



# Staff Report: Evacuation Zone Access for Agriculture and Livestock Producers

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**SONOMA COUNTY BOARD OF SUPERVISORS  
AD HOC COMMITTEE ON EVACUATION ZONE ACCESS**

July 2022



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Cover photo: Walbridge Fire, August 27, 2020. S Gibson. iStock

## SCOPE

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This report summarizes the legal, operational, health & safety, social and racial equity, and administrative elements that may support consideration and development of an Evacuation Zone Agriculture/Livestock Access policy and program in the County of Sonoma.

The report concludes with a set of policy/program options, as well as a summary of similar programs in other California counties and references.

## INTRODUCTION

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As wildfires in Sonoma County ("County") continue to increase in frequency and intensity due to climate change<sup>1</sup>, the threat to life, property and infrastructure has resulted in several efforts to provide the agricultural community with access into evacuated areas while ensuring resident and worker safety. Agricultural and livestock producers, farmworkers, community groups, professional associates, public policy researchers and academics, and residents continue to express considerable interest in this subject.<sup>2</sup>

This subject also serves as an example of the many challenges that will face County communities and residents as we come to grips with the real and complex implications of climate change.<sup>3</sup> There are many powerful social, economic, and community interests that intersect here, including public safety functions, farmworker health and safety, racial equity, the long-term economic viability of agricultural and livestock producers, economic effects, and the role of local, state, and federal governments.

The County's approach to evacuation zone access may be seen as a bellwether for similar efforts in other California counties. To date, there is no uniform approach to developing or administering county-level access programs (see Attachment 1). The

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<sup>1</sup> Yale Climate Connections. Wildfires and climate change: What's the connection? July 2, 2019 <https://yaleclimateconnections.org/2019/07/wildfires-and-climate-change-whats-the-connection/>; Sonoma County Climate Lands Resilience Strategy (Draft for Public Comment, June 2022). <https://sonomacounty.ca.gov/Main%20County%20Site/Administrative%20Support%20%26%20Fiscal%20Services/County%20Administrator/Documents/Climate%20Action%20and%20Resiliency/Sonoma-Climate-Resilient-Lands-Strategy.pdf>

<sup>2</sup> San Francisco Chronicle. Sonoma vineyard workers fight for safety ahead of fire season - It's an uphill battle. February 3, 2022. <https://www.sfchronicle.com/food/wine/article/Sonoma-vineyard-workers-fight-for-safety-ahead-of-16829576.php>; University of California, Irvine. Addressing disparities in Sonoma County's Agricultural Pass program. <https://socialecology.uci.edu/news/addressing-disparities-sonoma-countys-agriculture-pass-program>

<sup>3</sup> Urban Sustainability Directors Network. Guide to Equitable, Community-Driven, Climate Preparedness Planning. May 2017. [https://www.usdn.org/uploads/cms/documents/usdn\\_guide\\_to\\_equitable\\_community-driven\\_climate\\_preparedness-high\\_res.pdf](https://www.usdn.org/uploads/cms/documents/usdn_guide_to_equitable_community-driven_climate_preparedness-high_res.pdf)

development and implementation of any access program may require both near- and long-term efforts.

### Agriculture in Sonoma County

Agriculture and livestock production are a fundamental component of both the County's economy and identity. The total production value of County agriculture was \$680 million in 2020 (a decrease from 2019). This data point reflects only the production value and does not include the value of the agricultural supply chain in the county, including the ancillary benefits of agriculture in job creation within the processing, wholesale and retail markets, or the inherent value of agriculture for related sectors such as tourism.

There are more than 1,000 agricultural businesses in Sonoma County cultivating crops, practicing livestock agriculture or conducting associated agriculture processing activities or combinations of these. Absent a formal analysis by location, it is difficult to assess exactly how many of these producers and processors would seek participation in an access program and is dependent on the geography associated with fire emergencies in the county landscape. Previous wildfire incidents over a fire season in Sonoma County have demonstrated interest by just over 600 producers/processors seeking to be identified for potential access. While not all producer/processors apply to seek access during an event, there is considerable interest in securing identification for access should it be needed.

Sonoma County employs roughly 8,500 agricultural laborers with 2,500 in the dairy, livestock, nursery, and vegetable industries.<sup>4</sup> Approximately 60% of this workforce is permanent, year-round labor. The winegrape sector has the largest labor workforce with roughly 6,000 employees - 80% full-time and an additional 800 part-time. Each year, approximately 1,300 seasonal farmworkers come into the County via the H-2A Visa program. This program augments a local season-long agricultural workforce. Estimates as to the percentage of farmworkers who are undocumented range from 57%<sup>5</sup> to a "majority are assumed to be"<sup>6</sup>.

A 2015-2019 demographic analysis of California farmworkers from the National Agricultural Workers Survey (NAWS), indicates most are predominately immigrants from Mexico (84%) and Central America (4%).<sup>7</sup> 96% of farmworkers identified as Hispanic and

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<sup>4</sup> Sonoma County Department of Agriculture/Weights & Measures. 2020 Sonoma County Crop Report.

<https://sonomacounty.ca.gov/natural-resources/agricultural-weights-and-measures/crop-reports;>

<https://spotlight.tcbmi.com/?state=CA> (for H2A numbers).

<sup>5</sup> Measure of America. A Portrait of Sonoma County: 2021 update. <https://sonomacounty.ca.gov/a/97872>

<sup>6</sup> Sonoma County Dept. of Health Services. Sonoma County Farmworker Health Survey (FHS) 2013-14.

<https://sonomacounty.ca.gov/Ektron%20Documents/assets/Sonoma/Sample%20Dept/Sample%20Dept/Department%20Information/Documents/farmworker-health-survey.pdf>

<sup>7</sup> U.S. Dept. of Labor. California Findings from the National Agricultural Workers Survey (NAWS) 2015–2019:

A Demographic and Employment Profile of California Farmworkers.

<https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS%20Research%20Report%2015.pdf>

9% as indigenous (by self-identified race, language, and/or heritage language). 80 percent said that Spanish was the language in which they are most comfortable conversing, 7 percent said English was, 5 percent said both Spanish and English, and 7 percent said more than one language. Note: these NAWS figures are not definitive and require local data collection to supplement potential gaps.

Sonoma County is home to a “significant” Indigenous farmworker population with several languages spoken.<sup>8</sup> Note: Indigenous and undocumented farmworkers may be “severely undercounted the U.S. Census and the National Agricultural Workers Survey (NAWS).”<sup>9</sup>

Note: As the County develops policies and programs that serve the agriculture and farmworker communities, the County should consider updating and expanding demographic studies to ensure efforts are targeted and scoped appropriately.

### Background

In response to requests for access and an informational need identified in the field by law enforcement during major wildfires in 2017, 2019, and 2020, Sonoma County implemented temporary variations of an “Evacuation Zone Access” program. Through the Emergency Operations Center, the Department of Agriculture, Weights & Measures coordinated, reviewed, and facilitated the collection of information regarding requests for agricultural access, and the transmittal of the information to law enforcement in the field to aid in decision-making for access. These efforts were undertaken to support the needs of the agricultural community in the property preservation associated with their businesses and livelihoods, and to support the needs of law enforcement in evaluating requests for access.

### Recent County Efforts and Community Engagement

Between fire events in August and October of 2020, the Department of Agriculture, Weights & Measures received a number of inquiries from farm labor advocacy groups with concerns that farmworkers were entering areas subject to evacuation and were experiencing poor air quality in the areas where they were working. The Agricultural Commissioner met with advocacy groups on September 4, 2020 to understand their concerns relative to farm worker health and safety.

In 2021, the Agricultural Commissioner worked with the Director of the Office of Equity to identify a list of stakeholders from which to seek input on potential policies related to the development of an Agricultural Access program. The potential policy presented and discussed included a provision where access would be potentially granted by public

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<sup>8</sup> Measure of America. A Portrait of Sonoma County: 2021 update

<sup>9</sup> California Endowment. California’s Indigenous Farmworkers. 2010. [https://www.alrb.ca.gov/wp-content/uploads/sites/196/2018/05/IFS\\_Mines\\_Final\\_2010.pdf](https://www.alrb.ca.gov/wp-content/uploads/sites/196/2018/05/IFS_Mines_Final_2010.pdf)

safety personnel in order to allow bona fide agricultural operators to conduct activities critical or essential to the property preservation of their agricultural businesses.

The Agricultural Commissioner and Director of the Office of Equity identified 43 individual stakeholders representing a diversity of interests and affiliations including community based organizations, labor advocacy groups, local county and state agencies, and agricultural advocacy and industry groups. From July through October, 2021 the Agricultural Commissioner and Director of the Office of Equity carried out 18 individual stakeholder meetings to seek understanding of each stakeholder's mission, core values, and access program needs and priorities. This subject was also addressed in regular business meetings with Farm Bureau and Winegrape Commission board meetings.

### Board of Supervisors Ad Hoc Committee

To address the potential for developing a more comprehensive and sustainable approach to this issue, the Board of Supervisors established the Evacuation Zone Access Ad Hoc Committee on February 1, 2022. Chaired by two appointed Supervisors, the Committee staff consists of representatives from the following departments: Emergency Management, Agriculture/Weights & Measures, Sheriff's Office, Office of Equity, and County Office of Communications as well as the University of California Cooperative Extension (UCCE).

As of June 15, 2022, the Ad Hoc Committee had conducted five meetings to review recent County efforts, review existing guidance/practices, identify and assess potential options, address media communications, and prepare this subject for discussion by the Board of Supervisors.

The Committee established four primary areas of work:

1. Identify local and state efforts that address evacuation zone access with a focus on farmworker protections and other access issues (livestock and animals, commercial activities, etc.). Review draft county Agriculture Access programs and associated state legislation. Consider incorporating into County legislative advocacy platform relative to state programs.
2. Engage with stakeholders.
3. Assess options for implementing the state livestock program or other interim policy options.
4. Complete development and approval of a policy/program before August 1, 2022. Identify best approaches for educating residents on any approved policy/program.

The Committee also identified several areas of potential future work:

- Address non-agricultural interests in evacuation zone access (ex. economic)
- Disaster relief resources for workers impacted by evacuations/closures

- Health Impacts to farmworkers and other outdoor workers during disasters
- Increased labor and health standards education and enforcement resources
- Multi-departmental effort to focus on the farmworker population re: services, outreach, engagement, education, resources

Staff conducted a literature review of relevant authorities, requirements, and guidance. Results have been incorporated into this report narrative as well as Attachment Two (References). Staff also identified and summarized related programs developed in other California counties which is presented in Attachment 1 (County Access Program Summary).

Staff received input on this subject via public comments made at the May 3, 2022 Board of Supervisors meeting as well as via correspondence submitted by North Bay Jobs with Justice, Sonoma Alliance for Vineyards and Environment, and the California Cattlemen's Association.

#### Concept: Agriculture/Livestock Access Program

In relatively rare circumstances, a hazard (such as wildfire or flood) may no longer threaten an area that has been subject to mandatory evacuation or conditions have changed which may reduce the immediate life safety threat. Areas may be identified as potentially being open for emergency road and utility work in order to make the area safe enough for general access – i.e. the “Hard Closure” may be reclassified as a “Soft Closure.” At this point, it may be possible to allow limited re-entry for agricultural and livestock producers.

An established access program could potentially allow the agricultural farm owner-operator or livestock producer limited access to areas that may otherwise be restricted to the public, in order to:

1. Evacuate, transport, shelter, feed, water, administer veterinary or other care to livestock and/or irrigate crops;
2. Fuel emergency generators;
3. Conduct critical agricultural activity\*; or
4. Provide auxiliary support to peace officers and emergency personnel (such as identifying access roads and water points).

\*Critical agricultural activity needs to be defined.

An access program is intended to be implemented only when safe to do so as determined by public safety officials. An access program could include providing agriculture/livestock producers and designated employees with an identification card or some other document (as in past programs, based on Agricultural Commissioner verification). However, such an identification card or document does not grant permission to ignore evacuation orders, nor does it grant free passage into evacuation

areas. Access identification card holders must comply with all directions from public safety officials including evacuation and keep out orders.

Some agricultural/livestock producers and employees have not complied with evacuation orders due to concerns about life safety of livestock and other animals in evacuation, as well as due to concerns about property protection. An access program may increase the potential of compliance with evacuation orders, as well as increased information about people inside of mandatory evacuation zones to support life safety during emergencies. If people do not obey the evacuation orders and stay behind, it creates an increased danger for them and for first responders.



## **GOVERNMENT AUTHORITIES AND EVACUATION COORDINATION**<sup>10</sup>

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### County of Sonoma / Board of Supervisors – General Authority

Sonoma County is a general law county. Among its powers is the legislative power. Pursuant to California Constitution, Article XI, § 7, “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” “Most legislative acts, including using the police power, are adopted by ordinance. There are, however, numerous exceptions and specific state laws sometimes indicate whether the action requires an ordinance or resolution.”<sup>11</sup> Whether a proposed county legislative act conflicts with the general laws of the State of California requires a legal analysis.

### California Emergency Services Act and County Code Chapter 10

The County has broad discretionary powers related to emergencies and natural disasters. The California Emergency Services Act grants local governments with the authority to proclaim local emergencies, create local emergency councils, establish regulations necessary to respond to emergencies, etc.<sup>12</sup> County Code Chapter 10 was adopted to comply with and implement the California Emergency Services Act.<sup>13</sup> Under that Chapter, the Emergency Council may study and recommend rules and regulations to carry out the emergency plan that must be adopted by the Board of Supervisors. (Sec. 10-8(a).) While the Director of Emergency Services has authority to promulgate rules and regulations after a disaster has been declared, such rules and regulations must also be confirmed by the Board of Supervisors at the “earliest practicable time.” (Sec. 10-5(g)(1).)

### Law Enforcement – Authority to Establish Evacuation Zones

Under Section 409.5 of the California Penal Code, designated peace officers at both the state and local levels are provided with the authority to close and evacuate an area where “a menace to the public health or safety is created by a calamity including flood, storm, fire, earthquake, explosion, accident, or other disaster.”<sup>14</sup>

The Sonoma County Sheriff’s Office acts as the lead agency for evacuation of the unincorporated areas of Sonoma County and coordinates evacuation operations with law enforcement and other supporting agencies and jurisdictions.

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<sup>10</sup> See also Sonoma County Evacuation Annex, 2021 at <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/emergency-management/plans>

<sup>11</sup> For more information on county powers and structure see the California State Association of Counties website: <https://www.counties.org/general-information/county-structure-0>

<sup>12</sup> Cal. Gov. Code Section 8550, et seq.

<sup>13</sup> SCC Sec. 10-1.

[https://library.municode.com/ca/sonoma\\_county/codes/code\\_of\\_ordinances?nodeId=CH10CIDEI](https://library.municode.com/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH10CIDEI)

<sup>14</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=409.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=409.5)

In classifying the nature of an evacuation, Sonoma County law enforcement agencies adhere to the California Statewide Evacuation Terminology:<sup>15</sup>

- Evacuation Order: Immediate threat to life. This is a lawful order to leave now. The area is lawfully closed to public access.
- Evacuation Warning: Potential threat to life and/or property. Those who require additional time to evacuate, and those with pets and livestock should leave now.
- Shelter in Place: Go indoors. Shut and lock doors and windows. Prepare to self-sustain until further notice and/or contacted by emergency personnel for additional direction.
- Evacuation Order(s) Lifted: The formal announcement of lifting evacuations in an area currently under evacuation.
- Hard Closure: Closed to all traffic except Fire and Law Enforcement.
- Soft Closure: Closed to all traffic except Fire, Law Enforcement and critical Incident resources (i.e. Utility, Caltrans, City/County Roads etc. or those needed to repair or restore infrastructure).

In major wildfires, fire and law enforcement agencies will establish incident command using a shared organizational model called Unified Command - usually CalFIRE and the Sheriff's Office. Large scale evacuations will probably make use of the pre-established Sonoma County Evacuation Zones.<sup>16</sup> These zones are designed to quickly identify areas that may need to be evacuated in large-scale disasters, support the rapid delivery of alerts & warnings, enable residents to gain a clearer understanding of what is occurring in their area, and support an efficient and coordinated response by public safety agencies.

As the fire moves or conditions change, the incident management team continually evaluates the potential for reducing or eliminating evacuation orders to support the return of residents to their homes and businesses.<sup>17</sup>

#### Agricultural Commissioner – General Authority

The powers and duties of the Agricultural Commissioner are listed in state law.<sup>18</sup> "The Agricultural Commissioner is responsible for the promotion and protection of the agricultural industry and for the protection of public health, safety, and welfare. These mandates are implemented through environmental protection programs which include

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<sup>15</sup> <http://calalerts.org/documents/Letter%20to%20Public%20Safety%20Partners%20-%20Standard%20Evacuation%20Terminology.pdf>

<sup>16</sup> Sonoma County Evacuation Zones, 2021 at <https://socoemergency.org/get-ready/evacuation-map/>

<sup>17</sup> Sonoma County Operational Area Evacuation Annex, August 2021. <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/emergency-management/plans>

<sup>18</sup> California Food and Ag Code Sections 2271-2287).

pest exclusion, pest detection, pest eradication, and pesticide use enforcement; consumer protection programs which include nursery and seed inspections, fruit and vegetable standardization, and shell egg quality control; and other programs such as apiary certification, fruit and vegetable certification, and agricultural statistics.”<sup>19</sup> The Agricultural Commissioner is within their authority when they meets with or corresponds with other agencies or persons or groups interested in agricultural practices or agricultural resource management, for the purpose of developing necessary information and securing the best results for agriculture in this state.<sup>20</sup>

#### State Livestock Pass Program (AB 1103)

AB 1103, authorizes a County to establish a livestock pass program, under which access may only be granted by the incident commander, a law enforcement official having jurisdiction, or their designee. When access is granted by emergency response personnel other than the incident commander, the emergency response personnel shall notify incident command that access has been provided to the livestock passholder. Under AB 1103 access granted pursuant to a pass shall be limited to a livestock producer or managerial employee for the purposes of sheltering, moving, transporting, evacuating, feeding, watering, or administering veterinary care to livestock, or providing local expertise to peace officers and emergency personnel. Local expertise shall only be provided upon the request of peace officers and emergency personnel. AB 1103 also specifies the information a livestock pass identification document must contain, and directs the creation of a training curriculum to be used to certify and recertify livestock producers eligible for the program. See also the *Recent Legislation* Section below.

#### Division of Occupational Safety and Health of California (Cal/OSHA)

The California Department of Industrial Relations (DIR), within the Labor and Workforce Development Agency, has administered the Cal/OSHA program since 1973 when California's plan was submitted to federal OSHA for approval. “Cal/OSHA's role is to enforce safety and health regulations through enforcement efforts; to provide compliance assistance through targeted outreach, education and training; and to emphasize increased awareness on the part of both employers and employees of the importance of a safety and health culture.”<sup>21</sup>

Cal/OSHA first filed regulations governing worker protection from wildfire smoke in July 2019, which were adopted and amended various times since then. The detailed

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<sup>19</sup> <https://www.counties.org/county-office/agriculture>

<sup>20</sup> Section 2285 of the Food and Agricultural Code.

<sup>21</sup> California State OSHA Annual Report (SOAR) FFY 2021 ([https://www.dir.ca.gov/dosh/reports/State-OSHA-Annual-Report-\(SOAR\)-FY-2021.pdf](https://www.dir.ca.gov/dosh/reports/State-OSHA-Annual-Report-(SOAR)-FY-2021.pdf))

regulations and appendices are codified at Title 8 of the California Code of Regulations § 5141.1.<sup>22</sup>

Among other requirements, Title 8 CCR § 5141.1 through § 3203, requires the employer to “establish and implement a system for communicating wildfire smoke *hazards in a language and manner readily understandable by employees*, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.” (Emphasis added.) Cal/OSHA also has specific requirements governing respiratory protection.<sup>23</sup>

Cal/OSHA's provides numerous resources<sup>24</sup>, including Protection from Wildfire Smoke training videos in English and Spanish.<sup>25</sup> Cal/OSHA also maintains a website for providing an overview of its regulations protecting workers from wildfire smoke.<sup>26</sup> Cal/OSHA publishes a factsheet as well, “Protecting Workers Exposed to Wildfire Smoke.”<sup>27</sup> Numerous air quality resources are maintained by other agencies.<sup>28</sup> However, Cal/OSHA enforcement staff have not typically been activated to Sonoma County during an active fire emergency.

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<sup>22</sup> Title 8 of the California Code of Regulations § 5141.1: [https://www.dir.ca.gov/Title8/5141\\_1.html](https://www.dir.ca.gov/Title8/5141_1.html)  
Appendix A: [California Code of Regulations, Title 8, Appendix A to Section 5141.1. Protection from Wildfire Smoke Measuring PM2.5 Levels at the Worksite \(Mandatory if an Employer Monitors with a Direct Reading Instrument\)](https://www.dir.ca.gov/Title8/5141_1a.html) ([https://www.dir.ca.gov/Title8/5141\\_1a.html](https://www.dir.ca.gov/Title8/5141_1a.html))

Appendix B: [California Code of Regulations, Title 8, Appendix B to Section 5141.1. Protection from Wildfire Smoke Information to Be Provided to Employees \(Mandatory\)](https://www.dir.ca.gov/Title8/5141_1b.html) ([https://www.dir.ca.gov/Title8/5141\\_1b.html](https://www.dir.ca.gov/Title8/5141_1b.html))

<sup>23</sup> Title 8 CCR § 5144: Respiratory Protection: <https://www.dir.ca.gov/Title8/5144.html>

<sup>24</sup> See <https://dir.ca.gov/wildfire> and Cal/OSHA's Training Academy: <https://trainingacademy.dir.ca.gov/>

<sup>25</sup> English: <https://youtu.be/cJYGNDNZOkc> ; and Spanish: <https://youtu.be/ctQlwlPc81w>

<sup>26</sup> Wildfire Smoke Emergency Standard: <https://www.dir.ca.gov/dosh/doshreg/Protection-from-Wildfire-Smoke/Wildfire-smoke-emergency-standard.html>

<sup>27</sup> Factsheet: <https://www.dir.ca.gov/dosh/wildfire/Protecting-workers-from-Wildfire-Smoke-fs.pdf>

<sup>28</sup> U.S. EPA AirNow to check current A.Q.I.: <https://www.airnow.gov>

U.S. Forest Service Wildland Fire Air Quality Response Program: <https://portal.airfire.org/>

Interagency Wildland Fire Air Quality Response Program: <https://wildlandfiresmoke.net/>

California Air Resources Board: <https://ww2.arb.ca.gov/homepage>

Local air pollution control districts: <https://ww2.arb.ca.gov/california-air-districts>

Local air quality management districts: <https://ww3.arb.ca.gov/capcoa/dismap.htm>

AQI info from EPA by text or email: <http://www.enviroflash.info>

## SELECTED AUTHORITIES: WORKER SAFETY AND SOCIAL JUSTICE TOPICS

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In addition to identifying and suggesting programs and resources that should be created to serve the broader farmworker community, farmworker advocacy groups have requested additional worker protections be during wildfire emergencies. For the five key requests, these are the relevant authorities ...

### Farmworker Unemployment Insurance

During disasters such as flood or wildfire, most farmworkers cannot file for unemployment because they do not qualify. “To file a claim for unemployment insurance, a worker must 1) be unemployed, 2) through no fault of their own, 3) be physically able to work, and 4) be ready and willing to accept work immediately. Most farmworkers did not qualify because they were employed, and if they decided to stay home because of the unhealthy air quality, they wouldn’t satisfy the “ready and willing to accept work” or “through no fault of their own” prongs of the test.”<sup>29</sup>

To the extent unemployed farmworkers are ineligible for traditional unemployment insurance because of their immigration status, currently pending legislation (AB 2847), if passed and funded, would authorize until January 1, 2026, the Excluded Workers Pilot Program (EWPP), administered by the California Employment Development Department (EDD), as specified, and requires EDD to submit a report to the Governor and Legislature regarding whether to establish a permanent unemployment insurance (UI) benefit program for undocumented workers. AB 2847 originated in response to the effect of the COVID-19 pandemic on undocumented workers. At the time of this writing, as proposed, AB 2847 would not explicitly address the barriers identified in academic literature to farmworkers receiving benefits through the EDD when not accepting work during a wildfire event.

In some cases, a federal, state, local government, or agency may make disaster relief payments associated or in connection with a qualified disaster, as defined by section 139(c) of the Internal Revenue Code, to promote the general welfare, but only to the extent any expense compensated by such payment is not compensated for by insurance.

### Disaster Insurance for Lost Pay

Pursuant to its general police power, the County has authority to require certain insurance be maintained by an individual or entity as a condition of or to receive a privilege, license, permit, or other benefit that the County grants. However, the County

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<sup>29</sup> University of California, Hasting Law School, Hastings Race and Poverty Journal. Protecting California’s Farmworkers During the Wildlife[fire] Crisis: The State’s Response and the Need for Reform. Winter 2021. [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1173&context=hastings\\_race\\_poverty\\_law\\_journal](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1173&context=hastings_race_poverty_law_journal)

does not have the authority to order insurance companies to offer or renew certain types of insurance policies for an individual or entity to obtain and maintain. That authority likely rests with the State of California and the Insurance Commissioner. It is unclear what type of policy might be offered by the private insurance industry for lost pay due to a disaster, what the terms or exclusions of such policies might be, or their cost to the holder. "Business interruption insurance" may be a type of insurance, if offered by insurance companies, that could provide employers with coverage for lost income due to qualified disaster related business interruptions, but it is unclear if such coverage would extend to paying lost wages of an employer's employees where other available sources may be available to cover such loss types, such as unemployment insurance.

Similarly, it is unclear if various federal benefit or insurance programs specific to agriculture could be expanded to offer benefits to employers to pay lost wages of employees effected by wildfires. However, to the extent the private insurance sector does not offer adequate policies, government sponsored plans may be an alternative if they achieve coverage, indirectly to employers as payments for a business loss, or directly to the employee as lost pay, not compensated for or through other mechanisms.

#### Hazard Pay in Evacuated Area

Hazard pay is defined as "additional pay for performing hazardous duty or work involving physical hardship. Work duty that causes extreme physical discomfort and distress which is not adequately alleviated by protective devices is deemed to impose a physical hardship."<sup>30</sup> There is no single federal or state definition for "hazardous duty" or "physical hardship", however the U.S. Dept. of Commerce offers the following<sup>31</sup>:

*Physical hardship* means duty involving physical hardship that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation (5 CFR 550.902).

*Hazardous duty* means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist (5 CFR 550.902).

Whether the County may impose by local legislation a hazard pay requirement on private agricultural employers in the context of an agricultural pass program is a

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<sup>30</sup> U.S. Dept. of Labor. Hazard Pay. <https://www.dol.gov/general/topic/wages/hazardpay>

<sup>31</sup> U.S. Dept. of Commerce. Hazard Pay Differential. <https://www.commerce.gov/hr/practitioners/compensation-policies/premium-pay/hazard-pay>

complex legal question that would require, among other things, analyzing whether state or federal preemption or the contracts clause of the constitution prohibited such local requirement. We are aware of no case or statute that addresses the question directly. While there are some narrow exceptions to state or federal preemption when it comes to wage setting, such as the ability of the County to adopt a living wage applicable to county employees and contractors, in general, if a county goes beyond the exercise of its traditional police power in setting wage standards by intruding on how private industry negotiates its labor agreements, then such local regulation risks being invalidated.

New state and/or federal legislation or regulation in these areas may address the preemption issues, as well as to provide broader and more consistent coverage of these emerging issues in a just and equitable transition due to climate change impacts.

### Language Justice

Cal/OSHA regulation Title 8 CCR § 5141.1, in reference to § 3203, requires the employer to “establish and implement a system for communicating wildfire smoke *hazards in a language and manner readily understandable by employees*, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.” (Emphasis added.) Additionally, the regulation requires that the “employer shall provide employees with effective training and instruction *in a language and manner readily understandable by employees*.” [Emphasis added.] Appendix B to § 5141.1 specifies the content of such training and instruction. These regulations recognize that information needs to be understandable by the target audience.

The County must also comply, generally, with state and federal language access requirements in implementation of its programs. Gov. Code § 11135; Title VI of the Civil Rights Act of 1964.

### Access for Community Observers at Job Sites and Road Checkpoints

Some community members expressed a desire to have private citizens or non-profit organizations given access to evacuation zones to observe at job sites or in public right of way areas at road check points to serve as a check on compliance with applicable laws. In formulating its agricultural access program, the County may consider allowing access for persons offering “local expertise,” as defined, for example, by AB 1103, to aid in firefighting and emergency response, and only at the request of law enforcement or emergency personnel.

Similarly, law enforcement may consider allowing access to evacuation zones for persons who are community observers. However, the County likely may not mandate that private property owners or businesses allow or bring community observers onto their private property job sites. At the same time, excluding any persons from public rights of

way or other areas within evacuation zones, would be within the discretion of law enforcement and emergency personnel especially where their presence presents a safety risk or hazard.

Requests have also been made to ensure provision of drinking water and clean bathrooms in evacuation areas while workers are employed.



## RECENT AND PENDING LEGISLATION

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### Assembly Bill (AB) 1103 (Livestock Pass Program) <sup>32</sup>

In October 2021, the Governor signed AB 1103 which authorizes - but does not require - counties to establish a "livestock pass program" for issuing identification documents granting any qualifying livestock producer or a managerial employee, access to the qualifying livestock producer's ranch property, or to the ranch property owned by another holder of a livestock pass, during or following a flood, storm, fire, earthquake, or other disaster. Access is to only be granted for the "purposes of sheltering, moving, transporting, evacuating, feeding, watering, or administering veterinary care to livestock."

Chaptered as Chapter 4 to Division 2 of the Food & Agricultural Code and Section 13105.6 of the Health & Safety Code, the statutes require any program to comply with several requirements including:

1. "Qualifying livestock producer" means a commercial livestock producer, as determined by the county agency.
2. Livestock producers may provide any of the following documentation to demonstrate that the application is a commercial livestock producer:
  - a. An operator identification number issued by a county agricultural commissioner.
  - b. An Internal Revenue Service Schedule F (Form 1040) attesting to the applicant's Profit or Loss from Farming.
  - c. Assessor's parcel numbers confirming agricultural zoning for the property or properties upon which access is sought.
  - d. Agricultural land lease documentation.
  - e. Documentation attesting to the applicant's enrollment in a Williamson Act contract as authorized pursuant to Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code.
  - f. Documentation from the United States Department of Agriculture Farm Service Agency attesting that the applicant is a commercial livestock producer.
  - g. Current registration of a livestock brand with the Bureau of Livestock Identification.
  - h. A description or map of all lands owned or managed by the applicant for which disaster access is sought.

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<sup>32</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1103](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1103)

3. Employees must be a managerial employee who meets all of the following criteria:
  - a. Has management authority with responsibility to oversee the care and well-being of the qualifying livestock producer's livestock.
  - b. Primarily engages in managerial job duties and customarily and regularly exercises discretion and independent judgment in these duties. These duties shall be specified in a written job description issued no later than 90 days before the date of the flood, storm, fire, earthquake, or other disaster.
  - c. Earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment at the time of the flood, storm, fire, earthquake, or other disaster.
4. Livestock pass holders must comply with the initial and recertification training requirement set forth in 13105.6 of the Health and Safety Code. Curriculum (to be developed) for livestock producers shall, at a minimum, provide education regarding basic fire behavior, communications during a disaster emergency, and incident command structure.
5. No one may require any employee to obtain or use a livestock pass. Managerial employees are not required to be present during a disaster.
6. The livestock pass identification document must include the following information:
  - a. The name of the cardholder
  - b. Driver's-license-style headshot photograph
  - c. The name or names of the ranches to which the cardholder seeks access in the event of a disaster
  - d. The expiration date of the identification document, if an expiration date was established by the county
  - e. The seal or logo and signature of the Agriculture Commissioner

AB 73 (Farmworker Wildfire Smoke Protections Act) <sup>33</sup>

In September 2021, the Governor signed AB73 which expands worker protections from wildfire smoke by classifying farmworkers as “essential workers” that the state must “ensure sufficient Personal Protective Equipment (PPE) to address wildfire smoke events and to protect agricultural workers during pandemics, wildfire smoke events, and other health emergencies.”<sup>34</sup>

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<sup>33</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB73](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB73)

<sup>34</sup> National Law Review. California Expands PPE Stockpile and Employee Training Requirements to Address Wildfire Smoke Events. September 28, 2021. <https://www.natlawreview.com/article/california-expands-ppe-stockpile-and-employee-training-requirements-to-address>

The language also requires that the state “ensures farmworkers access to quality and comprehensible training relating to wildfire smoke, including by using pictograms and appropriately accounting for relevant ethnic and cultural backgrounds and education levels.”<sup>35</sup> While initially proposed, the final language does not contain any enforcement provision.<sup>36</sup>

AB 580 (Emergency Services: Vulnerable Populations)<sup>37</sup>

This legislation requires Cal OES to evaluate large animal evacuations plans as part of a larger review of a County’s emergency plan. The review shall address whether the plans are consistent with best practices and guidance issued by the Federal Emergency Management Agency (FEMA), including those practices that relate to adequately addressing the needs of those individuals with access and functional needs, including people with disabilities.

Other Pending State Legislation

Pending state legislation would affect worker protections that may be a component of a County access program. These bills include:

- Senate Bill (SB) 1066. California Farmworkers Drought Resilience Pilot Project.<sup>38</sup>
- AB 1044. Protection against employer retaliation if workers choose not to work during an emergency condition.<sup>39</sup>
- AB 2847 Excluded Workers Pilot Program.<sup>40</sup> Disaster-related unemployment insurance for undocumented workers
- AB 2243. Wildfire smoke standards.<sup>41</sup> Consider lowering the wildfire smoke particulates standard for when PPE is required.

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<sup>35</sup> King City Rustler. Newsom signs bill to protect farmworkers from wildfire smoke. October 13, 2021.

<https://kingcityrustler.com/newsom-signs-bill-to-protect-farmworkers-from-wildfire-smoke/>

<sup>36</sup> Governing. Ag Worker Smoke Protection Bill Doesn’t Solve the Issue. September 13, 2021.

<https://www.governing.com/work/ag-worker-smoke-protection-bill-doesnt-solve-the-issue>

<sup>37</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB580](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB580)

<sup>38</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB1066](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1066)

<sup>39</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB1044](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1044)

<sup>40</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2847](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2847)

<sup>41</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2243](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2243)

## **POLICY CONSIDERATION: PARTICIPANT ELIGIBILITY**

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A fundamental consideration is which organizations and which individuals may participate in any access program. This determines both the scope of any program as well as potentially addressing worker safety and racial & social equity factors.

### Organizations

It may be helpful to consider potential participants as being in one of two related agricultural industries: plant agriculture producers/growers and livestock producers (includes apiary/bees). It should be noted that a number of agricultural producers in Sonoma County have diversified operations that include both plant and livestock components in their operations.

- Plant Agriculture producers include but are not limited to fruit and/or vegetable production, hay, grain and other field crops (including hemp).
- Livestock producers include but are not limited to sheep, cattle, goats, hogs, poultry and apiary/bee production, as well as llamas, etc.. Commercial livestock producers can be large operations, or may be smaller farms and family ranches with fewer employees and few seasonal workers. The animals in livestock operations must be continually monitored, fed, watered or milked, as well as veterinary care administered to maintain health.
- In some California counties, registered apiary operations (i.e. bee keepers) may be considered agricultural or livestock producers for the purposes of an access program. In most counties, horses are not considered a commercial livestock operation however some counties provide for access as horses cannot be readily evacuated in quantity. Sonoma County has a program administered through the Sonoma County Animal Services to support the evacuation efforts of equine and other livestock practitioners.
- Other Crops: Currently, only Humboldt County identifies cannabis growers as eligible in their access program. Many of these are larger, more complex operations requiring management staff as well as larger full-time and seasonal farmworkers for planting, growing, harvesting, and packing. While cannabis cultivation was determined during COVID to be an essential production activity, it has not been addressed by most evacuation zone access programs.

In developing AB1103, state legislators had originally envisioned programs that would support both plant agriculture and livestock production. However, challenges in addressing worker safety predominantly identified in the plant agriculture community resulted in only livestock producers being addressed in the final language of this legislation.

There are several measures used by counties and the state to determine if an agricultural enterprise is a commercial operation qualified to participate in an access program. These measures may include:

- Pesticide Permitting documentation including Operator Identification Numbers and Restricted Materials permits\*
- Assessor's parcel number confirming agricultural zoning\*
- IRS Schedule F Tax Form filing\*
- Land lease documentation\*
- Documentation attesting to enrollment in a Williamson Act contract\*
- Certified Producer Certificate (CPC) documentation for direct marketing of agricultural products
- Production Winery Permit
- Minimum parcel size (ex. 10 acres)<sup>42</sup>

Many counties use similar measures to identify qualified commercial livestock operations as those listed above. In addition, the following may be considered sufficient documentation:

- Livestock brand registration with CDFA Bureau of Livestock Identification
- USDA Farm Service Agency documentation for commercial livestock producers.\*
- Certain minimum number of animals (ex. 20 head of cattle)

\* Asterisk indicates a documentation option provided under AB1103.

### Hobbyists, Homeowners, and Other Operations

Agricultural producers in the County that raise livestock or agricultural crops that do not meet the eligibility requirements for participation in an access program are still regarded as important stewards of the land. Services related to animal and pet welfare checks or evacuations are usually directed to Sonoma County Animal Services through their dispatch center. See also the Sonoma County Operational Area Animals in Disaster Response Plan.<sup>43</sup>

Additionally, commercial livestock operations without sufficient livestock hauling equipment should reach out to Sonoma County Animal Services to explore options for livestock evacuations in the face of fire and other local emergencies. Sonoma County Animal Services works with Sonoma Community Animal Response Team (SCART), which

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<sup>42</sup> Per state law (The Williamson Act), 'prime agriculture land' (a vineyard for example) is generally considered commercially viable at or above 10 acres. Whereas 'non-prime' (grazing) land is generally considered viable at 40 acres or above. For ease of administration, a county could use 10 acres as the minimum associated with a bona fide commercial ag operation.

<sup>43</sup>

<https://sonomacounty.ca.gov/Ektron%20Documents/assets/Sonoma/Emergency%20Management/Administration/Services/2147553654/SCASAnimalAnnex%20FINAL%202018%20DEC.pdf>

specializes in the evacuation and care of livestock and other animals in emergencies and disasters. They provide an emergency preparedness packet and forms for the identification and care requirements of livestock and pets/companion animals.<sup>44</sup> They have pre-contracted locations in the County to which they can transport animals to during disaster for boarding and care. They operate through the Sonoma County Animal Services dispatch center during emergencies and can respond with equipment and specialists for evacuation and transport.

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<sup>44</sup> <https://www.sonomacart.org/>

## POLICY CONSIDERATION: WORKER SAFETY

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One of the more significant elements relative to evacuation zone access is the challenge of ensuring worker safety in the evacuated areas. While in areas subject to evacuation orders, workers may be exposed to hazards including compromised/changed road conditions, degraded visibility, downed power lines, risk of falling trees, compromised power/communications systems, and exposure to wildfire smoke.<sup>45</sup>

In this changed environment, agriculture/livestock producers remain responsible for compliance with all applicable state/federal worker safety regulations and protective actions required for the work location that reflect any change in conditions (ex. wildfire smoke). Protective actions include monitoring air quality during working hours and potentially providing workers with Personal Protective Equipment (ex. N95 masks or protective eyewear). However, reports from some workers and media coverage indicate that these measures are not always implemented.<sup>46</sup>

The California Department of Industrial Relations, Division of Occupation Safety and Health (Cal/OSHA) serves as the primary agency for governance and monitoring of compliance with these regulations and protections; however, real-time monitoring of compliance during wildfire emergencies has not occurred.

Many in the community charge that a County access program places the health and safety of workers (especially undocumented farmworkers, given structural challenges to access to health and employment protections) at risk.<sup>47</sup> A recent policy brief commissioned by a local labor rights group provides some analysis and makes several recommendations to mitigate risk.<sup>48</sup>

A foundational question is whether access should be limited to owner-operators or managerial employees, as in the State livestock legislation. Implementation of that limitation creates subsequent challenges (see challenges to access to disaster unemployment insurance, above, to address wage replacement due to County legislation). If non-managerial workers are allowed in mandatory evacuation zones, from community input and assessing practices in other counties, staff have identified some

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<sup>45</sup> U.S Department of Labor. Occupational Safety and Health Administration (OSHA). Wildfires – Response and Recovery <https://www.osha.gov/wildfires/response>

<sup>46</sup> Reveal. Fighting Fire with Fire, September 2021. <https://revealnews.org/podcast/fighting-fire-with-fire/>  
See also *Media Coverage* in the References Section below.

<sup>47</sup> Moe, Kristin. Sonoma Magazine. As Wildfires Collide with Harvest Season, Who's Protecting Sonoma's Vineyard Workers? September 2021. <https://www.sonomamag.com/as-intensifying-wildfires-collide-with-harvest-season-whos-protecting-sonomas-vineyard-workers/>

<sup>48</sup> University of California, Irvine, School of Social Ecology. Addressing disparities in Sonoma County's Agriculture Pass program. May 2022 <https://socialecology.uci.edu/news/addressing-disparities-sonoma-countys-agriculture-pass-program>

worker safety mitigation measures that could be incorporated into a County policy/program:

- Access would only be granted when there is no immediate risk to life safety as determined by the incident command and/or on-scene public safety personnel.
- Workers must be made aware of their rights, work place hazards, related safety measures, and relevant labor protections.
- Program participants could be required to develop an emergency action plan for their operation/site that addresses communications, escape routes, shelter-in-place, employee accountability, access to clean bathrooms and drinking water, and emergency points of contact.<sup>49</sup>
- Communication and training must be provided in the worker's primary language and in an accessible format and/or venue.

As part of the discussion surrounding evacuation zone access, community and labor advocacy organizations have proposed to employ volunteer Community Safety Observers at entry points and/or worksites to monitor efforts related to worker protections.<sup>50</sup>

The County could consider an expanded system of identifying, tracking, and reporting on the number and location of agriculture/livestock producers, supervisors/managers, and employees participating in any single incident in which the access program is implemented. This could require additional pre-incident planning and staff training as well as employing additional staff and resources during an actual incident.

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<sup>49</sup> U.S Department of Labor. Occupational Safety and Health Administration (OSHA). Emergency Preparedness for Farmworkers. <https://www.osha.gov/sites/default/files/publications/OSHA3870.pdf>

<sup>50</sup>San Francisco Chronicle. Sonoma vineyard workers fight for safety ahead of fire season. It's an uphill battle. Feb 2022. <https://www.sfchronicle.com/food/wine/article/Sonoma-vineyard-workers-fight-for-safety-ahead-of-16829576.php>



## **POLICY CONSIDERATION: PARTICIPANT TRAINING**

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Training can address organizational and personal preparedness and can contain many subjects and forms of delivery. Training may be provided both for the initial participation in an access program as well as modified for ongoing or renewal of program participation.

### AB 1103 training requirements

AB 1103 requires the State Fire Marshal to develop a 4-hour training curriculum by January 1, 2023 for use by counties if they implement an AB1103 Livestock Access Program. At this time, there are no drafts of the curriculum available. Additionally, there is no information available on the effective period of initial training and the requirements for re-certification. It is also unclear if independent safety training providers, contractors, industry and worker advocacy groups will be able to obtain accreditation for courses they would like to provide in their communities to satisfy the requirements of AB 1103.

Other counties have developed their own training programs relative to the scope of their access programs – some in partnership with local fire agencies, CalFIRE, the University of California Cooperative Extension, and/or Agriculture and Natural Resources.

### Other county access program training elements

In the training curriculum used by other counties, these are the key subjects addressed:

- Access Program Overview / Requirements
- Disaster Preparation for Commercial Ranching Operations
- Fire behavior
- Fire safety (entrapment avoidance, hazard recognition, PPE, zones, escape routes)
- Incident Command System
- Law Enforcement Panel Discussion
- Disaster communications
- Rancher experiences in evacuations/other emergencies

### Other county access program training delivery

Training delivery varies significantly by county with some offering initial in-person training several times a year while others offer it only once or twice. Tulare County requires applicants to also complete an online Fire Behavior course through the National Wildfire Coordinating Group.<sup>51</sup> The length of training varies considerably from 1-2 hours up to 6-8 hours. Shasta and Siskiyou counties require attendees to complete a questionnaire. While most jurisdictions have not begun offering refresher training, this could be an

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<sup>51</sup> Tulare County Livestock Pass Program Description. <https://agcomm.co.tulare.ca.us/programs/livestock-ag-pass-program/tulare-county-livestock-pass-program-descriptionpdf/>

abbreviated version of initial training and could also potentially be provided virtually and/or on-demand.

A few counties offer courses in Spanish while most do not. Our research could not locate a county offering the training in an indigenous language; however, Ventura County's farmworker resource program has indigenous language speaking staff.

#### Additional training subjects

Based on input from community groups and reviewing access program guidance, additional training subjects could be added to existing or new state training curriculum. These include:

- Employer Emergency Action Plans
- Air quality and monitoring
- Short- and long-term health hazards
- Employee rights and labor protections
- Available health resources

## **PROGRAM ADMINISTRATION**

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To move from policy into practice, the County would seek to develop and implement a comprehensive and efficient access program which would be sustainable across years where no incident may occur. This has proven challenging for the County's recent interim efforts as well as for other California counties.

### Authority

Depending on the option the County selects, the authority for administering this program would be delegated to a County department (possibly Agriculture/Weights and Measures) or would be undertaken by the Sheriff's Office. Either approach will require consistent support from other County departments and would require coordination with state and local agencies. The administering department could also be provided with the authority to amend the program scope and administrative requirements as well as ensuring compliance with any changes in state law.

### Resources

Previous County efforts have been undertaken as projects using existing County staff drafted from regular duties. Depending on the option and scope of effort that the County selects, the County may need to allocate additional resources to develop, administer and sustain an access program. Staff time may be needed for program management, administration, community engagement/education, and training.

Modest material resources may be needed for administration, identification cards, and training. During an emergency, resources needed to fully implement the program would be developed and coordinated as per the authorities and policies outlined in the County's Emergency Operations Plan.

### Implementation

Public safety incident commanders determine if the conditions of the disaster incident may allow for implementation of the access program. Depending on the scope of the access program, either the County Emergency Operations Center (EOC) or Sheriff's Office staff would coordinate operations. Depending on the number of access program participants, additional staffing, logistics, and communications support could be coordinated by the County EOC.

### Compliance

Depending the nature and scope of a County access program, considerations for monitoring compliance with or certification of program requirements (ex. authorized activities) may need to be addressed as well as potential consequences for non-compliance. Monitoring during program implementation may be challenging due to time and resource constraints.

## COMMUNITY INFORMATION / ENGAGEMENT

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Although there may be relatively few County residents utilizing services under a County access program, a comprehensive community engagement and communications capability will be needed to ensure connection and a common understanding of why and how the access program functions.

### Collaboration

Given the reasons for an access program and the issues to be addressed, stakeholder engagement and collaboration will be vital in the program's implementation and ultimate success.

The County Department of Agriculture, Weights & Measures will manage program changes and corresponding communications relevant to livestock and agriculture owners/managers and related groups as appropriate. County DEM will incorporate information on the access program into the larger disaster-related Community Preparedness Action Plan. Additionally, input would be needed from other county and state agencies to ensure a local program was congruent with those stakeholders' roles during an emergency and ensure efficient operationalization of a program with respect to mutual aid partners.

The County could contract with a community-based organization or non-profit to conduct initial and ongoing outreach to agriculture and farmworker organizations and advocacy groups. As part of their larger community engagement efforts, the County Office of Equity, working with other County partners, may be able to identify and receive feedback on the concerns and needs of engaged groups; however, this will also require additional resources in order to focus efforts on this potential program.

Consideration should be given to communication to all stakeholders, including growers, livestock owners, farm worker and other advocacy groups, be facilitated through a culturally responsive contracted facilitator.

### Communication platforms

A variety of communication platforms and methods could be utilized to share resources as appropriate, depending on the audience. These platforms include:

- Website: SoCoEmergency.org or a County webpage would offer resources and information for farm worker groups as well as livestock and agriculture producers.
- Social Media: Facebook, Twitter, Instagram and NextDoor would be utilized to disseminate resources or updated information.
- Webinars: These would be Zoom-based informational webinars in English and Spanish with County panelists discussing and answering questions about the program and resources available.

- 211: The County's contracted information hotline could address questions over the phone and via text in more than 150 languages – before and during an incident.

#### Additional Considerations

Absent a language access policy and as part of the informal commitment to translate all disaster preparedness and response information, the County would provide all access program materials in English and Spanish on all platforms and media. If additional languages were identified as a critical need during the planning stage, a translation/interpretation consultant would be required.

Cultural considerations would also be addressed in the program development planning phase as the expansion of traditional communication/marketing platforms may be warranted. This could include community and group presentations, flyers, brochures, temporary or permanent signage and radio public service announcements.

On-going communication to various identified stakeholders would be managed through the program administrator, contractor, CBOs or a combination of all. The CAO Communications Team would assist in amplifying and targeting critical messages as well as support logistical needs for any in-person or virtual community presentations.

#### During an emergency

In the event of a potential or actual implementation of the access program, public information regarding the access program would be integrated with the processes outlined in the County's Emergency Operations Plan. Upon activation of the Emergency Operations Center (EOC), the EOC Public Information Section would lead related communication efforts via social media, traditional media, the County website, 211, print materials, and community forums.

## **RELATIONSHIP TO OTHER COUNTY INITIATIVES**

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### County Strategic Plan

Depending on if and how the County implements an access program, these efforts may support the following goal and objective from the County's 2018-2023 Strategic Plan:

Pillar: Racial Equity and Social Justice

Goal 3: Ensure racial equity throughout all County policy decisions and service delivery.

Objective 2: Collaborate with community members and stakeholder groups to develop racial equity strategies for County emergency response, economic recovery and resiliency planning efforts.

### Community Input/Recommendations for Emergency Management Plans

In 2021, the Department of Emergency Management (DEM) and the Office of Equity met with a Community Advisory Group and other community groups as part of the community engagement effort supporting development of the County's new Emergency Operations Plan. Input from these meetings - combined with input received since the 2017 Sonoma Nuns/Tubbs Fire - resulted in 137 community recommendations addressing emergency preparedness, response and recovery subjects. DEM continues to track these recommendations and how/where they might be incorporated in other County programs. In shaping a potential County access program, the following community recommendations may be relevant:

- Item 12: "All official communications...will be made in Spanish and English with translation into other languages available."
- Item 26: "Representatives of the immigrant and Spanish-speaking community will be included in planning future disaster response in the County."
- Item 35: "Worker Safety: Workers were taken to work areas near fires and exposed to smoke. Vineyard workers with H2A visas were left in front of the Healdsburg evacuation center without any support or translator. Employers sent a bus to pick them up the next day to work in full smoke near the fires."
- Item 36: "Add questions about the specific impacts of farmworkers and vineyard workers, for example, the long- and short-term medical effects of the job out in the smoke, provision of protective gear, financial hardship, job loss, impact on children."

- Item 48: "What communications have been directed specifically to undocumented people? To people working in the fields and vineyards? Is the County informing about workers' rights inside evacuation zones?"
- Item 85: "Address impact of smoke on agricultural workers in Hazard Analysis [of the Emergency Operations Plan]."
- Item 92: "Wineries should also have an evacuation plan. They know how to exit their land. In many zones there is no phone service. And they should tell their employees how to safely evacuate."
- Item 123: "Establish public health guidelines/protocols for employers to follow on worker safety; fund outreach to farmworkers and essential workers in their primary languages focused on safety education and protection."
- Item 124: "Promote provision of hazard pay by employers to essential workers and agricultural workers."
- Item 130: "Discussion of response and recovery must prioritize the preparedness of all communities affected by Access and Functional Needs: ... How will farmworkers access information about disasters when emergency radios don't function where they're working?"

## **POLICY AND PROGRAM OPTIONS**

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Staff have identified potential options for the County to develop as both policy and program. These include:

### **Option 1: Restrict all access (default)**

Do not adopt any access policy, program, or procedure for agricultural/livestock producers. Maintain hard closures during incidents and support re-entry once the area is made safe for all residents. Underscore the life-safety hazard of owners/employees not conforming to evacuation orders through pre-event education and emergency public information during incidents.

This option has the very real possibility of encouraging agriculture/livestock operators to ignore the evacuation orders and remain on their properties to tend to their operations.

This default approach is currently in place in most counties in California.

### **Option 2: Incident-Specific Access**

As with incidents in 2017, 2019, and 2020, continue to develop agriculture/livestock access procedures as needed for each specific incident as conditions and resources permit.

This option requires clarification of the requisite authority in any disaster declaration to implement an incident-specific program. This option may place tremendous administrative and operational pressure on County departments to staff and quickly respond to the unique demands of an incident. Access to department facilities to conduct the issuance of access verifications can be a challenge especially if the facilities used to operationalize the program are subject to evacuation orders or without power due to impacts of the emergency.

### **Option 3: Livestock Only Access Program**

Develop and implement a County Livestock Access Program as per the scope and requirements of AB1103 and provide access for livestock producer operations only.

This option could lead to plant agriculture producers ignoring the evacuation orders and remaining on their property.



#### **Option 4: Sheriff's Office Access Program**

Defer to the Sheriff's authority under PC 409.5 to determine if an Agriculture/Livestock Access Program is needed and to develop/implement an access program; or authorize the Sheriff to develop an Agricultural Access Program for plant agriculture and livestock producers. Provisions may or may not comply with AB1103.

#### **Option 5: Board of Supervisors Authorized Access Program**

Direct staff to develop policies, procedures, tools, and resources needed to support a comprehensive Agriculture/Livestock Access Program. Take Board action to adopt policies and approve resources to implement the program. In addition to the requirements of AB1103, other potential key policies and elements for a County access program could include:

- a. Unified policies and procedures for agricultural and livestock producers that comply with the requirement established in AB1103 (see *State Statutes* section above).
- b. Property must be located in the State Responsibility Areas (SRA)<sup>52</sup> of Sonoma County.
- c. The operation must be a commercial agricultural or livestock enterprise or property used for conducting agricultural research or instruction by an educational institution.
- d. Property must be zoned agricultural and of a minimum size.
- e. Access identification cards will be issued to individuals – not operations. The Applicant must be an owner or employee of the operation that has a working knowledge of the agricultural property, including access to irrigation systems, farm equipment, and other essential infrastructure. Note: the AB1103 requirement to authorize only “managerial employees” may restrict the County's ability to authorize other employees.
- f. The number of individuals that can obtain an access identification cards for each agricultural/livestock operation (not each individual site of the operation) will be limited (ex. 3). Authorize the Agriculture Commissioner to subsequently increase or decrease the number of individuals eligible per agricultural/livestock operation (based on program participation, compliance, and feedback from public safety officials),
- g. Training must align with CalFIRE/State Fire Marshal curriculum and be offered in the primary language of the Applicant.

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<sup>52</sup> CalFIRE, State Responsibility Area Viewer, <https://calfire-forestry.maps.arcgis.com/apps/webappviewer/index.html?id=468717e399fa4238ad86861638765ce1>

- h. The Applicant and employer (if different than the Applicant) must sign a waiver and release.
- i. Access identification card issued to an employee is only valid while the employee is employed at the operation named in the application.
- j. Access identification cards should include an expiration date upon which refresher training is required.
- k. Require employers develop an emergency action plan for each operation or site.
- l. Establish as an interim program for three years (2022-2025) and then assess and revise as needed.

## ATTACHMENT 1: SUMMARY OF CALIFORNIA COUNTY PROGRAMS FOR EVACUATED AREA ACCESS BY AGRICULTURAL/LIVESTOCK PRODUCERS

The following chart summarizes the county-level evacuated areas access programs as of June 28, 2022.

County	Implementing Authority	Program Name	Agriculture	Livestock	Compliant with AB1103	Limited to SRAs	Minimum Size Property	Minimum # of livestock	Employees Eligible	1 Pass for multiple employees	1 Pass for each employee	Limit on # of Passes by property	Training Required	Additional Worker Protections	Photo on ID/Pass	ID/Pass Expiration	Administered By	Liability Waiver Required?	URL	Notes
Butte	UCCE, Ag Commissioner, Sheriff	Livestock Operator Disaster (Ag) Pass	No	Yes	Gandfathered (in place prior to 1/1/2022)	No	N/A	50 cattle, 100 poultry, 50 beehives	Managers	Yes	Yes	No	Up to 4 hrs, up to 1-hr refresher	No	Yes	1 calendar year			<a href="https://ucanr.edu/sites/Rangelands2020/Commercial_Livestock_Disaster_Pass_and_Disaster_Preparedness_Training/">https://ucanr.edu/sites/Rangelands2020/Commercial_Livestock_Disaster_Pass_and_Disaster_Preparedness_Training/</a>	Small number: approx. 60 passes
Del Norte	<i>Under development</i>																			
Humboldt	Sheriff, Ag Comm, OES	Restricted Area Access Pass Program	Yes	Yes	Yes	Yes	N/A					Yes, 3	4 hours, 1 hr refresher		Yes	Annual	Sheriff and Ag Commissioner	Yes	<a href="https://humboldt.gov.org/3162/Restricted-Area-Access-Pass-Program">https://humboldt.gov.org/3162/Restricted-Area-Access-Pass-Program</a>	Ag Pass and Cannabis Ag Pass
Lake	Ag Comm, Sheriff, OES	Restricted Access Program	Yes	Yes	No	No	Varies	Varies	Yes	N/A	N/A	N/A	No	No	No ID issued	N/A	Ag Commissioner	Yes	<a href="http://www.lakecountyvt.gov/Assets/Department%20Agriculture/Forms/Ag-Verification+Program%20220417.pdf">http://www.lakecountyvt.gov/Assets/Department%20Agriculture/Forms/Ag-Verification+Program%20220417.pdf</a>	No ID issued before incident; not for harvesting
Marin	<i>Under development</i>																			
Modoc	UCCE, Sheriff, OES, Ag Dept	Disaster Livestock Ag Pass Program	No	Yes	No	No	N/A	50 cattle, 5 beehives	Yes	Not stated	Not stated	Not stated	4 hrs or other approved training	No	Not stated	current calendar year	Ag Dept	Yes	<a href="https://www.devilsgardennuce.org/post/modoc-county-ag-pass">https://www.devilsgardennuce.org/post/modoc-county-ag-pass</a>	Recognizes passes from other counties; Requires prior notification before seeking entry; Annual Report; adopted from Placer/Nevada/Yuba
Napa	Ag Commissioner	Ag Pass	Yes	Yes	No	No	N/A	Commercial Opns only	Yes	No	Yes	No	???	No	No	12/31 of year issued	Ag Commissioner	No	<a href="https://www.countyofnapa.org/3213/Emergency-Ag-Pass-Applcation">https://www.countyofnapa.org/3213/Emergency-Ag-Pass-Applcation</a>	Ag Pass by property and owner-issued verification cards; Operator ID or Restricted Materials Permit auto qualify; online application
Placer-Nevada-Yuba Plumas - Sierra	UCCE, Ag Commissioners	Livestock Access Pass	No	Yes	Gandfathered (in place prior to 1/1/2022)	No	N/A	50 cattle, 100 poultry, 50 beehives	Yes	No	Yes	No	4 hrs, 1 hr refresher	No	Yes	1 calendar year	Ag Commissioners	Yes	<a href="https://ucanr.edu/sites/PlacerNevadaYubaSierra/ucanr-postdetail.cfm?postnum=50897">https://ucanr.edu/sites/PlacerNevadaYubaSierra/ucanr-postdetail.cfm?postnum=50897</a>	Signs at property entrances; not used yet
Santa Barbara	Ag Commissioner	Ag Pass	Yes	Yes	Gandfathered (in place prior to 1/1/2022)	Yes	40 acres	No	"Key personnel"	No	Yes	3	4 hrs + refresher	No	Yes	2 years	Ag Commissioner & Committee	Yes	<a href="https://www.countyofsb.org/293/Ag-Pass">https://www.countyofsb.org/293/Ag-Pass</a>	Commerical or Educational props; not for harvesting/packing/planting; may also issue temp passes
Shasta	Ag Commissioner	Commercial Agriculture/Livestock Pass; Ag Pass	Yes	Yes	Gandfathered (in place prior to 1/1/2022)	No	N/A	Commercial Opns only	"Additional Agents" "Managerial employees"	Yes	No	6 (more if auth by Ag Comm)	Not more than 4 hrs	No	Yes	Annual	UCCE / Ag Commissioner	In Program Description	<a href="https://www.co.shasta.ca.us/index/ag-wm/ag-services/commercial-agriculture-livestock-access-pass">https://www.co.shasta.ca.us/index/ag-wm/ag-services/commercial-agriculture-livestock-access-pass</a>	Up to 6 add'l agents get a pass w/o photo - use regular photo ID. Only 24 passes issued; mailers sent to livestock producers
Siskiyou	UCCE, Ag Commissioner	Livestock Pass	No	Yes	No	No	N/A	50 head, 50 beehives	"Managerial employees"	No	Yes	No	Up to 4 hrs, 1-hr refresher	No	No	Annual	Ag Commissioner		<a href="https://ucanr.edu/sites/Siskiyou_County_Coag-Extension/files/366577.pdf">https://ucanr.edu/sites/Siskiyou_County_Coag-Extension/files/366577.pdf</a>	Requires prior notification before seeking entry; incl USFS permits; Annual Report
Sutter	<i>Under development</i>																			
Tulare	Ag Commissioner	Livestock Pass	No	Yes	No	No	N/A	25 head	Yes	No	Yes	No	6-8 hrs (NWCG S-190); 1 hr refresher	No	No - must have other ID	2 years, expires 5/31	Ag Commissioner	Yes	<a href="https://agcomm.co.tulara.ca.us/programs/livestock-ag-pass-program/">https://agcomm.co.tulara.ca.us/programs/livestock-ag-pass-program/</a>	Recognize passes from other counties; poss fee
Ventura	Sheriff, Ag Commissioner	Agricultural Pass Program	Yes	Yes	Yes			Commercial Opns only	Yes				4 hours, 1 hr refresher				Ag Commissioner		<a href="https://www.ventura.gov/Ag-Pass-Program-VC-Emergency">https://www.ventura.gov/Ag-Pass-Program-VC-Emergency</a>	Pre Incident passes and one-time passes during an incident.
UCCE Guidance	Pick one: Ag Comm, UCCE, Farm Bureau	N/A	Commercial	Commercial	No	No	No	No	"Key personnel"	No	Yes	Could be considered	"may be good practice"	Should be considered	Yes	At least every 4 years	TBD	Disclaimer optional	<a href="https://arcatalog.ucanr.edu/pdf/8885.pdf">https://arcatalog.ucanr.edu/pdf/8885.pdf</a>	Lots of issues for locals to decide
Sonoma 2020 Interim	Ag/Sheriff		Yes	Yes	No	No	N/A	N/A	Yes					No		1 year	Ag Commissioner			

Counties considering adopting a program: Alameda, Contra Costa, Inyo, Mendocino, Riverside, San Bernardino, Santa Clara, Santa Cruz, Solano

Counties that are not planning to adopt a program: Imperial, Monterey, Orange, Riverside, San Benito, San Luis Obispo

## ATTACHMENT 2: REFERENCES

As Evacuated Area Access for Agriculture/Livestock Producers is a relatively new concept, there is little government or professional guidance available. Staff request any additional resources be directed to the Department of Emergency Management.

### Legal / Regulatory

California AB 1103 (livestock pass program)

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1103](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1103)

California AB 73 (agricultural workers; wildfire smoke)

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB73](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB73)

CA Dept of Industrial Relations. Worker Safety and Health in Wildfire Regions.

<https://www.dir.ca.gov/dosh/worker-health-and-safety-in-wildfire-regions.html>

U.S. Department of Labor. Occupational Safety and Health Administration (OSHA). Health and Safety Topics – Wildfires. <https://www.osha.gov/wildfires>

### Guidance

University of California, Agriculture and Natural Resources. Preparing for Disaster: Establishing an Ag Pass Program in Your Community. December 2020.

<https://anrcatalog.ucanr.edu/pdf/8685.pdf>

### Media Reporting

San Francisco Chronicle. Hundreds of Sonoma farmworkers may have been exposed to toxic smoke during 2020 wildfires. May 20, 2022.

<https://www.sfchronicle.com/food/wine/article/sonoma-wildfires-toxic-17185670.php>

North Bay Business Journal. Study: Sonoma County 'ag pass' endangers farmworker safety during wildfires; California counties consider own versions. June 2, 2022.

<https://www.northbaybusinessjournal.com/article/industrynews/study-sonoma-county-farmworker-safety-questioned-as-california-local-off/>

Fern's AG Insider. (Blog) California weighs farmwork in wildfire areas. April 2022.

[https://thefern.org/ag\\_insider/california-weighs-farmwork-in-wildfire-areas/](https://thefern.org/ag_insider/california-weighs-farmwork-in-wildfire-areas/)

Prism. Report on Worker Protections, Dec 2021.

<https://prismreports.org/2021/12/29/limited-worker-protections-and-unpredictable-natural-disasters-leave-workers-vulnerable/>

San Francisco Chronicle. Sonoma vineyard workers fight for safety ahead of fire season. It's an uphill battle. Feb 2022.

<https://www.sfchronicle.com/food/wine/article/Sonoma-vineyard-workers-fight-for-safety-ahead-of-16829576.php>

PBS News Hour. Worsening wildfires in California's wine country threaten low-wage farm workers. August 3, 2021. <https://www.pbs.org/newshour/show/worsening-wildfires-in-californias-wine-country-threaten-low-wage-farm-workers>

Moe, Kristin. Sonoma Magazine. As Wildfires Collide with Harvest Season, Who's Protecting Sonoma's Vineyard Workers? September 2021. <https://www.sonomamag.com/as-intensifying-wildfires-collide-with-harvest-season-whos-protecting-sonomas-vineyard-workers/>

Western Livestock Journal. CA's Dixie Fire puts Ag Pass program to test. Aug 2021. [https://www.wlj.net/top\\_headlines/ca-s-dixie-fire-puts-ag-pass-program-to-test/article\\_baeff34c-f6c2-11eb-bfcd-77d90a24fe1c.html](https://www.wlj.net/top_headlines/ca-s-dixie-fire-puts-ag-pass-program-to-test/article_baeff34c-f6c2-11eb-bfcd-77d90a24fe1c.html)

UC Division of Ag and Natural Resources. (Blog) Livestock Access Pass Program Update. Nov 2021. <https://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=50897>

UC Division of Ag and Natural Resources. (Blog) Ag Pass program aims to improve wildfire preparedness on rangeland. July 2021. <https://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=44461>

#### Policy Guidance / Briefs

UC Irvine, School of Social Ecology. Addressing disparities in Sonoma County's Agriculture Pass program. May 2022. <https://socialecology.uci.edu/news/addressing-disparities-sonoma-countys-agriculture-pass-program>

Urban Sustainability Directors Network. Guide to Equitable, Community-Driven Climate Preparedness Planning. May 2017. [https://www.usdn.org/uploads/cms/documents/usdn\\_guide\\_to\\_equitable\\_community-driven\\_climate\\_preparedness\\_high\\_res.pdf](https://www.usdn.org/uploads/cms/documents/usdn_guide_to_equitable_community-driven_climate_preparedness_high_res.pdf)

University of California, Berkeley - Institute of Governmental Studies. Voters overwhelmingly support farmworker protections in wildfire evacuation zones and hazard pay. April 5, 2022. <https://escholarship.org/content/qt9124z4nw/qt9124z4nw.pdf>

National Academies Press. Implications of the California Wildfires for Health, Communities, and Preparedness – Proceedings a Workshop. 2019. <http://nap.edu/25622>

#### Wildfire Hazards Exposure Information / Public Education

CA Dept of Industrial Relations. (Graphic Handout) Worker Safety: Wildfire Smoke and Evacuation Zones. <https://www.dir.ca.gov/dosh/wildfire/Wildfire-Safety-Infographic.pdf>

UC Davis, Western Center for Agricultural Health and Safety. Wildfire Smoke Exposure. <https://aghealth.ucdavis.edu/wildfires>

UC Davis, Western Center for Agricultural Health and Safety. How to Reduce the Impact of Wildfire Smoke on Your Health (in Spanish). <https://aghealth.ucdavis.edu/events>

UC Davis, Western Center for Agricultural Health and Safety. Research Highlight: Increasing Wildfires and Ash Pose a Health Risk to Farmworkers. November 19, 2020. <https://aghealth.ucdavis.edu/news/research-highlight-increasing-wildfires-and-ash-pose-health-risk-farmworkers>

California County Agriculture/Livestock Evacuation Area Access Programs

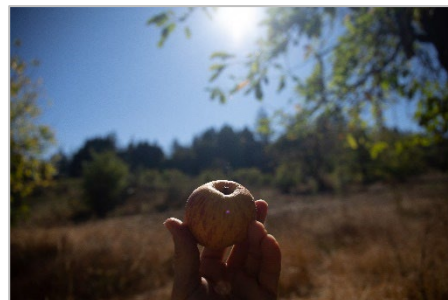
County of Napa

<https://www.countyofnapa.org/DocumentCenter/View/23234/2022-Ag-Pass-FAQ?bidId=>

County of Santa Barbara

<https://www.countyofsb.org/293/Ag-Pass>

<https://cosantabarbara.app.box.com/s/x3j0q0r0icdggfiuhcv5rvb8gclmpkm/file/809910484750>



*Air Quality During and After the LNU Complex Fire  
Occidental Road at Mill Station – September 9<sup>th</sup> and 22<sup>nd</sup>, 2020*

*Photos Credit: Jak Wonderly*