



WORKING DURING WILDFIRES

The Sonoma County Ag Pass Program and the
Health, Safety, Economic Security, and Data
Privacy of Agricultural Workers

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EXECUTIVE SUMMARY

In 2021, California passed legislation (AB1103) detailing how livestock owners/operators may re-enter evacuation zones for essential activities during an active wildfire. Some counties have interpreted this legislation and broader emergency powers to authorize “Ag Pass” programs as well, which expand access into evacuation zones for agricultural owners/operators. The Sonoma County Agricultural Access Verification Card Program (“Ag Pass”) is one of the first in the state to implement this legislation with a clear expansion of who qualifies for an Ag Pass to include full-time agricultural workers, and includes “harvesting” for the first time as an authorized activity. This represents a pivotal shift in access to evacuated areas that may expand work opportunities for agricultural workers, but also raises several concerns that could worsen existing economic inequality and risks to workers’ health, safety, and privacy.

Based on extensive legal analysis and a survey of over 1,000 farmworkers in Sonoma County, California conducted in 2024, this paper evaluates the Sonoma Ag Pass and state laws regulating agricultural work inside wildfire evacuation zones. We recognize the history of the Ag Pass program as a response to the acute and urgent safety and economic needs raised by livestock and agriculture owners during an evacuation. However, our research also identifies how the county developed a program that expanded access to agricultural workers but in practice primarily meets the needs of owners/operators. This results in significantly more people potentially qualifying for an Ag Pass and may result in gaps

in protection for workers re-entering evacuation zones. Our research highlights how under enforcement and gaps in state health and safety laws, as well as a lack of engagement with trusted community groups to interface with agricultural workers, may exacerbate these harms in future wildfires.

Our analysis breaks down how the Ag Pass program currently operates and culminates in recommendations to improve the program administration, requirements and implementation at the county level. These recommendations include specific actions for the Board of Supervisors, such as requiring health conditions be considered in the decision to activate the Ag Pass, and creating a data privacy policy which outlines how personal information collected for the program is shared, stored and protected. Recommendations for state action point to the critical role the state legislature and agencies tasked with occupational health and labor oversight must play in enforcing labor, health and safety protection inside an evacuation zone, and implementing new economic programs to address workers’ concerns regarding financial coercion, health and safety during a wildfire.

This research highlights that increased representation of agricultural workers’ experiences and self-identified needs in state and local policy planning is critical to ensure workers’ human rights are protected during wildfires. A program through which government and community-based organizations engage with each other can also help increase workers’ trust in the system when faced with the challenging decision to work in wildfire evacuation zones.

INTRODUCTION

As climate change increases the frequency and duration of wildfires across California, the state legislature has amended evacuation access laws and wildfire regulations that facilitate re-entry to livestock operations during evacuations. Passed in 2021, AB1103 represented the first state legislation to alter evacuation zone access for livestock pass programs.¹ The bill directs counties to implement specific safety requirements when creating livestock pass programs that allow approved livestock producers or managerial employees potential access inside evacuation zones for limited activities, at the discretion of an overseeing public safety officer.² This legislation has been applied by counties to create broader evacuation access pass programs, including the Sonoma County Agricultural Access Verification Card Program (“Ag Pass”). The county had an ad-hoc program starting in 2017 that was significantly altered and then formally approved by a county resolution of the Board of Supervisors in 2022.³

The Sonoma County Ag Pass program expanded potential re-entry into wildfire evacuation zones to agricultural workers, not just owner/operators, as outlined in state legislation. While this program expands work opportunities for agricultural workers

during wildfires, it may also heighten health and safety risks experienced on the job. Such risks may be compounded by structural inequities many farmworkers face, such as lack of healthcare and fear of retaliation from employers.

Drawing on recent scholarship in public health, disaster law, and wildfire response across California, as well as legal analysis and meetings with key government and community leaders, this white paper identifies how agricultural work inside evacuation zones in Sonoma County is regulated, both through policies and in practice. It then assesses the implications of the Ag Pass program on farmworkers’ health, safety, economic security, and data privacy in Sonoma County. Our assessment is heavily guided by findings from our survey, led by a local community engagement team, of 1,011 agricultural workers that examined the health impacts, economic pressures, and preferred methods of communication about work and safety risks during a wildfire. This survey was followed up with open ended interviews with participants on similar themes.⁴

Drawing on these interviews, survey results and our broader policy analysis, this paper provides recommendations to amend the Ag Pass program and county services to increase protections for

1 Cal. State Assembly, AB1103: *Agricultural lands: livestock producers: managerial employees: livestock pass program: disaster access to ranch lands (Livestock Pass Program)*. Amending Cal. Food & Agric. Code. § 2350, Cal. Health & Saf. Code § 13105.6 and Cal. Penal. Code § 409.5. Effective January 1, 2022.

2 Cal. State Assembly, AB1103: *Livestock Pass Program*.

3 County of Sonoma, *Agriculture Access Verification Card Program*, Resolution #2022-0338, 2022.

4 For further information on the survey questions and community engagement team who led survey collection, please see our explanation of methodologies and discussion in Carly Hyland et al, “Evaluation of “Agricultural Pass” Program and Farmworkers’ Experiences Working during Wildfires in Sonoma County, California,” *J. of Agromedicine* (2025), <https://doi.org/10.1080/1059924X.2025.2569371>.

agricultural workers' health, safety, economic security, and data privacy during wildfires and inside wildfire evacuation zones.

Our analysis focuses on the latest version of the Ag Pass program formally adopted in 2022 and discusses policy recommendations centering the impacts on agricultural workers' health, safety, economic security and data privacy. However, we recognize the Ag Pass program is also of great significance for other key populations, including livestock operations, individual owners/operators, and small

farms with varying needs and resources. Further research to understand the unique needs of these groups is important, as well as discussions on when different Ag Pass criteria or evacuation access may be appropriate for different activities or populations. Our goal is to ensure that the needs of farmworkers are represented in future Ag Pass reform, as well as broader local and state discussions on the economic, health, and safety of farmworkers and improve wildfire resilience across California.

BACKGROUND:

State Law and Guidance on Evacuation Access During Wildfires in California

The California Labor Code, Health and Safety Code, and Penal Code provide the statutory framework regulating work conditions for commercial agriculture during wildfire evacuations. In 2020, the California Governor’s Office of Emergency Services issued guidance to Public Safety Partners across California to standardize statewide evacuation terminology.⁵ The guidance document defines an evacuation order as an “[i]mmediate threat to life. This is a lawful order to leave now. The area is lawfully closed to public access.”⁶ This instruction has been widely adopted across the state and is the definition for mandatory evacuation orders in Sonoma County.⁷

In 2021, the state legislature passed AB1103 which codified authority and guidance for each county in California to adopt a “livestock pass program.” The bill amends state law to allow employers and managerial level workers in the livestock industry potential limited access to their property or workplace inside mandatory evacuation zones subject to local public safety approval.⁸ Any pass program must include a mandatory fire safety training course based on curriculum developed in partnership with the State

Fire Marshal.⁹ This legislation was passed without any documented assessments of potential health or safety impacts by any office within the Department of Industrial Relations or Department of Health.”

Prior to this legislation, Penal Code Section 409.5 already designated peace officers 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.”¹⁰ The amended text adds subsection (e), which states:

(e) This section shall not prevent an individual who holds a valid livestock pass identification document, pursuant to Section 2350 of the Food and Agricultural Code, from entering the areas closed pursuant to this section, unless a peace officer identified in subdivision (a) finds that the disaster is of such a nature that it would be unsafe for the document holder to enter or that the presence of the document holder would interfere with disaster response.¹¹

AB1103 did not explicitly apply to pass programs for agricultural work. However, it represents the only criteria to date provided by the state to counties implementing pass programs for work inside evacuation zones. Moreover, the underlying legal codes the bill amends, including Penal Code Section 409.5, are the primary authority for evacuation access writ large in California.

5 Mark Ghilarducci, *Standard Statewide Evacuation Terminology*, CalOES (May 15, 2020), <https://calalerts.org/documents/Letter%20to%20Public%20Safety%20Partners%20-%20Standard%20Evacuation%20Terminology.pdf>.

6 CalOES, *Standard Statewide Evacuation Terminology*.

7 An evacuation order is distinguished from an “evacuation warning” which signals a “potential threat to life and/property” but does not trigger any formal restrictions on movement or criminal penalties. Cal. CalOES, *Standard Statewide Evacuation Terminology*.

8 Cal. State Assembly, *AB1103: Livestock Pass Program*.

9 Cal. Health & Saf. Code §13105.6.

10 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*.

11 Cal. Penal Code § 409.5.

SONOMA COUNTY AG PASS PROGRAM HISTORY

Sonoma County experienced record-breaking wildfires between 2017–2022. In the absence of state guidance, the responsibility fell on the county government to regulate agricultural access in and out of areas where evacuation orders were in effect. The county originally coordinated evacuation access through an ad hoc Ag Pass program under the Department of Agriculture, Weights & Measures between 2017–2022.¹² This program was born out of an urgent need for agriculture and livestock operators to access their land during continued record-breaking wildfires, with the understanding that being able to conduct specific time-sensitive activities could help prevent widespread economic loss and property damage.¹³

The local regulation of evacuation zone access can have considerable benefits, as localized discretion allows county governments to be flexible in responding to shifting risks informed by local knowledge of their community’s needs and experiences. Additionally, regional knowledge of the specific terrain and topography helps inform effective risk assessments that may aid local authorities when deciding whether to activate the Ag Pass. Workers also trust these assessments as an indication it is safe to work in an area where they have been granted access.

In practice, the local management of wildfire evacuation work access with pass programs has resulted in different degrees of access and supervision for livestock and agricultural producers and workers across counties in California. Prior research and news coverage of fires during these years also reveal how the inconsistent criteria and oversight of agricultural work inside evacuation zones under this Ag Pass model in Sonoma County led to increased health and safety risks for workers.¹⁴

In 2022, the Sonoma County Board of Supervisors adopted the Ag Pass Resolution, creating a formal evacuation access program that recognizes both commercial agriculture’s economic need for the Ag Pass, as well as a local government interest in a program that “supports greater compliance with evacuation orders.”¹⁵ The Program defines commercial agriculture as the “cultivation of arable land by the raising of agricultural or horticultural crops or livestock and their products as a principal or supplemental source of income intended for sale off the farm, and distribution to wholesalers or retail outlets, as identified by the Sonoma County Agricultural Commissioner.”¹⁶ The administrative guide for the program emphasizes “possession of an

12 Cnty. of Sonoma, *Agriculture Access Verification Card Program, Administrative Program Document*. Updated Sept 19, 2023. (*Ag Pass Administrative Program Document*).

13 Madeline Craig-Scheckman et al, “Beyond the Evacuation Zone: Agricultural Passes and the Wildfire Crisis in California,” *Natural Hazards Research* (October 2, 2025): 1-34, <https://doi.org/10.1016/j.nhres.2025.09.007>.

14 Michael Méndez et al, *Policy Brief: Addressing Disparities in Sonoma County’s Agriculture Pass Program*, UC Irvine School of Social Ecology (May 18, 2022); See also Cnty. of Sonoma, Office of Emerg. Readiness, Response and Recover, *Looking back at the 2017 wildfires*, <https://socoemergency.org/recover/2017-tubbs-nuns-fire/looking-back-at-2017-wildfire>.

15 Cnty. of Sonoma, *Ag Pass Administrative Program Document*.

16 Cnty. of Sonoma, *Ag Pass Administrative Program Document*.

Agriculture Access Verification Card (“Ag Pass”) may facilitate — but would not guarantee — expedited and limited access by owners/operators or direct, full-time employees of commercial agricultural operations into areas under evacuation orders to conduct critical activities.¹⁷

This resolution explicitly cites AB1103 and authority under the Emergency Services Act as the program’s legal basis and foundation for program criteria and training requirements.¹⁸ According to the county, the program’s design incorporated feedback from diverse stakeholders, and includes requirements that each person seeking entry to an evacuation zone must acquire an Ag Pass. It also includes restrictions such as limiting authorized working hours to daylight hours, requiring that pass holders exit and enter through the same access routes, and mandating that all pass holders receive a safety training. The program also restricts work to “critical activities”; when initially passed in 2022 this included irrigation, livestock care, refueling, and support to first responders.¹⁹ The Sonoma County Board of Supervisors delegated the County Sheriff’s Office all authority to lead the administration of the program with assistance as needed from other county departments. On September 19, 2023, the Board of Supervisors expanded the program, without any prior usage, to include harvesting as a “critical activity.” In this meeting, the Board of Supervisors also emphasized that the Sheriff would retain discretionary authority as outlined in the Ag Pass Resolution to amend the administration of the program without first introducing proposed changes to the Board or obtaining Board approval.²⁰

17 Cnty. of Sonoma, *Ag Pass Administrative Program Document*.

18 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*.

19 Cnty. of Sonoma Dept. of Ag., Weights and Measures, *Ag Pass Certification Program FAQs: Card Issuance*, <https://sonomacounty.ca.gov/awm/agaccess>.

20 On September 19, 2023, the Board of Supervisors Ag Pass agenda item noted, “The Sheriff’s Office has delegated authority to lead administration of the program, consistent with the

In practice, the Department of Agriculture/Weights & Measures primarily administers the Ag Pass application process and initial eligibility determination. Approved applications are then sent to the Sheriff’s office, where applicants must go in person to obtain their physical Ag Pass.

There are two primary studies of the ad-hoc Sonoma County Ag Pass implemented between 2017–2022. The first provides a comprehensive review of the Ag Pass program during the Glass Fire in 2020 and the Sonoma–Lake–Napa Unit (LNU).²¹ Public records analyzed by a team of researchers at UC Irvine revealed that over 2,500 agricultural workers were issued Ag Passes based on inconsistent criteria and without clear safety training or oversight.²² Another study by researchers at Northeastern University conducted interviews with vineyard owners and managers about their experiences with the Ag Pass programs in Sonoma and Napa Counties in 2022.²³ These interviews demonstrated a common perspective of the Ag Pass as essential to mitigate economic losses during a wildfire.²⁴ The interviews also suggested that the Ag Pass program’s perceived fairness was important to maintaining its functionality and community support.²⁵ Among Sonoma based participants, one owner stated “We’ve seen people abusing the system,

parameters established by Resolution No. 22-0338, as interpreted by the Board on September 19, 2023.”

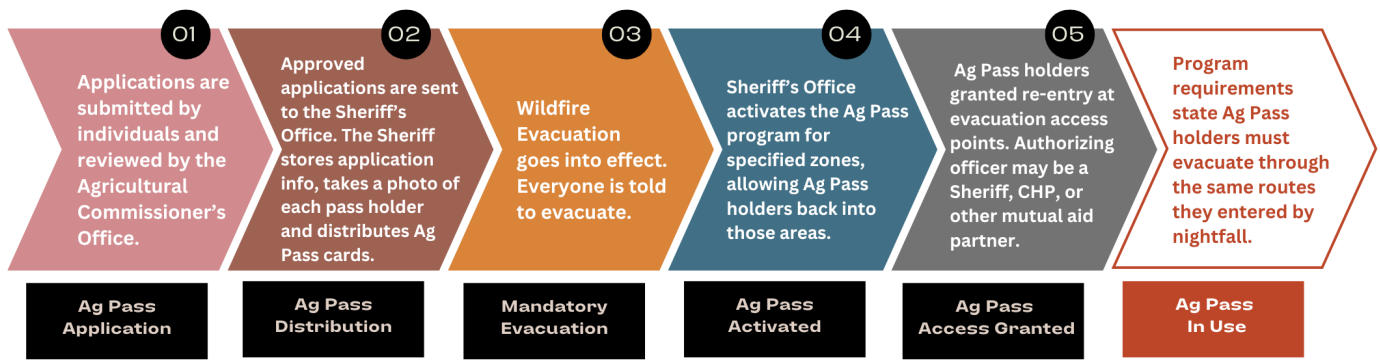
21 Michael Méndez et al, “Addressing Disparities in Sonoma County’s Agriculture Pass Program,” *Policy Brief*, UC Irvine School of Social Ecology (May 18, 2022), https://socialecology.uci.edu/sites/default/files/users/mkcruz/sonoma_policybrief_final_5.18.22_ccformat-4.pdf; Carlo Chunga Pizarro et al, “Air Quality Monitoring and the Safety of Farmworkers in Wildfire Mandatory Evacuation Zones,” *GeoHealth*, 8 no. 7 (July 2024): <https://doi.org/10.1029/2024GH001033>.

22 Mendez et al, “Addressing Disparities in Sonoma County’s Ag Pass Program,” 1

23 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 1.

24 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 10–11.

25 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 12–13.



which undermines its credibility.”²⁶ Another owner explained, “Smaller farms often feel left out because they can’t navigate the bureaucracy as easily.”²⁷

USE OF THE SONOMA AG PASS PROGRAM

The commercial agricultural industry is integral to the Sonoma County economy. At the time the Ag Pass Resolution was passed, the county identified over 1,000 agricultural operations in the area.²⁸ County estimates suggest there are roughly 8,500 agricultural workers, and 60% of these workers are permanent year-round residents.²⁹ Conversations with workers and farmworker advocates suggest the number of workers may significantly rise during harvest.

According to data provided pursuant to public records request, 373 non-duplicate Ag Pass applications had been submitted online and processed by the Agricultural Commissioner’s Office as of August 1, 2024. Of these requests, 304 applications were from commercial plant agriculture producers,

and 273 of these were approved or pending at the time of disclosure. Of the agricultural operation applicants, just 30% of pass holders identified as an owner/operator, suggesting a majority of Ag Pass holders are qualified full-time employees.³⁰ These numbers suggest potential underutilization of the Ag Pass program among commercial agricultural operations. This could mean significant numbers of operations do not intend to engage in any essential activities inside an evacuation zone. However, the underutilization of the program may also indicate a lack of awareness, understanding, or capacity to sign up for an Ag Pass among eligible populations. In a survey of agricultural operation managers and owners in 2022, participants also pointed to a range of administrative and bureaucratic challenges as historical barriers to signing up for an Ag Pass.³¹ In our recent survey of full-time farmworkers, just 86 agricultural workers (8.5%) had previously heard of the Ag Pass program and only 22 people within this group had signed up for an Ag Pass. When we asked those individuals who had signed up for the Ag Pass about challenges they experienced when enrolling, the most common responses were that they could not find information about the Ag Pass (52.4%), and/or they could not understand the information about

26 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 12, Participant 14.

27 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 12, Participant 21.

28 County of Sonoma, *Ag Pass Administrative Program Document*.

29 County of Sonoma, *Ag Pass Administrative Program Document*.

30 Appendix A; see also Ag Pass eligibility FAQs at <https://sonomacounty.ca.gov/awm/agaccess>.

31 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 16.

the Ag Pass/it was not in their language (76.2%).³² Workers also had mixed understandings of what the Ag Pass program is. In practice, these low registration numbers may be concerning if they result in a rush of last-minute requests during a wildfire or agricultural operations ignoring evacuation orders altogether.

Follow-up conversations with state and local wine industry representatives identified that one possible explanation for a lack of awareness among full-time agricultural workers is that they are not the target audience for the program. Furthermore, workers need an additional layer of authorization to even consider applying for an Ag Pass, as they are not eligible to apply without a letter of authorization and verification from their employer. In conversations with local community groups, we also heard concerns about employees not receiving evacuation notices or transportation to evacuate a worksite during wildfires, increasing the risk they remain working inside an evacuation zone without an Ag Pass. These reflections point to a need for further research to understand how agricultural operations decide to use the Ag Pass program or not, and how eligible workers are selected by employers to apply for a Pass.

Our research also identifies a disconnect between the perceived use of the Ag Pass program by local agricultural industry representatives versus what is actively authorized and approved according to the program's text and applications. If a fire were to occur, any agriculture operators or employees who wish to access their worksites would need to have previously applied for and been approved for this program. According to the county's data, this could be thousands of agriculture operations and a significant number of full-time workers *eligible* for re-entry. Therefore, for the purposes of government oversight and an accurate assessment of health and safety impacts, it is important to recognize the current

32 Hyland et al, "Evaluation of "Agricultural Pass program," Table 1.

participation levels are not a clear indication of the potential risks of this program. While recognizing that many individual operators may have their own priorities to protect their properties, we proceed in this analysis by focusing on the government's role in designing a program which establishes the minimum standard of protection for all people, including employees who return to work in an evacuated area during a wildfire.

The Point Fire in June 2024 was the first and only time the Ag Pass program was activated since the resolution was approved by the Board of Supervisors. During the Point Fire, an evacuation order went into effect for zone SON-2E2 on June 16.³³ The Ag Pass was activated for individuals with passes to access zone SON-2E2 on June 18.³⁴ According to the Ag Pass resolution, employers are obligated to track all employees who enter and exit their property inside an evacuation, and employers could be asked to provide this information to the Sheriff's office at the Sheriff's discretion.³⁵ According to public records provided by the county, as of August 1, 2024, 33 individuals were eligible to access addresses within this evacuation area through the Ag Pass program. At the same time, the Sheriff's Office indicated they were "unable to locate any records" of requests issued to employers for data they kept regarding their employees working in the evacuation zone, including when and where individuals entered and exited. Furthermore, the Office was unable to locate any templates or documented methods for issuing these requests to employers or any written policies regarding circumstances in which they would ask employers to provide these records. This event, analyzed further in the rights-based framework below, points to the need for the Board of Supervisors to

33 Cnty. of Sonoma Emergency Response and Recovery, *Point Fire Evacuation Order History*, <https://socoemergency.org/recover/point-fire/point-fire-evacuation-order-history/>.

34 Cnty. of Sonoma Emergency Response and Recovery, *Point Fire Evacuation Order History*.

35 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*, 4.

continuously supervise the Ag Pass and consider ways it can be improved.

AGRICULTURAL WORKERS’ EXPERIENCES DURING WILDFIRES

Existing studies provide relevant context to understand the health risks for agricultural workers during wildfires. In *The (in)visible Victims of Disasters*, the authors conclude “farmworkers . . . are exposed to the most densely concentrated smoke plumes, for longer periods of time, while simultaneously undertaking arduous work.”³⁶ Through a combination of archival analysis, participant observation, and semi-structured interviews, the study demonstrates how Latino and Indigenous immigrant workers in Santa Barbara and Ventura Counties were affected by inequities at every stage of disaster planning, response, and recovery.³⁷

Like Santa Barbara and Ventura, the health risks from wildfires in Sonoma are not borne equally across the County’s population. Since its creation in 2020, the Sonoma County Office of Equity has provided extensive guidance on the disproportionate risks agricultural workers in Sonoma face, finding “[a]s a result of . . . structural and institutional inequities, health, wealth, and educational outcomes for farmworkers and their families is markedly lower than other workers and residents in Sonoma County.”³⁸ The specific structural and institutional inequities referred to in the Office of Equity report are particularly important for this paper’s analysis of Sonoma’s evacuation response protocols. Nearly 90% of agricultural workers in

California are immigrants from Mexico and Central America,³⁹ and a majority of farmworkers do not speak or understand English.⁴⁰ A 2015–2019 survey by the U.S. Department of Labor found that only 49% of California’s agricultural workers have legal work authorization in the United States.⁴¹ Another study, *Implications of Social and Legal Status on Immigrants’ Health in Disaster Zones*, discusses the impact these demographic characteristics have on access to services and government services available to immigrant and undocumented workers.⁴² For example, the study found:

In a disaster situation, unauthorized immigrants—and even authorized immigrants with family and friends who are unauthorized—may disengage and avoid seeking help from first responders, law enforcement officers, and emergency health care providers, out of fear that they may be reported to federal immigration enforcement officials or because they believe that they do not qualify for such services.⁴³

Considering these vulnerabilities, understanding not only what local and state standards exist, but how they are communicated to workers and enforced, is essential to the protection of agricultural workers’ health and safety.

36 Michael Méndez et. al, “The (in)visible victims of disaster: Understanding the vulnerability of undocumented Latino/a and indigenous immigrants,” *J. of Phys., Hum. Reg’l Geosciences*, 116 (2020): 50–62, <https://doi.org/10.1016/j.geoforum.2020.07.007>.

37 Mendez et al, “The invisible victims of disaster,” 56–59

38 Cnty. of Sonoma Board of Supervisors, *Agricultural Access Verification Card Program Summary*, 6.

39 U.S. Dept. of Labor, *California Findings from the National Agricultural Workers Survey (NAWS) 2015–2019: A Demographic and Employment Profile of California Farmworkers*. January 2022, <https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2015.pdf>.

40 U.S. Dept. of Labor, *California Findings from the National Agricultural Workers Survey (NAWS) 2015–2019: A Demographic and Employment Profile of California Farmworkers*, (January 2022), <https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2015.pdf>.

41 U.S. Dept. of Labor, *Findings from the NAWS*.

42 Elizabeth Fussell et al., “Implications of Social and Legal Status on Immigrants’ Health in Disaster Zones,” *Am J Public Health*, 108 no. 12 (2018): 1617–1620, doi:10.2105/AJPH.2018.304554.

43 Fussell et al, “Implications of Social and Legal Status on Immigrants’ Health in Disaster Zones,” 1618.

HEALTH ANALYSIS

Survey responses relating to farmworkers' health experiences working during wildfires inform our understanding of the potential health implications of work inside an evacuation zone during a fire. Of the 763 survey respondents who had worked in agriculture during a wildfire in the county since 2017, 66.7% reported experiencing health impacts such as a headache (74.9%), sore throat (76.0%), and eye irritation (83.1%).⁴⁴ As one worker noted: *"Yes, I had a lot of eye irritation, I coughed, my head hurt . . . I got asthma because of the smoke."*⁴⁵ Another worker said, *"[I]t's a grave damage to our organs, and the smoke is toxic, and plastic material could be burning and that affects us."*⁴⁶

These findings are not specific to work with an Ag Pass but highlight the experiences of some full-time workers who have previously worked during wildfires in the county. All of the workers we interviewed were eligible for an Ag Pass, and the risks they identified highlight the potential conditions they could be working in under the Ag Pass program, underscoring the need for additional health and safety considerations. As of August 2024, 70% of agricultural operation Ag Pass holders answered "no" when asked if they applied as the owners/operator, suggesting the majority of Ag Pass participants fall under the category of a full-time employee.⁴⁷

While the Sheriff's Office is responsible for the legal enforcement of evacuation orders in Sonoma County, county Health Officers are granted authority under state law for the oversight of public health during a state of emergency (Penal Code 409.5).⁴⁸ The same Penal Code section 409.5, which is referenced in the Ag Pass resolution, also sets forth the local health officer's jurisdiction.⁴⁹ Penal Code 409.5 notes that "if the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section." This authority is consistent with the Health and Safety Code section 101040(a), which specifies: "The local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during a 'State of emergency' or 'local emergency.'"⁵⁰

The Sonoma Ag Pass program's authorization of work inside of evacuation zones during a wildfire may give rise to public health concerns regarding smoke and health hazards during a local emergency. However, the Sheriff has the sole discretion to authorize work with an Ag Pass, and there is no documented process for how the Sheriff's Office is advised on potential health or safety consequences nor is there any oversight from a Health Officer. Furthermore, the formal Ag Pass Resolution and Board of Supervisors' instructions for the implementation of Sonoma County's program provide no

44 Hyland et al, "Evaluation of "Agricultural Pass" Program," 2.

45 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 4.

46 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 4.

47 Appendix A; *see also* Ag Pass eligibility FAQs at <https://sonomacounty.ca.gov/awm/agaccess>.

48 Cal. Health and Safety Code § 101030(c).

49 Cal. Penal Code § 409.5(a).

50 Cal. Health and Safety Code § 101040(a).

discussion of the Health Officer’s role anywhere in the Ag Pass program. This includes no monitoring of health and safety conditions before Ag Pass activation or inside an evacuation zone during a wildfire.

The activation of the Ag Pass during the Point Fire highlights potential health risks that are elevated by excluding a health representative and disconnecting broader emergency infrastructure, such as the Department of Emergency Management and the Community Organizations Active during Disasters (COAD), from Ag Pass implementation. The County activated the Ag Pass on June 18, 2024, authorizing Ag Pass holders to reenter the evacuation zone for approved agricultural activities.⁵¹ On this same day the County Department of Health issued a health advisory for Sonoma County residents to limit outdoor activities in areas with poor air quality, and a general warning that “[p]eople may experience adverse health effects from the smoke over Sonoma County and across the region.”⁵²

While the health warning included links to Cal/OSHA regulations and guidelines to protect workers, the Ag Pass activation notice referenced no health information or guidance on state laws.⁵³ At the same time, because of the “Indemnification, Defend, and Hold Harmless Agreement” in the Ag Pass application, the County cannot be held liable for health harms that occur inside evacuation zones.⁵⁴ This intentional waiver of liability contributes to confusion as workers may assume that the County’s authorization of reentry must mean it is safe to work in that area. The Ag Pass application also requires that applicants acknowledge their ongoing responsibility

to comply with health and safety standards through a signature certification in the application.⁵⁵

During the Point Fire in 2024, the Ag Pass was activated for all pass holders at once for a specific evacuation zone, and it is our understanding that only those with prior authorization were allowed entry. However, when it came time to actually activate the Ag Pass, it appears the county notifications were released without coordination between departments, leaving Ag Pass holders to determine for themselves how to reconcile the public health warning and evacuation zone entry authorization. Furthermore, the lack of health information in the Ag Pass activation notice placed the burden on Ag Pass holders to monitor the air quality inside an evacuation zone and determine if the Ag Pass authorization conflicted with local health guidance and state laws. While the county is not responsible for the enforcement of state health laws, the Board of Supervisors should consider updating the Ag Pass program to ensure county departments coordinate with one another and draw on their collective expertise to incorporate the health conditions and broader emergency response efforts inside the evacuation zone as a consideration to activate the Ag Pass.

STATE HEALTH STANDARDS RELEVANT TO WORK PERFORMED WITH AN AG PASS

State laws provide guidance and direction for counties regarding how work during a wildfire and around wildfire smoke may be performed in compliance with state health standards. The Labor Commissioner’s Office Division of Occupational Safety and Health (DOSH), also commonly known as Cal/OSHA, is primarily responsible for enforcing certain safety and health requirements in the

51 Cnty. of Sonoma Dept. of Ag./Weights, and Measures, *Agricultural Pass Program Activated* [Press Release] June 18, 2024.

52 Cnty. of Sonoma Dept. of Health Services, *Sonoma County Issues health advisory due to poor air quality caused by current wildfires*, [Press Release] June 18, 2024.

53 Cnty. of Sonoma Dept. of Ag./Weights, and Measures *Agricultural Pass Program Activated*.

54 Cnty. of Sonoma Dept. of Ag./Weights and Measures, *Ag Pass Program Application Form*, accessed via FAQs: Card Issuance, <https://sonomacounty.ca.gov/awm/agaccess>.

55 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*.

agricultural workforce.⁵⁶ In 2019, the Cal/OSHA Standards Board passed the state’s first statute specifically addressing wildfire smoke. Title 8 §5141.1, “Protection from Wildfire Smoke,” requires that employers identify unhealthy exposures, communicate wildfire risks effectively to their employees, and control/reduce the unhealthy exposure of their employees to smoke by implementing administrative and engineering controls.⁵⁷ The standard states employers must “take action when the Air Quality Index (AQI) for PM_{2.5} is greater than 150, and where employers should reasonably expect that employees could be exposed to wildfire smoke.”⁵⁸

Specifically, when the AQI for Particulate Matter (PM_{2.5}) is equal to or greater than 151, employers must provide all employees with N95 respirators for voluntary use.⁵⁹ If the AQI exceeds 500, N95 use is required.⁶⁰ Appendix B to the Wildfire Smoke Standard also sets forth the mandatory training requirements that employers must provide to employees about protection from wildfire smoke.⁶¹ Under this standard, employers must provide training about (a) the health effects of wildfire smoke, (b) the right to obtain medical treatment without fear of reprisal, (c) how employees can obtain the current

Air Quality Index for PM_{2.5}, and (d) the requirements of Title 8, section 5141.1, which sets forth the mandatory information employers must communicate to workers.⁶² This includes communicating the current AQI at the “start of each shift and periodically thereafter” as well as notifying employees when air quality is harmful and what protective measures are available to them.⁶³ The employer must be able to clearly demonstrate what their communication system is to reach workers, as well as what their AQI monitoring system is at the worksite.⁶⁴

During the 2021 legislative session, California also passed AB-73, which officially classifies agricultural workers as “essential workers” and wildfire smoke as a potential “health emergency” in both the Health and Safety Code and the Labor Code.⁶⁵ This bill expanded responsibilities of the California Department of Public Health and requires the Department to consider wildfire smoke as a health emergency for which personal protective equipment (PPE) is properly “procured, managed and distributed.”⁶⁶ The bill also integrated a clear definition of ‘agricultural worker’ into the Labor Code and codified that mandatory safety training requirements be provided in a language understandable to all workers.⁶⁷ Finally, the bill requires Cal/OSHA “to review and update the contents of the protection from wildfire smoke training and thereafter post it on its internet website.”⁶⁸

Our survey of farmworkers was not designed to assess employer compliance with state health regulations nor the thoroughness of state agency

56 Cal/OSHA regulates work conditions through several enforcement units, including the Labor Enforcement Task Force (LETF). See State of Cal. Dep’t of Indus. Rels., CAL/OSHA, *Worker Safety and Health in Wildfire Regions*, <https://www.dir.ca.gov/dosh/Worker-Health-and-Safety-in-Wildfire-Regions.html> (Nov. 2022).

57 8 Cal. Code Regs. § 5141.1, *Protection from Wildfire Smoke*, Department of Industrial Relations.

58 See also State of Cal. Dep’t of Indus. Rels., CAL/OSHA, *Wildfire Smoke Alert: Cal/OSHA Reminds Employers to Protect Workers If the Air Quality Is Unhealthy Due to Wildfire Smoke* (August 16, 2022).

59 8 Cal. Code Regs. § 5141.19(f), *Protection from Wildfire Smoke*, Department of Industrial Relations.

60 8 Cal. Code Regs. § 5141.1(f), *Protection from Wildfire Smoke*, Department of Industrial Relations. Masks must be provided in accordance with § 5144.

61 8 Cal. Code Regs. § 5141.1, Appendix B, Department of Industrial Relations.

62 8 Cal. Code Regs. § 5141.1, Appendix B, Department of Industrial Relations.

63 8 Cal. Code Regs. § 5141.1, *Protection from Wildfire Smoke*, Department of Industrial Relations.

64 8 Cal. Code Regs. § 5141.1, *Protection from Wildfire Smoke*, Department of Industrial Relations.

65 CA AB-73 *Health emergencies: employment safety: agricultural workers: wildfire smoke*, Chapter 332 (last updated Sept. 28, 2021).

66 Cal. State Assembly, AB-73.

67 Cal. State Assembly, AB-73.

68 Cal. State Assembly, AB-73.

enforcement action for labor laws.⁶⁹ However, data from our interviews with farmworkers, conversations with local community organizations and county representatives, and public commentary at county board meetings point towards gaps in compliance with and enforcement of these health standards as the norm.

In light of this feedback, we reviewed all Cal/OSHA citations reported to the federal occupational safety and health agency (OSHA) for days of known “unhealthy” PM_{2.5} levels to determine if any citations were issued under the wildfire smoke standard, C.C.R. § 5141.1 *et seq*, between 2018 (when the standard went into effect) and 2022. We used the historical air quality data on the California Air Resources Board (“Cal. ARB”) website to identify 29 days during which the AQI exceeded the “unhealthy” threshold.⁷⁰ However, there are no citations by state agencies on record for any enforcement actions during this time.⁷¹ This rate is consistent with additional reporting in 2021 by The California Newsroom (a collaboration of National Public Radio, 17 public California radio stations, and CalMatters), which determined that Cal/OSHA issued just eleven citations for the entire state in the first two years the wildfire smoke standard was

active.⁷² Their report suggests these numbers are an indication of significant under enforcement for California’s outdoor workforce of 2.8 million people between 2019 to 2021, two years with some of the worst wildfires in California history.⁷³ Further public records requests regarding enforcement of the wildfire smoke standard could lead to greater understanding of state enforcement protocols and their application inside wildfire evacuation zones.

The conditions under which the Ag Pass is deployed, inside a mandatory evacuation zone during an active wildfire, are very likely to trigger requirements in these state standards. However, we were unable to find any evidence of state agencies’ formal procedures or processes in place to document workplace violations or enforce these health standards in practice when individuals reenter a wildfire evacuation zone.

While the Ag Pass application includes a disclaimer regarding ongoing compliance obligations with state criteria, more can be done to support employer’s compliance with the specific requirements set forth and increase worker health education. Direct language in the Ag Pass Resolution, not just absolving the county of liability, but affirmatively integrating the state health standards into the Ag Pass requirements is one way to improve health oversight and protections for those working inside wildfire evacuation zones with an Ag Pass. Health training may also be integrated with existing safety requirements to streamline compliance with both county and state training requirements for employees. This may include education for workers on the proper use and maintenance of N95 masks, and their right to “protective actions,” such as increased rest time and frequency when the AQI exceeds 150.⁷⁴

69 SB606 creates an enforcement mechanism for Cal/OSHA to “investigat[e] policies and practices of an employer.” California Labor Code Section 6317 dictates the procedure for Cal/OSHA to issue citations with penalties to employers who violate the Health and Safety or Labor Codes. If an employer has multiple worksites there is a rebuttable presumption that the violation is enterprise-wide. In the context of Sonoma agricultural worksites, this means all harvest sites under the purview of a single grower may have work suspended if a violation is found at any of their locations. SB-606 *Workplace safety: violations of statutes: enterprise-wide violations: egregious violations*. Chapter 336 (Sept. 28, 2021) amending Cal. Lab. Code § 6317.

70 California Air Resources Board (“Cal. ARB”), *Air Quality Data Query Tool*, <https://www.arb.ca.gov/aqmis2/aqdselect.php>.

71 We reviewed citations published in the CAL/OSHA enforcement activity database for agriculture operations in Sonoma County between 2018-2022 on the specific dates at which the air quality triggered action under C.C.R. § 5141.1(f). https://www.dir.ca.gov/dosh/dosh_enforcement_activity.html.

72 Fahida Romero, “California Failed to Protect Outdoor Workers from Wildfire Smoke Under Biden’s New OSHA Chief,” *KQED*, September 6, 2022, <https://www.kqed.org/news/11897789/california-largely-failed-to-enforce-worker-smoke-protections-under-bidens-new-osha-pick>.

73 Romero, “California Failed to Protect Outdoor Workers” *KQED*.

74 8 Cal. Code Regs. § 5141.1, Appendix B(f)(g)(h).

SAFETY ANALYSIS

Physical safety inside an evacuation zone is a key premise on which the Ag Pass activation rests. The Ag Pass Implementation Guide identifies when limited re-entry for agricultural and livestock producers may occur: when “a hazard may no longer threaten an area that has been subject to an evacuation order or conditions have changed which may reduce the immediate life safety threat.”⁷⁵ How an immediate life safety threat is defined and monitored is therefore critical to the protections afforded to agricultural workers reentering wildfire evacuation zones. In Sonoma County, the Sheriff’s Office is responsible for determining the conditions under which the Ag Pass program may be activated and monitoring access to the area while a mandatory evacuation is in effect. In practice, the Sheriff regularly authorizes mutual aid partners, such as California Highway Patrol, as designees to monitor evacuation checkpoints and delegates authority to check/approve Ag Passes at evacuation checkpoints. Any violations of a mandatory evacuation order may be prosecuted as a misdemeanor by the County.⁷⁶

During the Board of Supervisors meeting in which the 2023 Ag Pass Resolution was discussed, a Sheriff’s Office representative described the Department’s decision-making process to activate the Ag Pass as follows:

“[I]f the Fire (department) tells us it’s looking like it could have this rate of spread in this direction we need these ten zones evacuated, then we

do it . . . so zones might be under evacuation order that might not be impacted by the fire yet, and might never be . . . so we could allow people into those areas to do what they need to.”⁷⁷

Our conversations with the Sheriff’s Office provide additional framing on the decision to activate the program, including refraining from activating the program when a red flag warning is in effect or CalFire recommends against it; these considerations are discretionary and not required by the Resolution or monitored in any way. Beyond this, we learned of no other safety considerations incorporated into the Sheriff’s decision to authorize evacuation access, and no requirements to consult with county departments such as Health or the Department of Emergency Management. The Ag Pass program criteria, set forth in the resolution and guide, require that work access be limited to daylight hours and that passes be issued to individual workers rather than their employers, so each person who enters an evacuation zone can be identified and accounted for.⁷⁸ The Resolution also requires that employers keep track of which workers are inside evacuation zones and be able to produce records to the Sheriff’s Office upon request after a wildfire event.⁷⁹

These conditions established with the formal 2022 Ag Pass program are significant steps towards safer and more consistent standards than prior versions

75 Cnty. of Sonoma, *Ag Pass Administrative Program Document*.

76 Cal. Penal Code § 409.5.

77 Cnty. of Sonoma, *Board of Supervisors Meeting*, Testimony of Assistant Sheriff Naugle, August 30, 2022.

78 County of Sonoma, *Ag Pass Resolution #2022-0338*.

79 County of Sonoma, *Ag Pass Resolution #2022-0338*.

of the ad-hoc program. However, in response to our public records request following the first activation of the Ag Pass during the Point Fire, the Sheriff's Office provided they were "unable to locate any records" of requests issued to employers for documentation of workers inside the active evacuation zone. Moreover, the Sheriff's Office was unable to locate any templates or documented methods for issuing these requests or any written policies regarding what circumstances employers would be asked to provide these records.

While the Point Fire was a comparatively small fire for the county, historical trends indicate Sonoma could experience much larger fires in the future, and it is imperative to develop these systems before a fire occurs. This lack of preparation and follow up highlights a gap in oversight by the county of employers in the current Ag Pass Resolution. This discrepancy may give rise to safety concerns for workers inside evacuation zones, as our survey identified nearly 25% of full-time workers who had worked in agriculture during a wildfire did not receive notification from their employers that the wildfire was nearby.⁸⁰ These findings were echoed in meetings with community-based organizations and farmworker advocates who have heard accounts of farmworkers who had not known an evacuation order was in effect for the area in which they were working.

Another factor which may influence the safety assessment for activating the Ag Pass is the number of people being authorized for reentry to a given evacuation zone. In the analysis of Ag Pass application data provided pursuant to our public records request, we found access requests varied greatly for zones across the county. As of August 1, 2024, 26 evacuation zones had just one passholder approved to access an address inside the area, while the top ten evacuation zones authorized access for between 20 to 42 people (Appendix A). As participation in the Ag Pass grows, these numbers could quickly rise

for evacuation zones with higher concentrations of vineyards.

Ag Pass holders may also be approved for access to multiple addresses and evacuation zones in their applications. Of the 291 approved applicants for the Ag Pass as of August 1, 2024, 166 people (57%) have been granted access to more than one address and 141 people (49%) have access to more than one evacuation zone (Appendix A). Furthermore, 97 people (33%) have been approved for access to more than three addresses and 76 people (26%) have access to more than three evacuation zones (Appendix A).

The frequency of pass holders with multiple addresses suggests the primary address listed on an Ag Pass is not necessarily an indication of the full geographic scope the worker has access to (Appendix A). These numbers also suggest a majority of pass holders are approved to access multiple work sites once inside an evacuation zone, or may be able to move between evacuation zones should their work site addresses be in multiple zones where the Ag Pass has been activated. Currently the only method to account for individuals inside evacuation zones or ensure they have safely left is through employer tracking requirements. However, the Sheriff's Office has the sole discretion to decide whether to request these records from employers. Nonetheless, our public records requests revealed that they had not developed any template materials to request or monitor this information as of August 2024.

In testimony provided to the Board of Supervisors in public hearings just prior to the Ag Pass Resolution's passage in August 2022, county department representatives reiterated: "[The] Sheriff's office responsibility begins and ends at the barricades."⁸¹ At this meeting, the Representative of the Sheriff's office indicated, "We do have deputies patrolling inside (evacuation) areas."⁸² However, the County Counsel specifically clarified the county is not responsible for Ag Pass

80 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 4.

81 Cnty. of Sonoma, *Board of Supervisors Meeting*, August 30, 2022.

82 Cnty. of Sonoma, *Board of Supervisors Meeting*, August 30, 2022.

holders' actions or activities once they have reentered the evacuation checkpoint (See Figure 1).

This lack of oversight of activity inside evacuation zones directly impacts the ability to ensure safety conditions for workers inside the area. This also highlights the need for clear notification practices and effective methods to communicate the Ag Pass activation and deactivation to pass holders who may be moving around to multiple work locations after entering an area. The Ag Pass FAQs webpage states "an announcement will be made through SoCo Emergency declaring the Ag Access Verification Program has been activated."⁸³

However, there are no requirements regarding who makes these announcements, nor if they are made in coordination with the Department of Emergency Management. There are also no requirements nor documented practices of any county departments issuing notifications when the Ag Pass is deactivated, and no clear methods to communicate with Ag Pass holders should their access be suspended or fire conditions change. Language accessibility is also critical to ensure agricultural workers understand the entry and exit requirements for the Ag Pass program and evacuation procedures. When asked for their preferred language to receive information about the Ag Pass, 95% of our survey respondents preferred to receive information in Spanish while 2% preferred English and 1% requested Indigenous languages. Notably, work by local community organizations have estimated the number of Indigenous-language speakers in the county to be higher than was represented in our survey, underscoring the need for outreach in workers' preferred language. Furthermore, in meetings with community-based organizations, local leaders expressed uncertainty about how many farmworkers have signed up for county emergency alerts, and that many workers may be hesitant to sign up for

such notifications without knowing how their personal information (e.g., phone number) could be used.

It should also be noted that the current emergency alert notification system may not be accessible for many workers, and it is imperative that the county partner with trusted organizations to develop systems to effectively reach this population. When asked who workers would feel comfortable receiving information from about the Ag Pass, only 30% indicated they would feel comfortable interacting with the Department of Emergency Management and 38.5% with the Agricultural Commissioner's Office.⁸⁴ Meanwhile, the most trusted sources for information were community-based organizations (71.2%), followed by health clinics (59.5%).⁸⁵

In assigning the Department of Emergency Management no role in the Ag Pass Resolution or implementation plans, the Board of Supervisors disconnects this program from core emergency responsive infrastructure which is integral to evacuation zone safety. This lack of coordination and accessible notification system also creates additional safety risks for the Department of Emergency Management when making decisions without information on how many people have been granted potential access to an area or where they may be concentrated inside an evacuation zone. Increased coordination between county departments and methods to account for individuals entering and exiting evacuation zones can improve the safety of Ag Pass holders and overall wildfire response efforts in the county.

83 Department of Ag Weights and Measures Ag Access, *Agricultural Access Verification Card Program Frequently Asked Questions*, <https://sonomacounty.ca.gov/awm/agaccess>.

84 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 2.

85 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 2.

ECONOMIC SECURITY ANALYSIS

A consistent finding that emerged from our survey and interviews was that agricultural workers may feel pressure to continue working during a wildfire despite concerns over the potential health impacts due to severe economic need and fear of retaliation from their employers. Of the 1,011 farmworkers surveyed, 96.8% said they would be “very worried” about lost income if they could not work during a wildfire. Most participants indicated it would be difficult to pay for necessities like rent (99.2%), groceries (83.6%), and gas (77.5%).⁸⁶ Further, survey participants spent an average of 59.2% of their monthly income on rent, underscoring the difficulty in being able to afford basic needs such as housing if their work opportunities were limited during a fire or other natural disaster.⁸⁷ In interviews, participants discussed the health impacts of wildfires but repeatedly indicated that they need to continue working regardless of the conditions.⁸⁸ This enormous economic need provides a critical context to understand the different economic incentives and risks the work authorized by the Ag Pass creates for agricultural workers.

The Sonoma Ag Pass implementation guide and legislative history make clear that economic injury to agricultural operations was a primary concern driving the creation of the Ag Pass program. At the

time the Resolution was passed, *Sonoma County Guide* suggested the “total production value of county agriculture was \$680 million,” and more than 1,000 agricultural businesses in the county cultivated crops, practiced livestock agriculture or operated associated agriculture processing facilities.⁸⁹ However, neither the Ag Pass Resolution nor AB1103 include any guidance regarding compensation requirements for employees authorized for re-entry to an evacuation zone with an Ag Pass.

The Ag Pass program’s legislative history demonstrates this tension at the heart of the debates over what qualifies as an “essential activity” and who will be allowed into evacuation zones. In public board discussions the supervisors debated the expansion of work opportunities inside mandatory evacuation zones, particularly for harvesting and food processing. One supervisor noted:

Part of this conversation is deciding, do we want people to be able to work or not?...[I]limited food processing is a must . . . when it comes to harvesting, we can have more conversations but I know that was part of the original idea behind the access pass.⁹⁰

Another supervisor said: “I thought the intent was to avoid a financial disaster in addition to the natural disaster happening.”⁹¹ In a survey by the UC Cooperative Extension and Sonoma County Farm Bureau after the 2022 Resolution passed without

86 Hyland et al, “Evaluation of “Agricultural Pass” Program,” Table 5.

87 Hyland et al, “Evaluation of “Agricultural Pass” Program,” Table 5.

88 Hyland et al, “Evaluation of “Agricultural Pass” Program,” Table 4.

89 Cnty. of Sonoma, *Ag Pass Administrative Program Document*.

90 Cnty. of Sonoma, *Board of Supervisors Meeting*, August 30, 2022.

91 Cnty. of Sonoma, *Board of Supervisors Meeting*, August 30, 2022.

harvesting included, several respondents expressed significant frustration with the program and suggested operators were refusing to sign up due to restrictions on harvesting in the original program.⁹² In the wake of this feedback, the Ag Pass essential activities list was amended to include harvest in 2023. Notably, the Board of Supervisors did not vote on this change on the record during their meeting, but instead stated the Sheriff had this authority all along to update program criteria without a Board vote.

While the county's intentions to address economic needs are clear, the execution of this expanded program focuses primarily on the needs of agricultural operation owners, without fully recognizing how the introduction of harvesting alters the economic incentives of participating in this program for full-time workers.

During peak harvest season, the Ag Pass represents the only legal way to work and receive pay when an evacuation order is in effect. Which workers are selected to apply for an Ag Pass is also up to the discretion of their employers. Importantly, the Ag Pass Resolution and application disclaimer are clear no person may be required to use their Ag Pass to work inside an evacuation zone.⁹³ However, this disclaimer does not address the reality workers shared in our survey regarding their fear of retaliation from employers for choosing not to work during previous wildfires. "[P]eople are afraid to report anything or complain, out of fear of getting fired," one farmworker said. "Even as coworkers, we go complain, but sometimes, we get scared of getting fired. We are also scared of even reporting when people get injured, instead, people just toughen up."⁹⁴

92 UC Cooperative Extension and Sonoma County Farm Bureau, *Ag Pass Survey Results*, Attachment 4, Cnty. of Sonoma Board of Supervisors Meeting Calendar Item # 2023-1013, September 19, 2023.

93 Cnty. of Sonoma, *Ag Pass Application: Certification and Acknowledgment Clause*; Ag Pass Resolution #2022-0338.

94 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 4.

This fear of retaliation from workers was reinforced in repeated concerns we heard from local nonprofit organizations but remains unaddressed in current state and county oversight of the Ag Pass. To holistically address the economic impacts of the Ag Pass program, it is important agricultural employees who work inside an evacuation zone be both compensated appropriately and have meaningful economic alternatives when this work poses significant risks to workers' safety and health.

ALTERNATIVE ECONOMIC MODELS DURING DISASTERS

While economic oversight is unaddressed in the Ag Pass program itself, this gap is not entirely reflective of the county's climate emergency response efforts as a whole. The county has been a leader in California and has created disaster immediate needs funds to serve county residents, including agricultural workers.⁹⁵ In 2022, the Board of Supervisors dedicated \$2 million to the Sonoma Disasters Immediate Needs Fund and \$1 million to Low Wage Disaster Initiatives to address community needs following disasters such as floods and wildfires. The funds were first distributed in 2023 to support recovery efforts in response to winter storms, with over \$500,000 distributed in gift cards directly to people in Sonoma County through partnerships with Community Organizations Active in Disasters (COAD) and the Community Action Partnership (CAP).⁹⁶ Certain agricultural operations within the county have also created models of economic benefits for workers from which the county and others may learn, such as hazard pay and disaster relief.

95 Cnty. of Sonoma Board of Supervisors, *Legislation Regular Calendar Item File # 2023-1236: Essential Workers Immediate Needs and Low Wage Disaster Pay Programs*, October 3, 2023.

96 Cnty. of Sonoma Board of Supervisors, *Legislation Regular Calendar Item File # 2023-1236*.

For employees, hazard pay, or additional pay on top of a base wage rate for work performed in specified hazardous conditions, represents a wage model currently deployed at the local level by both government and private employers to address employee compensation during wildfires. The Federal Department of Labor defines hazard pay as “additional pay for performing hazardous dut[ies] or work involving physical hardship.”⁹⁷ Physical hardship is defined as “work duties that cause extreme physical discomfort and distress which is not adequately alleviated by protective devices.”⁹⁸ Certain vineyards have implemented hazard pay for workers in an effort to increase climate resilient compensation policies in their business plans. For example, Boesch Vineyards provides 150% pay when the AQI is above 150.⁹⁹ Eco Terreno in the Alexander Valley has also publicly committed to pay workers a 150% rate when the AQI meets 150, and E&J Gallo provides hazard pay benefits based on a collective bargaining agreement developed with the United Farm Workers union.¹⁰⁰

These models of hazard pay are consistent with the “threat to life” level of danger that the CA Office of Emergency Services (CA OES) uses to describe the conditions inside an area under mandatory evacuation.¹⁰¹ The health symptoms identified by farmworkers in our survey, as well as the health conditions identified in other academic research, further demonstrate a degree of unavoidable hardship that

is incurred by individuals working during a wildfire.¹⁰² The Ag Pass application itself also recognizes the inherent elevated risk of work inside an evacuation zone. The disclaimer states: “I acknowledge and understand the inherent risks and hazards associated with accessing restricted areas subject to official road closure as the result of a local emergency.”¹⁰³ This overlap should be considered by employers and in state pay standards when setting the appropriate compensation rates for activities inside an evacuation zone, particularly when the nature of activities, such as harvesting, requires physically demanding labor in geographically isolated locations.

Counties and cities in California may also pass hazard wage ordinances to respond to health risks for essential and agricultural workers, using similar ordinances passed during the height of the COVID pandemic as a model. For example, the city and county of San Francisco adopted a resolution in 2020 urging grocery stores to provide hazard pay of an increased \$5 per hour when the county is in a “purple, red, or blue” designated hazardous level of community disease transmission.¹⁰⁴ Similarly, the Coachella city council adopted an emergency ordinance in 2023 requiring farm employers pay workers a hazard premium of \$4 per hour during the

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

98 U.S. Dept. of Labor, *Hazard Pay*.

99 Phil Barber, “Boesch Vineyards in Napa Valley become 1st to provide vineyard workers hazard pay and disaster insurance”, *Press Democrat*, October 26, 2023, <https://www.pressdemocrat.com/article/news/boesch-vineyards-in-napa-valley-becomes-1st-to-provide-vineyard-workers-h/>.

100 Barber, “Boesch Vineyards in Napa Valley become 1st to provide vineyard workers hazard pay and disaster insurance”, *Press Democrat*.

101 Cal OES *Standard Statewide Evacuation Terminology*.

102 Richard Fenske and Kent Pinkerton, “Climate Change and the Amplification of Agricultural Worker Health Risks,” *J. of Agromedicine*, 26 no. 1 (2021): 15–17, DOI: 10.1080/1059924X.2021.1849211; See also Molly Parker et al., “Agricultural Worker Perspectives on Climate Hazards and Risk Reduction Strategies,” *J. of Agromedicine*, 29 no. 3 (2024): 333–34, DOI: 10.1080/1059924X.2023.2299378.

103 Cnty. of Sonoma, Ag Pass Application, *Indemnification, Defend and Hold Harmless Agreement*.

104 Cnty and City of San Francisco, *Emergency Ordinance — COVID-Related Hazard Pay*, File No. 210181; Compiled Hero Pay Ordinances for California, <https://mccmeetingspublic.blob.core.usgovcloudapi.net/coachelaca-meet-598515f99d244f51bc36aaaaaf6f38b2/ITEM-Attachment-001-02e3e07760e94f5f9b1352e778a7b321.pdf>

pandemic.¹⁰⁵ This later ordinance was challenged in federal court and upheld as constitutional.¹⁰⁶

The work-dependent nature of hazard pay does not address the pressure to work despite concerns farmworkers have about the impacts working in a wildfire evacuation zone may have on their health. Farmworker advocates and industry stakeholders alike echoed the sentiment that the full scale of economic compensation workers need during wildfires cannot be addressed through the Ag Pass program alone, or any work dependent option. Disaster economic relief programs at the state and local level play a critical role in distributing funds effectively and ensure they reach county residents most in need. To this end, the county resolutions for Sonoma’s economic relief programs delegated authority to the director of the county’s Human Services Department to enter into contracts with COAD and community based organizations to distribute money, and to amend the amount of aid that can be distributed to residents in need should state or federal funds be made available.¹⁰⁷

These steps represent both a financial commitment but also administrative awareness of the need to engage trusted community-based organizations to reach the diverse communities in the county. The inclusion of flexibility for state or federal aid is also an important recognition that the scale of aid

needed cannot be addressed by the county alone. Less than a year after approving the disaster emergency relief funds, the board already authorized the first \$1 million be used following winter storms that made agricultural work inaccessible.¹⁰⁸ That said, these payments, while helpful, are insufficient to fill the gaps in employee compensation.

Businesses in the North Bay Area have also demonstrated private models of compensation that incorporate both hazard pay and disaster insurance to more fully account for the economic pressures experienced by workers during a fire. In 2023, Boeschen Vineyards announced it will provide options for workers to choose between receiving time and a half to remain on the job or take paid time off when the air quality index climbs above 150.¹⁰⁹ In an interview announcing the policy, Doug Boeschen said their model emerged following the 2020 fire season when, “[t]here were lots of owners that suffered greatly in the fires . . . “I don’t want to diminish that. But generally speaking, it’s always going to be the workers who suffer the most.”¹¹⁰ Boeschen crafted the disaster pay guidelines with North Bay Jobs with Justice and worked with the labor group to release the final terms.¹¹¹ This model and engagement with local labor organizations can address workers’ concerns over lost income during a wildfire identified in our survey, and how to engage with trusted organizations to distribute information.

105 The ordinance established an immediate time-limited mandate that agricultural workers and grocery workers (among other classes of employees) employed by designated employers in the area must be paid at a rate of \$4 more than their hourly wage for a period of at least 120 days. The ordinance also prohibited employers from circumventing its effects by reducing a worker’s compensation or limiting a worker’s earning capacity; Jessica Fu, *Nation’s first mandatory farmworker hazard pay gains approval*, The Counter, <https://thecounter.org/farmworker-hazard-pay-covid-19-coachella/> (February, 2021).

106 *W. Growers Ass’n v. City of Coachella*, 548 F. Supp. 3d 948, 953 (C.D. Cal. 2021).

107 County Administrator’s Office, “Board of Supervisors approves contract for distribution of emergency financial assistance during disasters,” [Press Release] (February 27, 2024).

108 County of Sonoma, County Administrator’s Office, “More than 1,700 individuals received financial assistance during January storms, county report shows,” [Press Release] (October 4, 2023).

109 Barber, “Boeschen Vineyards in Napa Valley become 1st to provide vineyard workers hazard pay and disaster insurance,” *Press Democrat*.

110 Barber, “Boeschen Vineyards in Napa Valley become 1st to provide vineyard workers hazard pay and disaster insurance,” *Press Democrat*.

111 Barber, “Boeschen Vineyards in Napa Valley become 1st to provide vineyard workers hazard pay and disaster insurance,” *Press Democrat*.

The State also plays a significant role in creating pathways for economic compensation when it is too dangerous to work during a wildfire. Unemployment benefits in California provide a safety net for eligible workers in amounts ranging from \$40-\$450 a week, depending on earnings from the previous pay period.¹¹² During a declared state of emergency for a natural disaster, individuals who do not qualify for state unemployment may qualify for the Federal Disaster Uninsurance program.¹¹³ However, while employers pay for benefits out of their taxes, these systems are not extended to undocumented workers.¹¹⁴ Governor Newsom vetoed SB 227, a study bill to explore the expansion of unemployment insurance and other safety net resources for undocumented workers, in the 2024 legislative session.¹¹⁵ While organizations explore ways forward for this program, unemployment benefits remain inaccessible to workers without documentation status, who comprise a significant portion of the agricultural workforce in California.

At the Federal level, the *Disaster Relief for Farmworkers Act* has been introduced in the Senate and House of Representatives to provide compensation to farmworkers who “lose wages due to extreme weather, public health emergencies and other disasters beyond their control.”¹¹⁶ This legisla-

tion was introduced by senators and representatives from California and Oregon, where fires have been increasingly destructive in recent years. If passed, the bill would amend federal law to allow for emergency assistance for farmworkers and make grants available to farmworker organizations to provide emergency relief to workers affected by a disaster. It would also require USDA to develop plans prior to and during disasters to increase awareness of assistance and work with farmworker organizations.¹¹⁷

Paid sick leave in California represents another option for workers when weighing working inside an evacuation zone and during a wildfire.¹¹⁸ On September 10, 2024, Governor Newsom signed SB1105, expanding the types of climate conditions for which paid sick leave can be used by agricultural employees.¹¹⁹ The bill requires that at least five paid sick days or 40 hours (whichever is more) be provided to agricultural employees who work outside to avoid smoke, heat, or flooding conditions created by a local or state emergency.¹²⁰ However, it does not increase the number of sick days farmworkers receive, but it builds on existing sick leave conditions that had not previously included climate-induced reasons for leave. Paid sick leave is a benefit under state law that must be provided to all full-time employees, as well as any employee who works at least 30 days for the same employer within a year, including part-time, per diem, in-home supportive services, and temporary employees.¹²¹ The program does not discriminate based on immigration status,

112 Cal. Employment Development Department (EDD), *EDD Unemployment Eligibility Requirements*, <https://edd.ca.gov/en/unemployment/eligibility/>.

113 U.S. Dept. of Labor, *Disaster Unemployment Assistance*, <https://oui.doleta.gov/unemploy/disaster.asp>.

114 Cal. Health and Human Services Agency, *Guide to Disaster Assistance Services for Immigrant Californians*, <https://acrobat.adobe.com/id/urn:aaid:sc:US:5497fbo0-e530-4b74-a059-21bf5b2e966f>.

115 Office of the Governor, *SB 227 Veto Message*, Sept. 28, 2024. Full message available under bill status at https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240SB227.

116 Alex Padilla, U.S. Senator of California, “Padilla, Bennet, Salinas, Lofgren Introduce Bicameral Legislation to Provide Disaster Relief for Farm Workers,” [Press Release] (May 7, 2025).

117 Padilla, “Legislation to Provide Disaster Relief for Farm Workers.”

118 Cal. Dept. of Industrial Relations, *California Paid Sick Leave FAQs* (updated Dec 2, 2024), https://www.dir.ca.gov/dlse/paid_sick_leave.htm.

119 Cal. State Senate, *SB-1105 Paid sick leave: agricultural employees: emergencies*, Stats. of 2024, Chapter. 525, Amending Cal. Lab. Code § 246.5.

120 Cal. Dept. of Industrial Relations, *California Paid Sick Leave FAQs* https://www.dir.ca.gov/dlse/paid_sick_leave.htm

121 Cal. Dept. of Industrial Relations, *California Paid Sick Leave FAQs*.

therefore workers without documentation are eligible for paid sick leave should they qualify under an appropriate job category.¹²² However, local community organizations have shared that not all farmworkers know they are eligible for pay and some are fearful to apply for this benefit even when they are eligible.

¹²² For more information on paid sick leave benefits for all workers see ACLU Southern California, *Paid Leave in California*, <https://www.aclusocal.org/en/know-your-rights/paid-leave-california>.

While the Ag Pass program may not be the vehicle for comprehensive economic relief, it is the linchpin for legal agricultural work inside evacuation zones that directly affects what kind of compensation workers receive. Continued advocacy for legislation that expands unemployment and disaster relief at the state and federal level can also provide comprehensive economic relief required for agricultural workers to ensure workers have meaningful alternatives to be able to pay for critical housing, food, and transportation costs.

DATA PRIVACY ANALYSIS

The Ag Pass Resolution delegates the Sheriff’s Office authority to “lead the implementation of an Ag Pass program.”¹²³ In practice, the administration of the Ag Pass program is overseen by the Agricultural Commissioner’s office, including the determination of Ag Pass criteria and the program application, as well as eligibility determinations. The Ag Pass application collects personal identifying information to be retained by the Ag Commissioner and the Sheriff’s Office. The Information Practices Act defines personal information as “information that identifies or describes individuals including, but not limited to, name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.”¹²⁴ The personal information collected for the Ag Pass application includes an applicant’s full name, employer’s name (if applicable), phone number, email address, employment status, and work address.¹²⁵ The data privacy policies of the California Attorney General’s Office and the California Office of Emergency Services (Cal OES) “limit the collection of personal information to what is relevant and necessary to accomplish the lawful purpose of the organization.”¹²⁶ The Ag Pass

application is consistent with these policies, as the Agricultural Commissioner’s office uses this information to verify an applicant’s eligibility for the program. The need for this information at the application review stage is consistent with disaster surveillance practices at the state and national level of wildfire response.¹²⁷ However, the sharing and use of this data raises questions regarding privacy and data protection for applicants.

In recent months, the Sonoma County Board of Supervisors has taken steps to address concerns with information sharing between local law enforcement, county government departments, and state and federal agencies. In January 2025, the Board of Supervisors passed a resolution which highlights the California Trust Act, California Truth Act, and California Values Act, as the county standards for any data collection or sharing practices.¹²⁸ For this purpose, the resolution includes the following intent:

“[t]he County endeavors to safeguard public health and safety, which relies on trust and cooperation between all residents and local law

123 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*

124 Cal. Civ. Code § 1798.3 *et seq.*

125 Sonoma Cnty. Sheriff, Dept. of Ag./Weights and Measures, *Application for Sonoma County Agriculture Access Verification Card*.

126 Cal. Office of Emergency Services (CalOES), *Privacy Policy: Personal Information*, Updated June 2015, (last accessed September 30, 2025). <https://www.caloes.ca.gov/privacy-policy/#:~:text=Cal%20OES%20may%20collect%20personal,lawful%20purpose%20of%20the%20organization.>

127 Centers for Disease Control and Prevention (CDC). *A Primer for Understanding the Principles and Practices of Disaster Surveillance in the United States: First edition*. Atlanta (GA): CDC; 2016.; *See also* 2023-2027 FEMA Data Strategy — OPPA, FEMA Data Management Branch, March 2023.

128 Sonoma County Board of Supervisors, RESOLUTION OF THE BOARD OF SUPERVISORS TO UPHOLD THE CIVIL RIGHTS, DIGNITY, HEALTH AND SAFETY OF OUR IMMIGRANT POPULATION AND ALL SONOMA COUNTY RESIDENT, County of Sonoma, Resolution #2025-0066.

enforcement; and to strengthen communities and foster trust between immigrant communities and local law enforcement.”¹²⁹

Notably, the resolution specifically mentions the county’s Ag Pass program as an instance for which close protection of data is mandatory. The resolution prohibits all Sonoma County departments, agencies, representatives, and employees from using County resources to “investigate, interrogate, detain, detect or arrest persons only for immigration enforcement purposes” or to “communicate with Immigrations and Customs Enforcement (ICE) regarding an individual’s immigration status.”¹³⁰

While this speaks clearly to a public interest in protecting Sonoma County residents and specifically preventing data sharing with ICE, the resolution includes no substantive direction on what the “close protection of data” otherwise means in practice. While this resolution applies to the Ag Pass, specific data privacy policies for the Ag Pass program would strengthen protections for farmworkers.

Furthermore, interviews by prior research on agricultural operators and owners in Sonoma and Napa about Ag Pass programs identified fraud prevention and equity as two primary concerns for program implementation.¹³¹ In our own interviews with farmworkers and meetings with community-based organizations, we learned about the fear workers feel to share personal information with government offices without any clarity on how it will be protected or shared. Collectively, these concerns speak to the need for a data policy specific to the Ag Pass program that clarifies what the “close protection of data” means. This may include transparency about why data is being shared, who it is being shared with, how it is being stored and for how long, and the role of law enforcement agencies in this program. The county may also specify if information

will be shared between government departments as well, and why information sharing is necessary.

AG PASS DATA DISCLOSURE PRACTICES

Ag Pass applications and records relating to the program are also subject to the California Public Records Act (CPRA). Under the CPRA, government records must be disclosed to the public upon request, unless a specific exemption applies.¹³² One recurring interest behind the exemptions to disclosure is the fundamental right to privacy.¹³³ Records may be redacted or disclosure limited on this basis. The CPRA also provides for a general balancing test, whereby an agency may withhold records from disclosure if it establishes that the public interest in not disclosing the records clearly outweighs the public interest in disclosing them.¹³⁴ The CPRA is modeled on the federal Freedom of Information Act (FOIA) which contains a similar balancing test to weigh the nondisclosure of records which have strong privacy interests.¹³⁵ The United States Supreme Court has stated that, “disclosure of records regarding private citizens, identifiable by name, is not what the framers of the FOIA had in mind.”¹³⁶

The Office of Agriculture, Weights and Measures identified privacy interests and CRPA disclosure criteria in their response to our public records requests regarding the Ag Pass application data:

Records will not be disclosed that are confidential attorney client communications, confidential attorney work product, contain deliberative process, where the public interest in

129 Cnty. of Sonoma, *Resolution #2025-0066*.

130 Cnty. of Sonoma, *Resolution #2025-0066*.

131 Craig-Scheckman et al, “Beyond the Evacuation Zone,” 12.

132 Cal. Office of the Attorney General, *Summary of the California Public Records Act (CPRA)*, (2004).

133 Cal. Office of the Attorney General, *Summary of the CPRA*.

134 Cal. Gov’t Code § 7927.700.

135 *Freedom of Information Act*, 5 U.S.C. § 552.

136 *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 765 (1989); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1019 (1999).

non-disclosure outweighs the public interest in disclosure, or otherwise confidential under the law. (Cal. Gov't Code §§ 7927.700, 7927.705, 7927.500, 7922.000, Evidence Code §§ 954, Code of Civil Procedure § 2018.030, Cal. Const. Art. I, § 1.)

In practice, the department may apply this balancing test to limit the disclosure of personal information of Ag Pass applicants in public records requests, such as the redactions of full names, and personal contact information for which there is strong privacy interest. Alternatively, the continued disclosure of this personal information may cause a chilling effect among agricultural operations and workers who fear signing up for an Ag Pass because of the disclosure risks of their personal information. Such a chilling effect has been recognized by California appellate courts to weigh in favor of nondisclosure.¹³⁷ The Sonoma Board of Supervisor's recent resolution to uphold the civil rights, dignity, health, and safety of the county's immigrant population and all Sonoma County residents further speaks to the importance of protecting personal identifying to prevent the further erosion of trust in government institutions and encourage cooperation between immigrant communities and county departments.¹³⁸

The public may still fulfill its right to transparency regarding the functioning of the Ag Pass program and oversight of government institutions without the release of individual identifying names of applicants in Ag Pass data disclosures. Each Ag Pass application is assigned an ID number which can be used to track the request, creating an anonymous way to still document the requested activities and geographic scope of access. In *City of San Jose v. Superior Court*, the sixth district court of appeal held that the city's ability to provide a substantial amount of detailed information about a program without disclosing the personal names of participants weighed in favor of

nondisclosure.¹³⁹ In cases where the public interest in nondisclosure prevails, disclosure constitutes an unwarranted invasion of privacy.¹⁴⁰ County departments may therefore comply with public records requests while safeguarding personal information of Ag Pass applicants.

County policies on Ag Pass data disclosures may be incorporated into an overall Ag Pass data privacy policy as well, to ensure the criteria for storing and sharing Ag Pass records within the government and with the public is all in one place and easily accessible for individuals trying to understand how their information will be used.

ROLE OF LAW ENFORCEMENT IN AG PASS DATA RETENTION

The role of law enforcement in the administration of the Ag Pass program heightens concern with the program for potential pass holders and agriculture employees. Of our survey respondents who had signed up for an Ag Pass, 47.6% of workers cited hesitancy to interact with the Sheriff's Office as a challenge in the enrollment process.¹⁴¹ Additional sources of concern included the requirement to get their picture taken and provide their contact information.¹⁴² Of agricultural workers surveyed who had worked during a wildfire, only 25% indicated they would feel safe interacting with the Sheriff's Office for information about the Ag Pass program.¹⁴³

As noted under our security analysis, the Sheriff's Office is clear that their oversight of Ag Pass holders "begins and ends at the barricades." However, at

137 *City of San Jose*, 74 Cal. App. 4th at 1024.

138 Cnty. of Sonoma, *Resolution #2025-0066*.

139 *City of San Jose*, 74 Cal. App. 4th at 1024.

140 Cal. Office of the Attorney General, *Summary of the CPRA*

141 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 1

142 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 1

143 Hyland et al, "Evaluation of "Agricultural Pass" Program," Table 2

times, a mutual aid law enforcement partner, such as State Highway Patrol, may be the one supervising the evacuation checkpoint, rather than a county officer. Whatever personnel are at the barricade check for one Ag Pass per individual as their form of verification. The Sheriff's Office then conducts a review of the "effectiveness and performances" of the program as part of the County's After Action report process.¹⁴⁴ There appears to be no reason why the Sheriff's Office needs to be involved in the Ag Pass application process or retain application records. We are unaware of an identified purpose

for the transfer of an applicant's personal data from the Agricultural Commissioner's office after their application has been approved to the Sheriff's office for the applicant to obtain a photo ID. Therefore, the county may consider revising the Sheriff's role in the application process and retention of records to reduce the sharing of personal information without cause. The Sheriff's Office may still retain all relevant oversight authority for evacuation access, collect any information needed regarding evacuation access from employers, and review the effectiveness of the Ag Pass implementation. In taking this step, agricultural workers may be more likely to apply to the Ag Pass program because their hesitancy to interact with the Sheriff's Office may be reduced.

144 Cnty. of Sonoma, *Ag Pass Resolution #2022-0338*

ANALYSIS OF CALIFORNIA LABOR AUTHORITIES' JURISDICTION AND CAPACITY INSIDE EVACUATION ZONES

The discussion of state laws throughout this analysis has assumed that the health and safety regulations that apply to agricultural worksites during non-emergency conditions would not suddenly disappear inside an evacuation zone. However, neither state law nor the Ag Pass County Resolution clearly address who is responsible for enforcing health and safety laws inside a mandatory wildfire evacuation zone during an active state of emergency.

California labor law does not directly address what agency has primary jurisdiction and enforcement authority over workplaces inside wildfire evacuation zones. While Cal/OSHA has jurisdiction over every “place of employment” in the state of California,¹⁴⁵ the labor code dictates this jurisdiction does not include places in which “health and safety jurisdiction is vested by law in, and actively exercised by, any other state or federal agency.”¹⁴⁶

The Ag Pass certification statement which must be signed by all passholders recognizes “access to restricted areas is subject to the jurisdiction and orders of law enforcement, fire services, emergency services, and the California National Guard.”¹⁴⁷ It emphasizes that the Ag Pass itself does not “certify compliance with applicable laws or regulations, including workplace safety laws or regulations.”¹⁴⁸

In addition, the Ag Pass Resolution states that “commercial agricultural operation owners/operators must acknowledge continued responsibility to comply with all applicable worker safety regulations and protections required for the work location including those administered by the California Division of Occupational Safety and Health (Cal/OSHA).”¹⁴⁹ The Resolution then specifies “nothing in this Resolution shall be construed to abridge the Sheriff’s authority under PC 409.5 to allow or prohibit access to an evacuation zone.”¹⁵⁰

Collectively, these policies are clear that the Ag Pass does not actively authorize the violation of any labor or health laws inside of evacuation zones. However, neither the Ag Pass Resolution nor AB1103 or any other local or state guidance address the hierarchy of authority between labor enforcement and emergency authorities during a state of emergency. Penal Code 409.5(e) suggests the right of entry for pass holders may only be limited when “it would be unsafe for the document holder to enter or that the presence of the document holder would interfere with disaster response.”¹⁵¹ The county resolution then specifies the evacuation area is subject to the jurisdiction of law enforcement, emergency services and the California National Guard.¹⁵² Therefore, a key question remains whether Cal/OSHA has jurisdiction over places of employment geographically

145 Cal. Lab. Code § 6307

146 Cal. Lab. Code § 6303(a)

147 *Cnty. of Sonoma, Ag Pass Application, Certification and Indemnification Clause*

148 *Cnty. of Sonoma, Ag Pass Application, Certification and Indemnification Clause*

149 *County of Sonoma, Ag Pass Resolution #2022-0338*

150 *County of Sonoma, Ag Pass Resolution #2022-0338*

151 Cal. Penal Code § 409.5(e)

152 Cal. Penal Code § 409.5(e); *County of Sonoma, Ag Pass Resolution #2022-0338*

located in areas declared a menace to public health or safety under the Emergency Services Act.

While no specific case law exists to guide our interpretation of PC 409.5 or the Ag Pass regulation, the California Supreme Court has weighed in on the definition of “places of employment.” In *United Air Lines, Inc. v. Occupational Safety & Health Appeals Board*, the California Supreme Court upheld Cal/OSHA’s authority to issue a citation of an airline for an unsafe working condition at an airport ground maintenance facility despite the Federal Aviation Administration’s (FAA) authority over the airport.¹⁵³ The Court emphasized that “the allocation of health and safety jurisdiction between different agencies should be construed in a manner that minimizes any potential gap in coverage.”¹⁵⁴ The Court determined the FAA’s failure to “promulgate specific health and safety rules” or “systematically enforce [] safety measures” justified the occupation safety board’s jurisdiction over the ground maintenance

¹⁵³ *United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd.*, 32 Cal.3d 762, 763 (1982).

¹⁵⁴ *United Air Lines, Inc.* 32 Cal.3d 762 at 771.

facility.¹⁵⁵ Applied to the Ag Pass regulation, a court may similarly find the safety guidance applied by the Sheriff’s Office or CalFire does not sufficiently provide workers protections comparable to the health and safety regulations enforced by Cal/OSHA. One may argue that any restrictions on Cal/OSHA or the Labor Commissioner’s enforcement authority inside an evacuation zone where farmworkers are present would therefore create the “potential gap in coverage” the CA Supreme Court warned against in *United Air Lines*.

While litigation may ultimately resolve any legal uncertainties, the county can preemptively address potential gaps in labor enforcement authority by explicitly recognizing the Labor Commissioner’s authority and Cal/OSHA jurisdiction to enforce all relevant health and safety laws inside an evacuation zone in which farmworkers are permitted. Further guidance from state agencies on the enforcement of labor laws inside evacuation zones would also reinforce accountability for employers to comply with all health and safety regulations for activities performed with an Ag Pass.

¹⁵⁵ *United Air Lines, Inc.* 32 Cal.3d 762 at 763.

CONCLUSION

When a fire breaks out in Sonoma County, the Ag Pass program is the legal way agricultural work can continue inside an evacuation zone. The current version of this program accounts for the urgent needs of agricultural owners and operators, but also expands opportunities for agricultural workers for activities such as harvest as well. When authorizing this access, the county must also account for the health, safety, economic, and privacy concerns that may arise for this population. This paper documents

the risks and concerns farmworkers identified from prior experiences working during wildfires, and points to specific recommendations for how state and local governments may improve their protections going forward. These recommendations cannot address the depth of challenges facing agricultural workers, but can help improve our emergency response systems to protect this community on the frontline of a wildfire.

RECOMMENDATIONS

We have outlined how the Ag Pass program directly impacts the health, safety, economic security, and data privacy of full-time agricultural workers. Based on our survey and interviews with full-time agricultural workers eligible for an Ag Pass; stakeholder interviews with Sonoma County department directors and staff, state agency staff, community-based organizations; analysis of Ag Pass application data; and extensive legal and policy research, including analysis of relevant case law, state and local statutes, legislative history, and academic publications, we have developed recommendations for the Sonoma Board of Supervisors to improve protections for workers, through 1) the administration of the Ag Pass, 2) county requirements for the Ag Pass program, and 3) implementation of the Ag Pass.

COUNTY PROGRAM ADMINISTRATION

We recommend:

1. Changes to the Ag Pass program, such as updates to applicant eligibility, application criteria, and uses of Ag Pass data collected from applicants should be subject to Board Approval, rather than left to the discretion of the Sheriff;
2. County meetings with items relating to the Ag Pass or impacting farmworkers' potential work inside evacuation zones are accessible, advertised to farmworkers, and accommodate their work schedules (e.g., allow public comment via recorded video, allow anonymous comments, hold meetings on evenings so that farmworkers may provide in-person public comment);
3. A written Ag Pass data collection and storage policy be created, which includes how records will be stored, protections for personal identifying information in the files, and when files will be deleted;
4. Law enforcement agencies no longer be involved in the Ag Pass application process and no longer store Ag Pass data, including photos;
5. Consolidate the Ag Pass application process and retention within one county department;
6. Include health professionals (e.g., representatives from Sonoma County Department of Health, Health Officer) monitoring AQI and heat levels in and near evacuation zones in decisions of when and where to activate the Ag Pass;
7. Provide resources to local CBOs, health clinics, and Sonoma County Community Organizations Active in Disaster (COAD) to develop and distribute resources (e.g., PPE, information about where to go during an evacuation, know your rights information) and wildfire health and safety training to farmworkers;
8. Amend the Ag Pass Resolution to formally recognize Cal/OSHA enforcement authority inside evacuation zones and for the enforcement of all workplace regulations and protections for work performed with an Ag Pass.

COUNTY PROGRAM REQUIREMENTS

We recommend:

1. A count of farmworkers in Sonoma County be conducted, including information on employment type, and map farmworker housing and agricultural operations across all evacuation zones to inform Sonoma County's Emergency Command Center response during wildfire evacuations;
2. Information and resources be provided to Ag Pass applicants in their preferred language, including:
 - a. Information on temporary evacuation shelters and aid for families during wildfires;
 - b. Information on the health, safety, protection from retaliation, and mandatory communication requirements set forth under CCR Title 8, Section 5141.1, "Wildfire Smoke Standard";
 - c. Resources for farmworkers' access to potential local, state, or federal compensation benefits they may be eligible for during a wildfire;
 - d. "Safety Kits" with PPE, health and safety information, location and hours of local health clinics, and contact information for local departments and community organizations farmworkers can contact if they have any questions;
5. Include a data disclosure clause on the Ag Pass application that describes who will have access to the information and how it will be used.

COUNTY PROGRAM IMPLEMENTATION

We recommend:

1. A working group be formed that includes relevant county departments (e.g., Health and Human Services, Emergency Management, Equity) and local community organizations and clinics to: 1) evaluate existing resources to address farmworkers' health and safety concerns before, during, and after wildfire evacuations; 2) identify gaps in health services and monitoring for farmworkers during wildfire evacuations; and 3) develop a plan to address any identified gaps and expand services and resources to farmworkers during and after wildfire evacuations;
2. Develop additional notification systems to alert farmworkers of local air quality levels and when the Ag Pass is activated or deactivated. Alert systems could follow models such as Ventura County's system that provides text and audio alerts in English, Spanish, and Indigenous languages;
3. Increase efforts to assist farmworkers in signing up for existing and new emergency wildfire alerts;
4. Increase air monitors throughout the county to monitor real-time AQI levels;
5. Conduct additional research to examine the specific needs of populations such as H2A workers and Indigenous language speakers, who were underrepresented in our study and face additional barriers to receiving wildfire evacuation notifications and transportation out of the area.

STATE GOVERNMENT RECOMMENDATIONS

Our analysis also noted gaps at the state level, and we have developed the following preliminary recommendations for State agencies:

1. Cal/OSHA include greater health protective measures in the forthcoming updates to the wildfire smoke standard, such as specific criteria (e.g., AQI thresholds) in which prolonged outdoor agricultural work without engineering or administrative controls should be restricted. Per AB-2243, Cal/OSHA is required to submit to the standards board a rulemaking proposal to consider revising the wildfire smoke standard by December 1, 2025;
2. Relevant departments within the Labor and Workforce Development Agency (LWDA) conduct a review of all labor, health, and safety laws impacted by evacuation access pass programs and release guidance to enforce workers' rights inside wildfire evacuation zones;
3. The Department of Industrial Relations (DIR) update the farm labor contractor licensing exam to ensure contractors understand legal requirements under the labor code and health and safety code regarding workers' rights during wildfire evacuations;
4. Relevant departments within the LWDA partner with CBOs in Sonoma County and other wildfire-prone counties to deliver trainings to workers on laws relevant to work performed during a wildfire and inside of an evacuation zone;
5. The California State Legislature pass and the Governor sign legislation to provide wage replacement for farmworkers regardless of immigration status when it is unhealthy to conduct prolonged physical activity outside (e.g., disaster pay, unemployment insurance).

APPENDIX: SURVEY DATA AND AG PASS PUBLIC RECORDS ANALYSIS

SURVEY DATA

A full breakdown of our survey findings and further analysis is available through the Human Rights Center website and on Tableau Public in the Data Dashboard: Sonoma Ag Pass Survey Findings. Dashboard design by Aurora Olaya.

PUBLIC RECORDS, APPLICATIONS OVERVIEW

The following analysis focuses on approved or pending Ag Pass applications submitted to the Agricultural Commissioner’s office as of August 1, 2024. This

does not include cancelled or duplicate applications. Approved applications fall into two categories: “complete,” when the application has been approved and an Ag Pass has been issued to the applicant, and “sent to sheriff for authorization,” when the application has been approved but it is unclear if a pass has formally been issued. Active applications are all other applications still working through the application process at the time of our request.

According to data provided pursuant to a public records request, 371 non-duplicate applications were processed by the Agricultural Commissioner’s Office as of August 1, 2024. 291 of these applicants had an “approved” status (including livestock and commercial applicants).

Nature of Operation:		
Commercial Plant Agriculture Producer	304	81.5%
Commercial Livestock Producer	67	18.5%
Total	371	100%

Status of Active Commercial Agriculture Applications	
Approved	231
“Complete” (Issued Ag Card)	185
“Sent to Sheriff”	46
Active	42
“Additional Information Required”	17
“Appointment Needed”	3
Status Blank	22
Total	273

Owner/Employee Status of Agriculture Operations (Active or Approved)		
“Is the owner the same as the applicant?”		
No	212	69.7%
Yes	92	30.3%
Total	304	100%

Commercial Ag Producer Activities Requested (applicants could select more than one):		
Activity	# of applicants	% (out of 273 active)
"Irrigation"	222	81.3%
"Harvest and Related Activities"	176	64.5%
"Refueling"	107	46.3%
"Livestock Care"	84	30.8%
"Support to First Responders"	71	26%
"Other"	32	11.7%

Commercial Ag Producer Activities Approved: (applicants could select more than one)		
Activity	# of applicants	% (out of 231)
"Irrigation"	185	80.1%
"Harvest and Related Activities"	136	58.9%
"Refueling"	98	42.4%
"Livestock Care"	67	29%
"Support to First Responders"	56	24.2%
"Other"	29	12.5%

Top 10 Evacuation Zones Among All Approved Applications		
Zone	# of Applicants	% (out of 291)
SON-2F2	42	14.4%
SON-2E2	33	11.3%
SON-2F1	32	10.99%
SON-2M1	30	10.3%
SON-3D1	28	9.6%
SON-4F1	24	8.2%
SON-2E4	23	7.9%
SON-2K3	22	7.6%
SON-2K2	21	7.2%
SON-2J1	20	6.9%

All Applicants with Requests for Multiple Addresses or Evacuation Zones (Approved Applications)		
	# of Applicants	% (out of 291)
More than one address	166	57.0%
More than one zone	141	48.5%
More than three addresses	97	33.3%
More than three zones	76	26.1%
More than five addresses	56	19.2%
More than five zones	49	16.8%

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