FINAL REPORT

of

The Food and Livelihood Legal Project of the Sustainable Economies Law Center (SELC)

for

2011-2012 Sustainable Agriculture and Food Systems Competitive Grants Program University of California Agricultural Sustainability Institute (ASI)
Sustainable Agriculture Research and Education Program (UC SAREP)

August 11, 2012

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Location of Project: San Francisco Bay Area and Fresno, CA

Funding from UC SAREP: \$10,000

Objectives

The overarching goal of the Sustainable Economies Law Center's Food and Livelihoods Legal Project is to meet the needs of low-income individuals and groups wishing to make sustainable livelihoods through participation in the food system. Funding from SAREP made it possible to partner with community-based organizations to provide informational materials, workshops, and legal clinics targeted at low-income community residents. When applying for funding, SELC set out to create the following:

- **Online Resources:** High quality legal information will be available at no cost on the SELC website for anyone interested in food-related livelihoods;
- Legal Workshops: Between 90 and 225 individuals will attend our workshops about legal issues to support the development of their sustainable food livelihoods; and
- **Legal Clinics:** Up to 36 people will attend our legal advice clinics to receive advice on the legal possibilities and limitations of their food or farm enterprises or projects.

Specifically, the resources, workshops, and clinics were aimed at developing clear legal resources and assistance pertaining to the following topics and questions:

- 1. Entrepreneurial Urban and Suburban Agriculture: What are the unique legal issues that arise in connection with urban and suburban commercial food production? Commercial agriculture is common in rural areas, while in urban areas, food growing generally takes the form of community gardening and small personal gardens. Increasingly, however, communities are exploring the potential for urban commercial food growing on rooftops, walls, empty lots, and in private yards. Many unique legal issues arise when commercial agricultural production takes place in urban and suburban areas, including zoning, private land covenants, building codes, unique insurance questions, property tax questions, residential landlord-tenant laws, health and safety laws, nuisance laws, and so on.
- 2. Home-Based and Informal Food "Enterprises:" What are the limits and possibilities of entrepreneurial food growing and food production in back-yards and residential kitchens? Increasingly, participants in the urban homesteading, permaculture, grow-your-own, and DIY (do-it-yourself) movements are exploring creative ways in which home food production can provide a livelihood. Community meal-sharing and home-grown vegetable swaps are examples of casual activities that rarely trigger legal problems. Yet, when these activities go a step further and develop into organized food bartering networks and even selling of home-produced food, many legal issues come up: zoning laws, commercial regulation, consumer protection, health and safety laws, fire codes, potential tort liability, and tax laws.
- 3. Community-Supported Food Enterprises: What are the legal limits and possibilities for implementing community-supported, community-owned, and cooperative enterprise models in the food system? The Community-Supported

Agriculture (CSA) model has already taken root and helped to grow many organic farms. By purchasing a subscription or share of the harvest, community members support farmers by agreeing to share initial expenses and risks. This model is spreading to other parts of the food industry, through community-supported kitchens, cafes, and fisheries. Taking it yet another step further, many food enterprises are now exploring the potential to raise capital by obtaining microinvestments from customers and community members. Cooperatives, too, are an important tool for enabling more people to take part in food-related livelihoods. These enterprise models not only benefit food enterprises; they also create and circulate wealth within local communities. Unfortunately, these enterprise models face securities laws obstacles as well as arcane state statutes governing various corporate forms, making it extremely difficult for small farms and food enterprises to raise capital or implement models of consumer, producer, or worker ownership.

Summary

The goal of the Sustainable Economies Law Center's Food and Livelihoods Legal Project is to facilitate low-income community members' access to sustainable livelihoods in the food economy. In particular, SELC provides legal resources and assistance to help individuals and groups develop:

- 1) Urban and suburban entrepreneurial farms,
- 2) Home-based and informal food enterprises, and
- 3) Community-supported and cooperatively-owned food and farming enterprises.

With funding from UC SAREP, SELC accomplished the following:

- 1) **Three Legal Workshops:** SELC designed and co-organized three legal workshops in the Bay Area, each attended by 50-60 farmers and food entrepreneurs. Two workshops included simultaneous Spanish translation. The workshops consisted of a series of action-packed five-minute presentations, all using graphical PowerPoint slides. The topics included:
 - a. Business Formation
 - b. Social Enterprise
 - c. Cooperatives
 - d. Nonprofits
 - e. Community-Supported Enterprise
 - f. Private Food Clubs
 - g. Accessing Land
 - h. Commercial Leasing
 - i. Zoning
 - i. Building Codes
 - k. Selling Food
 - l. Bartering with and Donating Food
 - m. Income and Sales Tax
 - n. Health & Safety Regulations

- o. Food and Agricultural Regulations
- p. Livestock Raising
- q. Employment Law
- r. Risk Management
- s. Financing and Securities Law
- t. Contracts
- u. Accounting/Bookkeeping

All workshop participants received a 60-page booklet, which included a detailed section to accompany every topic. The workshops were an excellent opportunity to involve law students, lawyers, and community volunteers, who helped to present the material. Nearly every presentation was scripted, to enable future volunteers to present the same topic, and also to aid in translation into other languages.

SELC partnered with several organizations in delivering the workshops and clinics, including the East Bay Community Law Center, Students for Economic and Environmental Justice, the City of Richmond Cooperative Development Program, and the UC Cooperative Extension Small Farm Program. Most of these partnerships are ongoing and will serve as the foundation for additional workshops and clinics in 2012-2013.

- 2) **Legal Advice Clinics:** SELC provided 30-90 minute legal advice sessions to 45 farmers and food entrepreneurs in the Bay Area and Fresno. With the help of a Hmong translator, nine of the legal advice sessions were provided to Hmong and Lao farmers in Fresno.
- 3) **UrbanAgLaw.org:** SELC has created a free online Urban Agriculture Legal Resource Library (www.UrbanAgLaw.org). Thirteen volunteers continue to research and collect content for each section of the library.
- 4) **Other Resources:** SELC has also researched topics related to community-based and home-based food businesses, including:
 - a. **Cottage Foods:** SELC compiled <u>research on cottage food laws nationally</u>.
 - b. **Private Food Sales:** SELC researched <u>the legalities of food sold in private contexts.</u>

The grant from UC SAREP essentially acted as seed funding to grow SELC's ongoing projects to meet the legal needs of small-scale farmers and food entrepreneurs. SELC continues this work in 2012-2013, and has received other funding to support legislative advocacy projects that remove legal barriers to cottage food production (California's AB 1616), and a bill to be introduced in 2013, known as the Homegrown Food Act.

Specific Results

1. **Results of Online Legal Resources:** SELC created an Urban Agriculture Legal Resource Library (UrbanAgLaw.org), which is now one of the only central sources for legal information pertaining to urban and suburban agriculture. We are publicizing the launch of this library at two major conferences on urban farming this year, and will engage volunteers to maintain this library on an ongoing basis.

In connection with the Food and Livelihoods Legal Project, SELC has also researched a handful of other related topics, the details of which have been or will soon be made available on SELC's website. For example, our research on cottage food laws led us to write a bill and seek an author in the California legislature for AB 1616, which will allow Californians to sell certain food items made at home. See www.cottagefood.org for more information about our efforts. In addition, our research on the legalities of food sales in private contexts has influenced county health departments' responses to many "underground" markets and restaurants.

More recently, we have begun to draft a law, which we hoped will be proposed in the California legislature in 2013. This law, the California Homegrown Food Act, would remove some of the public and private zoning barriers to the sale of homegrown and urban-grown produce.

SELC has recently received funding from the $11^{\rm th}$ Hour Project to continue the work we began with the Food and Livelihoods Legal Project. This funding will allow us to vastly expand the resources currently available on our websites.

2. **Results of Legal Clinics:** SELC provided legal advice sessions to 45 farmers and food entrepreneurs, most of whom completed a feedback form giving overwhelming positive comments. Significantly, most clients indicated that they were unaware of other legal resources through which they could have obtained assistance, which demonstrates that SELC was filling a notable gap in the availability of legal services for small-scale food enterprises and projects. A larger number of the clients were involved in starting or operating worker cooperatives, mobile food businesses, urban farms, community-supported agriculture programs, and other innovative projects that faced unique legal issues.

Approximately 2/3 of the clients we advised were in the early stages of starting their enterprise or project, which is a critical time during which to examine and address potential legal barriers. Other clients had existing enterprises but faced legal barriers to their ongoing work.

We learned that running a legal clinic is also an excellent way to expose law students and other interns to the experience of advising food enterprises. For each clinic, interns and law student volunteers were responsible for handling intake of clients – interviewing or administering a questionnaire to the client to collect information about his/her project/enterprise. We shared the intake information with the volunteer attorneys taking part in the advice sessions, so that the advice attorneys could know in advance about the clients they would advise.

The role of interns during the advice session was quite valuable. One intern recorded information on a whiteboard, while the other typed notes on the conversation, to later serve as the basis for a summary memo. This freed up the attorney to listen and advise, and it freed up the client to listen and ask questions, which made the sessions quite effective. Interns also helped by asking clarifying questions and offering ideas. Following each clinic session, the interns typed up memos that summarized: 1) matters discussed and advice given, 2) unresolved questions, and 3) additional resources.

With funding from the 11th Hour Project, and in partnership with the East Bay Community Law Center and Students for Economic and Environmental Justice, SELC will continue to offer these clinics in fall of 2012 and throughout 2013.

3. Workshops and Accompanying Materials: As noted in the summary, SELC developed and provided three workshops, each of which included a series of five-minute mini-presentations on approximately 15 of the 21 topics for which we have developed mini-presentations. The majority of the slides to accompany the workshops were graphics, which were meant to make the subject more interesting and memorable to participants. Feedback from the workshops was quite positive and enthusiastic, although many attendees expressed feelings of information overload. As a result, the workshops we will offer in coming months will be longer in duration and will include more interactive components to help participants digest the material.

The handbooks we developed to accompany these workshops will soon be made available online. They are included in this Final Report as an email attachment. The "Law Slaw" Handbook is more focused on urban farms and community-based food projects. The "Legal Eats" Handbook is more focused on sustainable food enterprise.

The workshops we developed were designed to be replicable, and may soon be replicated in Detroit, Philadelphia, and Fresno. Nearly every one of the 21 workshop presentations were scripted in advance and we have shared the scripts, slides, and handbooks with organizations in the three other cities to allow them to teach similar workshops.

Potential Benefits/Impacts on Agriculture and/or Food Systems

Many food entrepreneurs venture into uncharted legal territory when they seek to do something innovative and sustainable. SELC's Food and Livelihood Legal Project has begun the process of mapping out a significant portion of this legal territory, particularly in relation to urban agriculture, cooperatives, small farms, home-based food businesses, and "underground" food projects. The resources and workshops SELC has developed already fill a significant gap in information, and the legal advice we have given on these topics has already benefited many existing food projects. We expect that the impact of this work will grow exponentially as we further develop and make public our online resources in coming months.

Much of the research we did in connection with this project led SELC to the conclusion that some legal barriers need to be removed through legislation. SELC raised money separately to begin some legislative advocacy projects. By September of 2012, we expect that our advocacy efforts will already begin to pay off, with the passage of the California Homemade Food Act (AB 1616). We are also aware that our research on cottage food laws has helped advocates in other states begin the process of introducing similar legislation.

The model that SELC developed for the provision of workshops and clinics has proven to be useful in application to other topics. For example, using the same model, we are now offering workshops and clinics for Worker-Owned Businesses. Legal programs in other parts of the country are now considering replicating our models.

Dissemination of Findings

The research and writing SELC has done in connection with the Food and Livelihoods Legal Project will be disseminated in a variety of formats:

Online Handbooks:

- The "Legal Eats" and "Law Slaw" Handbooks: These are handbooks developed to accompany our workshops, but are also very useful as standalone resources. The handbooks will soon be made available online. They are attached to this report.
- The Think Outside the Boss Manual for Worker-Owned Cooperatives: This handbook was developed with funding from Rainbow Grocery Cooperative, but the topic overlaps with our work on Food and Livelihoods. The handbook is also attached to this report.

Online Libraries:

SELC has developed or will develop online legal resource libraries where we collect research on a range of topics related to sustainable economies. These libraries include:

- UrbanAgLaw.org legal resources for urban and suburban farms.
- CoopLegal.org legal resources on cooperatives.
- BarterLaw.org legal resources on barter and local currencies.
- SELC's Food Policy Library (in development) policy recommendations and samples to contribute to the growth of a more sustainable food system.

Book:

Janelle Orsi has authored a book called *Practicing Law in the Sharing Economy* (ABA Books 2012), which will be available for sale in September 2012. Parts of the book draw on research SELC did as part of this project. Chapter 8 is attached to this report. All royalties from the book will go to SELC.

Articles:

The research SELC did has resulted so far in three articles by SELC on Shareable.net:

- "The Shareable Food Movement Meets the Law," July 1, 2011, available at http://www.shareable.net/blog/the-shareable-food-movement-meets-the-law
- "Policies for a Shareable City #11: Urban Agriculture," December 1, 2011, available at http://www.shareable.net/blog/policies-for-a-shareable-city-11-urban-agriculture
- "Policies for a Shareable City #12: Food Sharing," December 15, 2011, available at http://www.shareable.net/blog/policies-for-a-shareable-city-12-food-sharing