereby helping improve land conservation by placing the onus on the landowner.
- A decision-tree to help farmers discern which lease model would be most appropriate for their specific situation with explanations to assist farmers in making the right choice.
- A list of provisions that would *not* be to a farmer's benefit -- for example, a clause requiring pre-payment penalties in owner-financed sales.
- A list of essential terms used in a lease, including definitions and an explanation of their importance in a lease.
- A checklist of things to consider before signing a lease.

Participants also recommended CAFS review and possibly include the leasing tools already available through UVM and Land for Good.

5. Easements

Challenges:

Participants discussed easements at length as well. In general, participants discussed the following challenges with easements:

- Amending easements.
- An inability to subdivide large parcels that are too big for small farms.
- An inability to add infrastructure.
- Lack of flexibility for diversified operations.
- A lack of information on how conservation easements are created in each New England state.
- Easement terms that do not support farming.
- Information barriers to funding a conservation easement.

Recommendations:

- Create a specific, how-to guide for amending conservation easements.
- General tools to help farmers understand what conservation easements are and how they work federally and in each state. For example, a participant noted that Vermont Land Trust has three different types of easements. Thus, easements can vary by state and by organization. Participants recommended that CAFS look at the Conservation Easement Handbook and the work Land Trust Alliance has done in this area.
- To help lower the cost of legal advice, create a document/checklist titled “Things to Know Before You Talk To Your Lawyer” about easements with a template to create an easement and a decision-tree to consider and analyze different issues involved with easements.

6. Tax

Challenges:

- Farmers and land trusts do not know what sorts of tax implications exist when land trusts lease land to farmers. For example, participants were concerned that land trusts might run afoul of IRS rules for providing a private benefit to farmers if they offered land to farmers at below market value.
- Farmers often do not know how property taxes are determined in each state when a non-profit owner such as a land trust leases to a commercial farmer.
- Land trusts were concerned about the tax implications involved when they allow bargain sale easements pursuant to section 170 (h) of the federal tax code, which does not recognize agriculture as an intended purpose of land protection.

Recommendations:

Participants did not suggest any tools in this area.

7. Liability

Challenges:

When Professor Ristino raised the issue of liability, participants expressed that they wanted to know what liability would look like for landowners, renters, municipalities, and non-profit entities such as land trusts and educational facilities that lease land to farmers.

Recommendations:

Participants did not provide any recommendations for the toolkit in this area.

8. Insurance

Challenges:

After Professor Ristino raised the issue of insurance, participants discussed their challenges in three basic areas: general insurance issues, crop insurance issues, and urban agricultural insurance issues.

- General concerns:
 - It is difficult for farmers to obtain insurance when they produce certain items, such as raw milk.
 - Chicken farmers are unable to obtain insurance until they raise chickens for a certain number of years.
 - For farmers whose enterprises also fall within the realm of agritourism, obtaining proper insurance is challenging.
- Crop insurance:
 - Participants expressed that most small farmers are not eligible for crop insurance because they produced specialty crops and crop insurance was largely provided for commodity crops. However, it was noted that insurance would be available for specialty crops under the 2014 farm bill.
 - Participants discussed that crop insurance could be less desirable for organic crops because the coverage is not sufficient to cover organic crop losses. However, it was noted that changes to crop insurance in the 2014 farm bill may begin addressing this inequity as well.
- Urban:
 - Participants discussed an instance wherein a greenhouse was vandalized and the insurance carrier subsequently dropped coverage for the non-profit tenant. The city then refused to lease space to the non-profit tenant for the greenhouse because the non-profit could no longer obtain insurance.
 - Participants discussed whether adding “hold-harmless” clauses for the city in the lease would remedy the problem.
 - What type of insurance is available for rooftop farming?
 - What type of insurance is available for bee keeping in cities?
 - Do multiple users of a particular parcel -- such as a community garden -- raise a separate type of liability/insurance issue?

Recommendations:

Participants did not provide any recommendations for the toolkit in this area.

9. Zoning

Challenges:

The discussion concerning zoning largely centered on zoning constraints for urban agriculture and included farmers needing to know:

- What each state's zoning statutes provide in terms of permitting or prohibiting urban agriculture.
- How various types of agriculture are defined in state statutes.
- How the zoning laws in each state affect farmers engaging in emerging forms of agriculture, such as direct-market, on-farm sales, and the creation and sale of value-added products.
- Are permits required for the above operations?
- What zoning regulations do farmers need to be aware of if they want to host farm-community dinners or weddings on-site?

Recommendations:

- Provide an explanation of the zoning requirements in each state.
- Create a tool describing the ways in which farmers might have to interact with municipal land use planning laws.
- Create a tool detailing brief hypothetical situations addressing the categories of issues farmers are likely to face.
- Create a mechanism by which farmers can determine which zone they are in.

10. Urban agriculture

Challenges:

- Lack of access to suitable land.
 - Land trusts are not often able to be a source of assistance in this area because the land parcels are usually small and not likely candidates for protection.
 - Contamination concerns.
 - Changeable nature of urban land and unfortunate lease terms/unstable tenure of public land.
- Lack of urban agriculture zoning laws.
 - Rooftop farming has specific permitting challenges.
 - Possibility of nuisance suits as a deterrent to would-be urban farmers.

*Recommendations:*⁷

- Provide templates of affordable housing covenants in urban agricultural areas.
- Give explanations of the zoning restrictions in different municipalities.
- Give explanations of what urban farmers could expect when interacting with a zoning board. For example:
 - Should a lawyer be present?
 - If urban farmers are required to bring a proposal or plan for their property to the board meeting, what should it look like and what are the requirements?
- Provide a list of pertinent legal services, such as the Legal Services Food Hub/Conservation Law Foundation and perhaps a list of pro bono attorneys familiar with farmland legal issues whom farmers could contact for additional assistance.

11. Environmental

Challenges:

- Challenges to land tenure occur when new farmers lease land that must be remediated or restored.

Recommendations:

- Provide explanations of what state and federal legal constraints exist for farmers trying to bring land back into production, particularly for highly erodible lands or wetlands.

12. Other Legal issues

Challenges:

Participants briefly mentioned three issues related to law but not directly relating to land tenure. We summarize those issues here even though they are beyond the scope of this project because they are important and CAFS or other organizations may address them in the future. These issues included:

- What labor and employment laws apply to farmers and when do farmers need to pay employees minimum wage salaries and overtime?
- Lack of farmers' access to quality lawyers who are farm-friendly and understand the legal issues that new farmers face.
- A need for farmers to be educated on different laws and housing codes that impact their ability to obtain quality and affordable housing.

⁷ A participant asked whether right to farm laws could be used in urban areas to immunize farmers from nuisance suits in cities. However, generally farmers may only avail themselves of right to farm laws if they can demonstrate that the particular land at issue has previously been used for farming for a specified duration -- which is not the case in urban agriculture.

Recommendations:

Participants desired:

- A list of attorneys well-versed in the legal issues farmers face who would be willing to work with farmers on a pro bono basis.
- Descriptions of the applicable labor and employment laws in each state that could be relevant to farming or related food service operations. Similarly, participants might welcome tools that describe the various portions of state housing codes relevant to farmers.

Recommendations for the design of the toolkit

In addition to making recommendations regarding the substantive content of the legal toolkit, participants also made recommendations and asked questions regarding how the toolkit should be designed. Participants asked:

- Whether the toolkit could be a compilation of **new** or **existing** resources, or a combination thereof, and how such resources would be differentiated.
- Whether the toolkit would contain just legal tools or also incorporate **policy** related tools.
- What is the **breadth** and **depth** of the project in terms of how many legal issues are covered and how deeply they are covered.
- Whether the toolkit would contain separate sections for each state. Participants suggested that they would like information presented in a **state-by-state** basis.
- Whether CAFS could have lawyers provide legal opinions on various issues and make such opinions public in the toolkit. For example, a lawyer might provide an opinion on what is legally allowable or not in terms of farmers seeking investors. Professors Ristino and Renner explained that this would likely be outside the scope of the project and that CAFS needed to be careful not to appear as though it were providing legal advice on the site. However, CAFS might include the different factors courts consider under a statute or a regulation in a given situation and provide that information in the toolkit. Participants suggested that CAFS might be able to provide the arguments for or against certain outcomes or the strengths and weaknesses of a given argument.

Review of the online guide and land tenure legal resources

During this session of the convening, participants broke into small group sessions where each student clinician and Professor Renner showed participants the online guide of existing land tenure resources that CAFS created and solicited feedback.⁸

Participants made several suggestions concerning the design of the Online Guide. To the extent that these suggestions are not appropriate for the Online Guide due to time, budget and technological restraints, CAFS will consider these comments when designing the legal toolkit:

- Topic titles should appear in a larger font size and appear in different colors so as to stand out more from the resources that appear underneath them. For example, under “Maine,” financing, insurance, land acquisition, state statutes, taxation, and urban agriculture could have a larger font size than the names of the resources listed below them.
- After participants clicked on a state within the map, they would like to be taken to a screen containing the various issues and be able to select an issue from that page. In other words, if a user clicked on “Maine” within the map but was most interested in “taxation,” then participants wanted to be able to click a “taxation” issue button at the top of the Maine page and jump to that specific information.
- Including a Trip Advisor-like feedback survey tool for each resource as a way to help determine the helpfulness of the resource to users.
- Organizing the resources by robustness.⁹
- Contacting Jenn Dempsey (jdempsey@farmland.org) with the American Farmland Trust for input regarding web resource design given AFT’s experience building its own web-based resources.
- Creating a “return to top of page” button at the bottom of each page to assist users in easily returning to the beginning of their search, rather than having them scroll all the way back to the top of the page.
- Creating a “return to home” button that would easily direct users back to the homepage.
- Linking the Online Guide to sites to help people find currently available farmland. However, CAFS notes that the Online Guide already contains such land link resources where they are available in select states.¹⁰
- Using drop-down menus in order to better organize broad, over-arching issues and sub-issues. For example, under the urban agriculture tab, a drop-down menu could appear containing the following subcategories: liability, fire safety, and

⁸ Participants recommended a list of resources to include in the Online Guide, but these resources were already contained within the Guide.

⁹ All the sources have already been screened for robustness.

¹⁰ There was a category of comments like this one that were already addressed within the Online Guide. Consequently, we have not included an exhaustive summary of those comments in this final synthesis report.

waste management. Similarly, the land acquisition tab could have a drop-down menu containing the following subcategories: land seekers, landowners, land trusts, and farmers.

Comments on the additional resources page of the online guide:

Other comments centered on the “additional resources” page and participants suggested:

- These resources should be incorporated throughout the other tabs on the site.
- Ensuring the citation format of the resources was consistent; for example, publishing information should be included for each resource.
- Hyperlinking the sources (CAFS notes that for print-only sources and sources appearing on Westlaw, hyperlinks are not available because these are not publically available). One participant suggested that CAFS refer site visitors to libraries for those resources not publically available.

Conflicting feedback:

Participants also provided conflicting feedback. For example, some participants:

- Recommended adding more resources (especially in the areas of leasing, land acquisition, and zoning), while other participants felt that some information should be eliminated because too much information and too many sources would be overwhelming to users.
- Advised shortening or eliminating the descriptions of links entirely while other participants advised rewriting the descriptions to make them lengthier and more descriptive.
- Concluded that the “land acquisition” tab was too specific and that it might help to change this label to “land access.” Other people thought that the “land acquisition” tab was too broad and over-inclusive, including topics such as easements and conservation, which might deserve their own sections.

Maintenance of the online guide:

Participants also inquired how the site would be updated and maintained in the future after the current project funding is gone.

Conclusion

In sum, participants suggested a range of priority issues within the realm of land tenure, including farm succession; land transactions; collaborative models of ownership; leases; easements; financing; tax; liability; insurance; zoning; urban agriculture; labor and employment laws affecting farmers; access to legal counsel; and affordable housing for farmers. Participants provided a range of legal tools that they suggested be included in the toolkit that would help them assist farmers in overcoming land tenure barriers, especially flow charts, decision-trees, checklists, guidelines, glossaries, and samples/models/templates of different kinds of leases. Going forward, CAFS -- in collaboration with its project partners -- will determine the breadth and depth of coverage to provide in creating tools to address the issues as generated by this convening and what further due diligence is necessary to discern key legal land tenure issues to inform priority setting.

Appendix I

Agenda

Priority Issues



CENTER *for* AGRICULTURE AND FOOD SYSTEMS

THE FOOD MOVEMENT GROWS HERE

Agenda for Land Tenure Convening February 25, 2015

Agenda

- 1:00 Welcome, Overview and Introductions
- 1:30 Listening Session to Explore Participants' Challenges
- 2:30 Break (cheese, crackers, fruit)
- 3:00 Listening Session Continued
- 3:30 Available resources – small groups to review state resources
- 3:45 Recommendations for the Legal Tool Kit
- 4:45 Next steps
- 5:00 Adjourn



CENTER *for* AGRICULTURE AND FOOD SYSTEMS

THE FOOD MOVEMENT GROWS HERE

**Center for Agricultural and Food Systems
Land-Tenure Project
Convening: Suggested Topics**

*How do we define “land tenure”?

I. MODES OF LAND TENURE ACCESS

1. Land Purchase

- Option to purchase – within the lease
- Fee-title purchase
- Fee-title purchase with sweat equity
- Conservation easements

2. Land transfer

- Familial versus non-familial
 - Are there different tax regimes?
 - Death transfer versus living transfer
 - Joint ownership versus tenant-in-common
 - Do differences exist?
- Farm succession planning
- Equity protection for apprenticing
 - Are there rules for building, measuring, and protecting accumulated equity in property?

3. Leaseholds

- Lease models
 - Revenue sharing
 - Contracts
 - Oral versus written
 - Do the leases have to be registered if they exceed a certain length?
- Termination agreements
 - Ex. Iowa – requires termination notice prior to September 1st for properties greater than 40 acres in size

- Lease tenure
 - Long-term versus short-term
 - Protecting investment in property
- Lease conditions
 - Rights allotment
 - Use rights
 - Control rights
 - Transfer rights
- Compensation for long-term investments
- Good husbandry provisions

4. Cooperative

- Models of cooperative ownership
 - Legal organization
 - Liability
 - Capitalization
- Governance

5. Community

- Models of community or commons ownership
- Agreement forms with farmers (how is equity recognized?)
- Securities law issues with potential passive investors

II. ADDITIONAL LAND TENURE TOPICS:

1. Urban and rural (which considerations unique to one versus the other?)

- Zoning issues
 - Restricted uses
 - Ex. no livestock
 - Can they be overcome by contract conditions or do they require a bylaw change?
- Use of community gardens
 - Are there restrictions on commercial producers?
 - Are size restrictions imposed on plots?
 - Are certain forms of business arrangements encouraged or prohibited?
 - Leaseholds
 - Rent-to-own
 - Share cropping

2. Environmental

- Contaminated lands
- Remediation and liability

3. Financing

- Classification and access to loans
- Can small plots/urban plots be designated as homeowner plots and thus be eligible for subsidized interest rates?
- Are there no interest loans, low interest loans, or loan guarantees available for qualified beginning farmers?
- **USDA Farm Service Agency Farm Loan Programs**
 - Direct and guaranteed loans to farmers and ranchers for operating expenses and land purchases
- **State finance programs**
 - Low interest loans
 - Loan guarantees
 - Loan participation programs
 - Who qualifies?
- **Farm credit programs**

4. Insurance

- Crop insurance
 - A factor in land access/tenure?
- Does the landowner bear any potential liability for tenant actions?
 - Environmental
 - Who bears responsibility for remediation?
 - Injury
 - Are third-parties protected from liability?

5. Taxation

- Are “beginning farmer” tax credits available?
- Role of taxation rates in land tenure
- Tax deductions for land improvements
 - Who can take them?

6. Farm conservation programs

- Relation to land access/tenure?
- When can landlord take portion of the payment
- Is active involvement of landlord required?
- State programs
- Federal programs
- Role of Conservation
 - Conservation easements
 - Transfer of development rights