

**INTERIM REPORT:**

**CANNABIS BANS, LOCAL CONTROL, AND THE  
EFFECTS AND EFFICACY OF PROPOSITION 64**



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## Executive summary

This is the interim report for the project funded by the Department of Cannabis Control entitled “Cannabis Bans, Local Control, and the Effects and Efficacy of Proposition 64.” The report below is an update on the project at the halfway point. The analysis, findings and recommendations are preliminary and subject to revision. The report gives a brief overview of the project and the history of local control and bans, a summary of research activities, a county-by-county summary, cross-county findings, and tentative recommendations.

The project asked: *What are the causes and effects of local cannabis cultivation bans?* The project consisted of four in-depth case studies of “ban counties” in Siskiyou, Napa, Yuba, and San Bernardino. In the past year, we have: conducted in-person ethnographic research (interviews and observations) with over 150 people; transcribed, anonymized, and proofed transcripts; oversaw a team of undergraduate research assistants; conducted background and historical research on relevant issues; hired graduate student researchers to assist with data coding and analysis; and informed two white papers to the state on cannabis regulations and small farmers. Looking forward, we plan to: code and analyze all data; draft and publish a final report; draft two academic papers; design and publish fact sheets and other educational materials; execute a dissemination strategy for project materials and findings by leveraging UC Berkeley and Cannabis Research Center resources; and present findings in person, online, and in recorded form.

Our recommendations (elaborated at the end of the report), based on preliminary findings, are as follows:

- 1) Protect medical and personal cultivation in ban counties;
- 2) Enable small-scale exceptions at the state level to local bans;
- 3) Reform local enforcement approaches;
- 4) Redirect state agencies in their relations to ban counties;
- 5) Establish state commission to review local-level ban enforcement.

## Introduction

Broadly, this research asks: *What are the causes and effects, intended and unintended, of local cannabis cultivation bans?* We conducted four in-depth case studies of “ban counties” in Siskiyou, Napa, Yuba, and San Bernardino. We stratified and selected these counties for geographic, ecological, industry, land use, political dynamics, and socio-demographic diversity. Each county is home to incorporated cities that allow cannabis, and each county borders counties that permit cultivation, facilitating comparisons in ban/permit approaches. San Bernardino and Siskiyou County have taken a hard-line law-enforcement-led approach to cannabis cultivation enforcement, while Napa and Yuba Counties offer a comparison of a “softer” enforcement approach seated in code enforcement. Selection of these counties also enables a comparison in the efficacy and impact of differing approaches in ban enforcement.



*Image 1: California’s cannabis cultivation landscape is a legal patchwork where farmers of the very same crop (left image) are understood as entrepreneurs in one jurisdiction and may be treated like criminals in another. For example, Sonoma County is a permit county - the right image is of permitted cannabis drying in a warehouse in Sonoma County - while growing the very same crop is banned in next-door Napa County. (Photos by Petersen-Rockney, 2022.)*

Through a suite of qualitative research methods, including in-depth interviews, this study is generating a detailed, integrated analysis of multiple dimensions of local bans. This project aims to grasp why localities ban cultivation and what derivative effects result, with a goal of producing findings that illuminate several priority research areas, including the fiscal and economic impacts of ban policies, the effects of bans on criminal justice systems, the efficacy of bans in achieving civil-regulatory aims, and the effect of bans on the environment (AUMA §

34019(7)(b)(7-9). Specifically, our goals include: developing site-specific history and characterization; deducing commonalities and differences across sites; producing analysis of ban efficacy, particularly in preventing unlicensed cultivation and environmental harms; and generating policy recommendations about bans at the state level and better practices at the local level.

## Background: Cultivation bans

Since the passage of Proposition 215 in 1996, the issue of local government's control over cannabis allowance has been central to public debates, court decisions, and policy development in California. One controversial aspect of these debates has been whether localities have the authority to ban cannabis altogether. Leading up to the passage of Proposition 64, bans were framed by proponents as a key capacity of local governments and an important policy tool to adapt state law to local circumstances. Its inclusion in the law was regarded as pivotal to the ballot's passage. Critics of bans have argued that they undermine voters' intentions to regulate cannabis, create new criminal or unregulated markets, and exclude a locality's residents from Proposition 64 benefits, including development, income, revenue, police reforms, equity gains, and the ability to regulate (not criminalize) environmental land uses.

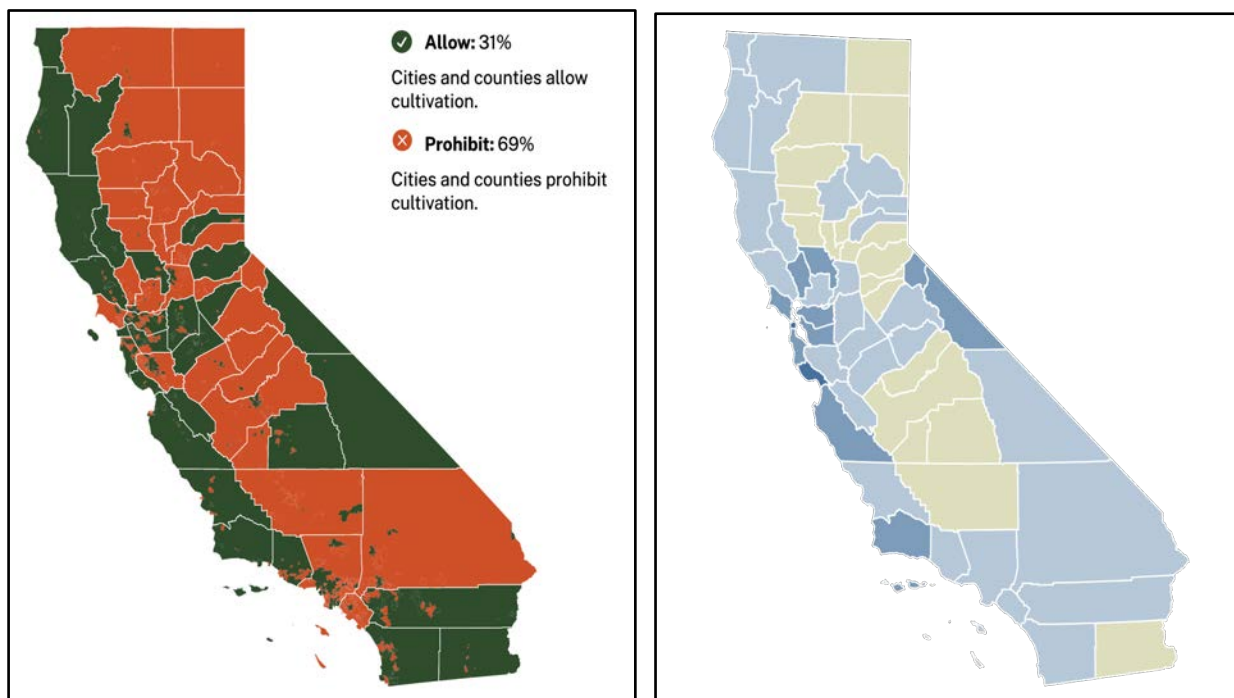


Figure 2: Map (left) produced by the CA Dept. of Cannabis Control showing jurisdictions that allow commercial cultivation (green) and prohibit cultivation (orange). Map (right) shows counties that voted for Proposition 64 (blue shades) and against (light green). (Department of Cannabis Control, [cannabis.ca.gov](https://cannabis.ca.gov), 2023.)

Proposition 64 legalized commercial cannabis cultivation at the state level while allowing local municipalities – cities and counties – a high degree of local control to determine how, and even if, cannabis could be cultivated. Now, local cultivation bans are the most prevalent policy option, covering the majority of counties, cities, population, and land area in California. Since 2016, 69% of cities and counties have prohibited cultivation (Figure 1). While a majority of voters in California approved commercial cannabis cultivation in 2016, over 50% of California’s population lives in localities that have banned cultivation, denying a majority of California residents the opportunity to pursue commercial cultivation licenses and permits.

While indoor personal use cultivation cannot be banned by local governments, many have banned outdoor personal use gardens and imposed expensive fees and restrictive requirements on personal use gardens, making them inaccessible to residents. The same is often true of medical cannabis, which many ban jurisdictions intensively regulate, often collapsing medical and personal use cultivation into one category.

Wealthier residents who would like to cultivate commercially, medically, or personally may be able to move from ban jurisdictions to more permissive localities. However, for many growers, especially those who are experiencing poverty, who are minoritized, or who have been negatively impacted by the War on Drugs, moving is not a financial or social possibility. In short, commercial cultivation bans and de facto bans on personal cultivation are matters of economic, racial, and health justice.

When cannabis was fully prohibited, market prices were influenced by supply-side enforcement and the risks it imposed. Bans, however, simply restrict cultivation in particular geographic areas, with little effect on market prices. Price is now driven by total market production, much of which is legal. Enforcement, which was never particularly effective at reducing supply (McCoy and Block 2021), thus becomes merely punitive and restrictive, negatively affecting under-resourced farmers.

Limited county government capacity appears to be both a driver and a result of cannabis cultivation bans. Under-resourced and thinly stretched county governments, especially in low-revenue rural areas of California, lack the capacity to develop their own permitting, licensing, and compliance systems for cannabis cultivation. Many such counties in California have therefore banned cannabis cultivation, creating a landscape wherein cultivators are violating local codes. Attempts to enforce against unpermitted cultivators draw limited public resources away from much-needed public services, such as the opioid crisis, and other government agencies and capacities, such as environmental protection. Bans are not the absence of a policy but are an *active policy* that has many causes, variables, effects, and costs.

Several other lessons arise from this study. First, bans narrow the toolbox of options available to address cultivation, often leaving law enforcement as the only mechanism of attempting control, resulting in conflictive, oppositional dynamics. Second, even the most effective bans appear to simply push the problem elsewhere, either further underground (with negative ecological and social effects) or to other jurisdictions with less enforcement capacity. They do not appear to generally stop cultivation; rather, they often transform cultivation patterns and methods, albeit with less regulatory tools than permit programs would afford. Third, bans privilege certain definitions of “quality of life” that can exclude significant portions of local populations, who are either not opposed to cannabis cultivation or desire access to personal, medical, or adult-use cannabis. Finally, if the criteria of local quality of life revolves around reducing or stopping unlicensed cultivation, protecting environmental resources, and improving social inclusion, then cultivation bans often fail on their own aspirational terms.

Our research illuminates some ways that the administration and enforcement of bans may mitigate the negative effects of bans. Taken as a whole, however, our work shows that bans often produce negative outcomes for social equity, environmental protection, and local communities. While lifting bans would provide governments with many more tools to control and regulate cannabis, it is not evident that widespread permitting of cannabis in unrestricted amounts would solve these matters. Licensing and permitting is expensive for farmers and local governments and tax revenue and profits are far from guaranteed, particularly at this moment of market flux and overproduction. Lifting bans and welcoming significant amounts of new producers into the cannabis cultivation sector could worsen current market and licensing conditions in which over-licensing and overproduction have eroded prices. That said, goals of social equity and inclusion, environmental protection, and rural development could be met if there were statewide exemptions from bans for small-scale farmers, particularly those who grow in ecologically sustainable ways. Such reforms could provide cannabis for residents in “access deserts” and help fulfill the intent of Proposition 64 to build a cultivation sector of small and medium sized enterprises.

## **Summary of research activities**

We have conducted two fieldwork visits to Yuba, San Bernardino and Napa County, and three visits to Siskiyou County. With several weeks spent in each county, we have built contacts with locals and conducted in-depth interviews and ethnographic observations. Such qualitative work is essential to study stigmatized or illicit activity (Adler & Adler 1998; Werth & Ballastero 2017), like banned cannabis cultivation. We have also conducted remote interviews online, particularly with public officials. Together, these activities have facilitated the development and deepening of relationships, including building trust with vulnerable research participants, which are unique and essential to research on illicit activities.

We conducted over 150 ethnographic interactions, primarily in-depth interviews, as well as group interviews, and more informal observation and participant discussions. Some people preferred not to be recorded due to various concerns over privacy, sensitivity, etc. We transcribed recorded interviews using happyscribe.com software, with whom we have a Non-Disclosure Agreement to ensure protection of transcripts and audio files. Undergraduate research assistants are working through these transcripts to check for accuracy and correct software mistakes. Soon, we will begin coding the transcripts for themes, issues, and key discourses. These codes will be organized into a codebook and used to develop and inform our analysis of bans across counties. All interviews were protected by security protocols detailed in our Institutional Review Board certification (SPO id: 051499-001) with the aim of ensuring the confidentiality and security of all participants, minimizing or eliminating risks to participants, and codifying mechanisms and procedures to enact these aims.

Through this project, we have mentored nine undergraduate research assistants through UC Berkeley's Research Opportunities Programs. Undergraduates have proofed transcripts, assisted in collecting policy and media coverage data for each of the four counties, and helped to create county summaries, timelines of cannabis policy developments, key discourses, and a tranche of secondary materials from policy documents to news articles to social media accounts. We have just extended employment offers to two Graduate Student Researchers and anticipate hiring a third to assist with data coding and analysis.

Though proposed to begin in early 2021, this project was delayed until February 2022 due to negotiations between the University of California and the State of California, unforeseen administrative hurdles in hiring and onboarding Dr. Polson, and correlated delays this caused in acquiring Institutional Review Board certification. Because of this, we submitted a No-Cost Extension request to early 2024 and a reworked budget to account for the differences. We do not expect any of these adjustments to affect the outcomes or progress of the project as a whole.

Our research team led and participated in the drafting of several policy papers for the California Department of Cannabis Control (DCC). "Policy Findings and Recommendations Regarding California Cannabis: Farming, Regulation, and the Environment," was led by Polson and Petersen-Rockney was a co-author. This collaborative white paper drew from research projects conducted by multiple members of Berkeley's Cannabis Research Center, many of whom were funded by the DCC. The policy brief "Smaller Cultivation and California Cannabis Policy: Recommendations for a Multi-scale Cultivation Sector" was led by Polson, with Petersen-Rockney and Getz as co-authors. Authors of this report include researchers at UC Berkeley, UC Davis, CalPoly Humboldt, UC Riverside and the Community Alliance with Family Farmers. Both documents draw from our initial research findings and make associated policy recommendations directly to the DCC.

## County summaries

We selected four counties that have banned cannabis cultivation for in-depth ethnographic research: Siskiyou, San Bernardino, Yuba, and Napa Counties (see Table 1). Our focus is on bans in unincorporated areas (not incorporated cities).

**Table 1: County Basics (data from 2020 US Census and 2017 USDA NASS Census)**

	<b>Siskiyou</b>	<b>San Bernardino</b>	<b>Yuba</b>	<b>Napa</b>
<b>County size</b> (square miles)	6,347	20,105	644	789
<b>Population</b>	44,076	2,181,654	81,575	138,207
<b>Density</b> (population per square mile)	7	108.7	129.1	184.4
<b>Median household income</b>	\$49,857	\$70,287	\$62,666	\$97,498
<b>Poverty rate</b>	16.8%	13.2%	15.6%	9%
<b>Racial demographics</b>	<ul style="list-style-type: none"> <li>- 74.2% White, not Hispanic or Latino</li> <li>- 13.9% Hispanic/Latino</li> <li>- 1.5% Black/African American</li> <li>- 0.4% American Indian and Alaska Native</li> <li>- 1.7% Asian</li> <li>- 0.4% Native Hawaiian and Other Pacific Islander</li> <li>- 5.8% Two or more races</li> </ul>	<ul style="list-style-type: none"> <li>- 25.4% White, not Hispanic or Latino</li> <li>- 55.8% Hispanic/Latino</li> <li>- 9.4% Black/African American</li> <li>- 2.2% American Indian and Alaska Native</li> <li>- 8.5% Asian</li> <li>- 0.5% Native Hawaiian and Other Pacific Islander</li> <li>- 3.8% Two or more races</li> </ul>	<ul style="list-style-type: none"> <li>- 51.7% White, not Hispanic or Latino</li> <li>- 30.5% Hispanic/Latino</li> <li>- 4.8% Black/African American</li> <li>- 3% American Indian and Alaska Native</li> <li>- 7.8% Asian</li> <li>- 0.6% Native Hawaiian and Other Pacific Islander</li> <li>- 6.7% Two or more races</li> </ul>	<ul style="list-style-type: none"> <li>- 50.4% White, not Hispanic or Latino</li> <li>- 35.6% Hispanic/Latino</li> <li>- 2.6% Black/African American</li> <li>- 1.3% American Indian and Alaska Native</li> <li>- 9.1% Asian</li> <li>- 0.4% Native Hawaiian and Other Pacific Islander</li> <li>- 3.5% Two or more races</li> </ul>
<b>Number of</b>	745	1,062	764	1,866

<b>farms</b> (non-cannabis)				
<b>Average size of farm</b> (acres)	923	64	235	137
<b>Top agricultural products</b> (by acre)	Beef cattle, forage (hay, alfalfa), grain (wheat, barley)	Beef cattle, poultry (chickens, turkeys), forage (hay, alfalfa), oranges	Rice, tree crops (walnuts, plums, prunes), forage (hay, alfalfa), almonds	Grapes, beef cattle, forage (hay, alfalfa)
<b>Average per farm government payment</b>	\$24,197	\$23,123	\$80,808	\$23,112
<b>Average per farm net cash income</b>	\$53,720	\$54,716	\$57,060	\$50,257

### *Siskiyou County*

Siskiyou County has become pivotal in debates over cannabis bans, policing, and racial disparity. Our previous research in Siskiyou County (Polson and Petersen-Rockney 2019) revealed that cannabis bans can: 1) emerge from concerns over local agriculture and cultural heritage; 2) consume significant local resources; 3) leverage state agencies, powers and resources to enforce those bans; 4) create detrimental effects on marginalized populations, who become more visible and vulnerable to enforcement, and equivocal effects on economic development and environmental quality; and 5) hinder the ability of environmental and social protection agencies to regulate and mitigate environmental and social harms of cultivation activity.

Siskiyou's rural landscape had been home to cannabis cultivators for decades, especially in the remote western mountains that border Humboldt and Trinity Counties. Many growers in that area developed the expertise and cannabis genetics that the industry is built on today. From 1996-2015 mostly white medical growers operated without local cannabis regulation, in line with locally held values of property rights, independence, and limited government involvement. After a series of public workshops and listening sessions held across the county, Supervisors approved the county's first, and widely-supported, medical cannabis ordinance in early 2015, which was overseen by the Planning Division and allowed outdoor cultivation based on property size.

After just one season, however, the county's approach to regulating cannabis changed sharply, with power and resources shifting to the Sheriff's Office, followed by a countywide ban. The

reasons had partly to do with a lack of Planning Department resources and funding as well as an enterprising Sheriff. But a major coinciding factor was the shifting profile of cultivators from white locals to in-migrant Hmong Americans and the shifting geography of cultivation from remote areas into Siskiyou's large rural subdivisions. This land was cheap, with little infrastructure and no public services like paved roads, electricity, sewer, or water.

Many Hmong in-migrants were refugees and veterans of the US' Secret War with Vietnam and had retired from manual labor jobs like farmwork in the Fresno, CA area or assembly lines in St. Paul, MN. Elders, who are often wary of institutionalized Western medicine, described growing cannabis for medical purposes, to use in baths and poultices on war wounds and repetitive stress injuries from factory and farm work. Additionally, cultivating cannabis was an important livelihood strategy, particularly in remote areas with little access to licit livelihoods or other industries. Such livelihood strategies may be especially important for populations who have limited English proficiency, experience poverty, and are excluded from local economic opportunities. Hmong elders we interviewed (often through a Hmong interpreter), described a desire to realize their version of the American dream - to own their own property, return to agrarian roots that would allow them to be self-sufficient and grow their own food and medicine, and to spend their final years in natural beauty, surrounded by mountains and in community. Indeed, within and between each subdivision, Hmong residents have established community care networks with volunteer committees to support elders, and self-provision essential services. Farmers often purchased land with financial help from their children and other family members, lived in RVs, and described growing cannabis for their own medical use, selling extra to make enough money to buy gas, groceries, and supplies for the next season. Social and community structures based on location are layered with kinship and clan-based social supports. Nearly every Hmong elder we interviewed expressed a sense of being a landless people, as one older Hmong cultivator said, "My entire life I was born into conflict, searching for a home to make permanent. It is so sad that I am still driven out from my home, I'm always forced to flee with violence" (author's interview, October 2022).

Cannabis cultivators were met with ever-increasing law enforcement efforts beginning in 2016. Siskiyou's Board of Supervisors have, since then, dedicated a significant amount of governing capacity to cannabis cultivation (see Table 2), which continues to expand. In 2017, Siskiyou declared a local State of Emergency regarding cannabis cultivation.

As law enforcement efforts expanded in scope and intensity, cultivation methods changed. Growers described how, especially since about 2019, the scale of cultivation had increased, particularly in high-enforcement areas, where large high tunnels were erected. Officials and residents reported new racial and ethnic categories of growers, particularly Chinese growers. Smaller-scale cultivation persists alongside these new larger-scale operations. In the western part of the county, primarily white and Indigenous growers cultivate for medical and personal use and

gifting to neighbors in need, including to children with seizure disorders living many hours away from formalized medical care. Cannabis also supports rural livelihoods in remote areas with few other economic opportunities. In the subdivisions of the central region of the county, Hmong cultivators persist too, often describing growing under 99 plants (and expressing confusion over what is and is not allowed medically).

Today, Siskiyou stands out as an innovator in expanding local control authorities around cannabis cultivation, developing new regulatory and prosecution structures to enforce against people who grow cannabis. In 2020 and 2021, for example, the county passed a series of ordinances that utilized anxieties and laws around groundwater to ban water use for cannabis and prohibit the transport of water on certain roads that surround the subdivisions where Hmong farmers live, stopping water deliveries to households reliant on water for drinking, bathing, pets, livestock, and subsistence gardens, as well as cannabis plants. In 2021, a series of ordinances amended County Code to increase fines, fees, and liens for code violations in proximity to cannabis cultivation. Through the courts, the county has sued alfalfa farmers who sold water to residents of the subdivisions where cannabis cultivation is assumed. The County District Attorney has also taken innovative approaches to prosecution, including pursuing grand jury processes and imposing “intent to commit a misdemeanor,” which is a felony, along with other tactics in attempts to raise cannabis cultivation activities back to felony-level charges.

In 2021, the Lava Fire burned about a third of Mount Shasta Vista, the largest subdivision where a majority of residents are Hmong and many grow cannabis. Firefighters were slow to respond, Hmong water truck drivers and residents stayed to fight the fire despite an evacuation order, and a Hmong man was shot and killed by a sheriff’s deputy. This incident, along with others, sparked protests and the second class action lawsuit in five years on behalf of Hmong residents alleging racist intent by Siskiyou County and Siskiyou’s Sheriff’s Office.

In 2022, many plots in the subdivisions stood empty. Between wildfire damage, enforcement activity, the low price of cannabis, and especially the lack of access to water, many people had left. Hmong residents often described a sense that the county’s goal was to run them out of the region. Residents estimated about half of the Hmong community had left. Those who stayed expressed a desire to stay and build their lives in the region, while some expressed discouragement at their inability to leave, after having sunk their meager savings into land that had become nearly value-less due to the above factors.



*Image 3: Many Hmong farmers in Siskiyou County live in drought and wildfire-vulnerable rural subdivisions that lack public services like paved roads, water, or electricity. This photo, taken in October, 2022, shows a greenhouse and water tank re-built behind a rocky hill (lower right). Note the dead trees burned in the 2021 Lava Fire and Mount Shasta in the background. (Photo by Petersen-Rockney, 2022.)*

**Table 2: Siskiyou County Key County Actions Regarding Cannabis Cultivation**

Date	Key County action	Purpose
April 2015	Ordinance 15-04	Medical Marijuana Cultivation: establishes plan allowance based on parcel size, property requirements, and an abatement/hearing process for complaints
December 2015	Ordinance 15-18	Medical Marijuana Enforcement: tightens medical marijuana allowance, introduces license and fee structure; advocates present 1,500 signatures in opposition
June 2016	County voters	Siskiyou voters approve more restrictive medical marijuana cultivation measures in Ordinance 14-18 via local ballot measures
August 2017	Ordinance 17-11	Moratorium on Commercial Cannabis Activities: prohibits commercial cultivation for one year, whether or not profit is intended
September 2017	Local State of Emergency Declared	County issues emergency declaration regarding “Proliferation of Illegal Cannabis Cultivation,” citing 2000+ private grows and nearly universal non-compliance with Count Code. Allows Sheriff’s Office to harness other agencies and resources

December 2017	Ordinance 17-14	Amends 15-19 to extend restrictive requirements to personal cannabis cultivation. Exemption for six or fewer plants on private residence in locked facility not visible from public space
July 2018	Ordinance 18-05	Extends the Commercial Cannabis Moratorium for second and final year to allow county time to develop and adopt permanent ordinance
August 2018	Ordinance 18-06	Amending Citation Procedures for Code Enforcement Processes and Fines: tightens timeframes and appeal processes for civil code violations; formalize and expand powers for enforcement officers; expands fines for penalties
June 2019	Ordinance 19-07	“Commercial Cannabis Activities Prohibited” in “all zones in the unincorporated area” of the county
December 2019	Ordinance 19-15	Hemp Cultivation Program: approved Industrial Hemp Cultivation on specifically classified county land
January 2020	Resolution 20-18	County Supervisors re-declare local state of emergency for “Proliferation of Illegal Cannabis” cultivation
August 2020	Ordinance 20-13	Bans groundwater extraction for cannabis cultivation. Categorizes the use of groundwater for cultivation of cannabis as a “public nuisance”
September 2020	Ordinance 20-15	Adds Article 7 to Chapter 13 of Title 3 in County Code, defining cannabis cultivation as an unreasonable and wasteful use of groundwater
March 2021	Ordinance 21-03	Abatement by Responsible Party or Property Owner: those who have been ordered to abate illicit marijuana plants must provide proof of abatement
April 2021	Ordinance 21-05	Abatement by Responsible Party or Property Owner: those who have been ordered to abate illicit marijuana plants must follow abatement procedures as instructed by the enforcing officer
May 2021	Ordinance 21-07	Administrative Permit Required for Extraction of Groundwater for Use Off-Parcel: use of

		Groundwater outside of legally parceled land or sale of groundwater prohibited without a permit
May 2021	Ordinance 21-08	Water Trucks Prohibited on Certain County Roads: bans water trucks, transporting more than 100 gallons of water, and transporting water "off parcel," on roads surrounding subdivision where Hmong live.
December 2021	Ordinance 21-19	Abatement by Responsible Party or Property Owner: those who fail to properly abate marijuana plants are subject to a \$5,000 dollar fine for the cultivation of 13 or more cannabis plants

### *San Bernardino County*

In April of 2011, when the ability of localities to regulate federally-prohibited cannabis was under scrutiny, San Bernardino (“SB”) first banned outdoor and collective medical cannabis cultivation (as well as retail) with a small indoor allowance. The ban followed a 2-year moratorium from 2009.<sup>1</sup> That 2011 ban was met with lawsuits,<sup>2</sup> but they were resolved when *City of Riverside v. Inland Empire Patients Health & Wellness* (2013) and *Maral v. Live Oak* (2013) affirmed the rights of localities to ban distribution and cultivation of medical cannabis. While some SB cities followed suit, voters in Needles opted for an alternate strategy by forging a compact with dispensaries to allow them to operate in exchange for responsible, responsive operation and a 10% tax.

In 2016, numerous additional cities in SB moved to ban cultivation and other related cannabis activity.<sup>3</sup> By August of 2016, the county Planning Commission recommended tightening indoor medical cultivation standards (limited as they were) and in September, SB County implemented a ban on all commercial activity, medical or otherwise. The county allowed landlords to enact further restrictions on cultivation, use, or other activities; banned deliveries in unincorporated areas; and specified that people violating the ban would be guilty of a misdemeanor (rather than a lesser infraction, which state law allows). Later, after passage of Proposition 64, numerous cities passed new bans or updated their bans to include “adult use” cannabis.<sup>4</sup>

<sup>1</sup> After San Bernardino lost a lawsuit (*San Bernardino County v. California*), forcing them to issue medical cannabis identification cards mandated by SB420.

<sup>2</sup> *Clearview Lake Corporation et al v County of San Bernardino; Crusaders for Patients Rights v Board of Supervisors*

<sup>3</sup> e.g. Upland, Montclair, Barstow, Colton, Apple Valley, Big Bear, Grand Terrace, Loma all banned cultivation between January and March of 2016.

<sup>4</sup> Including Apple Valley, Ontario, Grand Terrace, Big Bear Lake, Barstow, Highland, Yucaipa, Rancho Cucamonga, Yucca Valley, Redlands, Montclair, Victorville, Rialto, Chino, Twentynine Palms.

A small allowance was retained for personal and medical cultivation – a total of 30 plants maximum per property, or 24 medical for two patients with state ID cards and six personal use plants allowed in approved indoor facilities. Land Use Services and Sheriff’s officials are not aware of anyone who has acquired the appropriate permits for indoor cultivation (medical or otherwise), raising the question of whether these programs are accessible to residents.

SB localities pursued a strategy of heavy fines to reduce cultivation. Some cities leveraged their code enforcement and fee collection capacities, such as Victorville, which levied a \$100 fine per day per plant for unpermitted cultivation, in addition to any abatement costs. Repeated violations could result in a \$1000/day/plant fine. According to the Sheriff’s Department, who provided contract police services for Victorville, this strategy worked in discouraging illegal cultivation. Victorville justified the high fees as “cost recovery” for city services and enforcement (though these “costs” were only necessitated by the ban itself.)

Early exceptions to these bans came in Adelanto, Needles, and Colton, with Barstow, City of San Bernardino, and Fontana later moving toward permit programs. Adelanto established an Overlay Zone where commercial cannabis activity was allowed. The city lifted limits on the amount of permits that could be possessed by a single individual or operate in a single location and, by 2019, established a cannabis tax. Needles allowed cannabis permitting for cultivation and other activities in 2016 and has seen a significant growth in economic development and city revenue. The City of San Bernardino opened the door to regulation by passing a tax on all cannabis businesses, establishing a fee-based program for personal cultivation (six plants maximum indoors) and constructing a permitting program for cannabis businesses. With the exception of Needles, these moves toward permits can be generally sorted into two categories: overly-strict regulations (Colton, Fontana) that make operation cumbersome and expensive, and permissive regulations that have been characterized by corruption, bribery and irregularities (Adelanto, San Bernardino).

SB cultivation transformed as the county and its municipalities sorted into ban and permit jurisdictions. Since at least the 1990s, SB had a relatively significant amount of cannabis cultivation, largely on remote public lands and in indoor cultivation sites in urban San Bernardino Valley. By 2014, outdoor cultivation in the residential areas of the High Desert seemed to be increasing. In 2019, several factors converged to cause a boom in unlicensed High Desert cultivation: 1) aggressive police operations in Riverside County pushed growers into San Bernardino; 2) low property prices in the High Desert lured cultivators; 3) higher legal consequences on public (often federal) land pushed cultivators onto private land, where cultivation was a misdemeanor or infraction; 4) declining wholesale prices of cannabis led cultivators to seek cheaper land and shift to less-expensive outdoor or mixed light growing; and 5) expensive and slow permitting and licensing processes discouraged growers from participating in the legal market.

In response, the Sheriff's Department launched "Operation Homegrown" in 2020, a five-month operation that primarily focused on the unincorporated area of Lucerne Valley and served 300 search warrants and netted over 250,000 plants. In June of 2021, a pivotal Town Hall meeting was held in the incorporated city of Apple Valley in the High Desert. Vocal residents expressed reasons for concern, particularly around aesthetic objections to new structures, the visible presence of (often ethnic) "criminals," and concern over unpermitted water use in the adjudicated water basin area. Notably, the meeting only came after several months of police operations that raised the visibility of cultivation and framed it as a menacing problem.

The meeting was coordinated with a Board of Supervisors vote to allocate \$10.4 million to address community concerns, specifically unpermitted cultivation. With these funds, the Sheriff's Department organized five Marijuana Enforcement Teams (MET) to address zones of the county and an additional 6<sup>th</sup> team to investigate organizational and financial patterns across zones. The Sheriff's Department argued they were understaffed and could not deal with unlicensed cultivation but, paradoxically, the METs were recruited from local stations throughout the county, which had the adverse effect of further short-staffing local stations and impeding their ability to respond to other local needs. The upshot, however, was that this dedicated attention to cannabis cultivation reportedly revealed other hidden crimes, like unreported murders, illegal semi-automatic weapons, human trafficking, and gang presence. Seizure of plants increased by 224% and firearms increased by 620%. In August 2022, the second enforcement push, Operation Hammerstrike, de-escalated, notching approximately 1100 raided sites with over 8600 greenhouses, 1.4 million plants, and 97 tons of processed cannabis, all valued by the Sheriff's Department at approximately \$1bn. Currently, the operation has resolved into two permanent cannabis teams.

The Sheriff and responsive politicians advanced the idea that unpermitted cultivation could best be addressed by elevating unpermitted cultivation from a misdemeanor to a felony, an escalation that would controvert Proposition 64's text. According to this reasoning, the legal consequences of cultivation should outweigh the financial benefits.<sup>5</sup> The Sheriff's position encouraged the Board of Supervisors to pass a resolution in favor of re-felonization at the state level and SB Assemblymember Smith proposed a bill in the State Assembly to achieve this.

In emphasizing felonization as the key issue, these actors sidestepped other potential explanations for unlicensed cultivation, including regulatory failures, barriers to legal market entry (including bans), unfavorable market conditions, and other significant factors. With re-felonization requiring a new voter ballot that would be unlikely to pass, this discourse only served to agitate local residents into a form of resentful politics, all under the guise of pursuing

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<sup>5</sup> The conversion rate between legal consequences and economic reasoning remained unstated, particularly in relation to low income people or people with limited access to the formal market.

“law breakers” and “lawless criminals” in a state (and county) that had voted to legalize cannabis. Constant media attention, stemming from the Sheriff’s biweekly press releases during Operation Hammerstrike, stoked ideas of “us vs. them,” and presented the problem as a matter of protecting the public and “quality of life.” The rhetoric deployed raises questions of which publics and whose quality of life were being protected. This division between “criminals” and the public may have led to enforcement excesses, as when deputies stopped an armored truck that was transporting funds from licensed cannabis businesses on three instances and seized their cash contents (the Sheriff was forced to return the funds and issue an apology).

In its stated objective to stop or slow unpermitted cultivation under ban conditions, SB was effective. Its enduring success, however, depends on more than simple enforcement, which seems to create a “whack-a-mole” scenario wherein farms are busted, only to pop up in the same place again, while encouraging cultivators to utilize innovative avoidance tactics. Some grow operations, for example, began using ecologically-damaging sand berms and unpermitted greenhouses in attempts to shield operations from view. Another tactic of cannabis cultivators was to grow cannabis on farms licensed for legal hemp production. Inspectors took days to produce test results on THC content, allowing cultivators to move or harvest their plants. In short, cultivators were not disappearing due to enforcement; they were simply changing their growing practices and locational decisions.

In response, SB Supervisors authorized a system of fines and abatement processes, thus joining Sheriff’s Department efforts with Code Enforcement and Land Use Services efforts (and other local, state, and federal agencies as needed). The agencies coordinated operations, with the Sheriff’s Department conducting seizures and raids and Code Enforcement/Land Use Services immediately and without recourse documenting and charging code violations, whether or not they were directly related to cannabis (e.g. unpermitted structures, land alterations, trash, illegal chemicals, water diversion, improper pesticide storage). Notably, no pre-fine abatement or remediation period was built in. The fines took effect immediately, thus taking on a punitive, rather than pedagogical, function. The county’s District Attorney prosecuted environmental crimes (for which felonies could be charged) and guided county agencies in documenting those crimes. SB, according to Supervisor Paul Cook in the High Desert area, wanted to highlight environmental aspects of unpermitted cultivation because they believed this would appeal to (what he perceives as) pro-cannabis (and presumably more liberal) legislators and agencies at the state level. DA Jason Anderson, the chief prosecutor of environmental crimes said, “My office will outmaneuver the legislators in Sacramento,” casting the State as partial to cannabis and blind to local needs and his office as the defender of local residents and the environment. The aim of rigid enforcement plus significant fines was to make the county “the most inhospitable place” for cultivators, according to the Sheriff.

The county also pursued landowners and landlords to discourage the leasing of land to cultivators. In August 2021, the county sent 105 notices of complaint against landowners, the

first in a series of actions to pressure landlords not only to stop leasing land but also to put landowners on notice that they would ultimately be responsible for environmental harms and remediation on the land that their tenants may have caused. The county developed an abatement ordinance that steeply increased fines from \$100/200/500 per day for first, second, and third offenses, respectively, to \$1000/1500/3000 per day (and \$3k/\$6k/10k for sites with over 200 plants). The ordinance also empowered county agencies to remediate land, if owners were non-responsive, and to place a lien on the property for the costs of that clean-up.

Operation Hammerstrike concluded at about the same time that Attorney General Rob Bonta and other state officials visited the county to discuss illegal cultivation, a trip that coincided with the roll-out of a new statewide, multi-agency program dedicated to stopping unpermitted cannabis cultivation. The program, framed as an updated CAMP program (the 30-year cannabis eradication program run by the state's DOJ), was not novel for California, but it did mark a coordinated direction of state resources toward addressing unlicensed cultivation. Resources assigned to this effort would benefit ban counties as much as permit counties, thus circumventing policies that prohibit state support for law enforcement in counties that do not permit cannabis cultivation.



*Image 4: Several cities in San Bernardino, such as Adelanto, have embraced permitted cannabis cultivation as a driver of economic development. Just over the city boundaries, greenhouses that contain cannabis have been a major target of the San Bernardino Sheriff Department's "Operation Hammer Strike," which raided approximately 9,000 greenhouses from September 2021 to November 2022. (Photo by Petersen-Rockney, 2022.)*

**Table 3: San Bernardino County Key County Actions Regarding Cannabis Cultivation**

<b>Date</b>	<b>Key County action</b>	<b>Purpose</b>
April 2011	SB County Ordinance No. 4140	Banned medical marijuana dispensaries and outdoor cultivation of marijuana in the unincorporated areas of San Bernardino County.
September 2016	SB County Ordinance No. 4309	Banned all commercial cannabis activities, which includes cultivation defined as any activity including the planting, growing, harvesting, drying, curing, or trimming of cannabis.
2017	SB County Ordinance No. 4329	Provided Exemption for privacy caregivers affiliated with licensed facilities.
2019	SB County Ordinance No. 4360	Amendments to Ordinances No. 4140 and No. 4309.
June 2021	SB Budget	Board of Supervisors designates \$10.4m in funding to address unpermitted cannabis cultivation.
2021	SB Urgency Ordinance	County increases fines (x5-6) for unpermitted cannabis cultivation, with graduated fines for larger plant numbers.

### *Yuba County*

Like many places in California, cannabis cultivation activity has long occurred in Yuba and continues to this day, with a zenith of cultivation activity in the early to mid 2010s under Proposition 215. After a permissive period of cultivation (2012-2015), growers in Yuba experienced an intense enforcement effort from 2018-2019, especially backyard growers in residential areas. At that time the Sheriff estimated that cannabis was being cultivated on one in four parcels in the county. Now, officials, medical activists, and growers described Yuba County's cannabis cultivation activity as "quiet." One public official said, "From an airplane Yuba was once a sea of marijuana, now it is just salt and pepper." Informants also described a contemporary enforcement approach that is soft, or gentle, based in Code Enforcement (though Sheriff's deputy's accompany Code Enforcement on inspections), and that prioritizes limited county capacity to target large-scale and environmentally impactful unpermitted cultivation sites.

The legacy cultivation community in Yuba is concentrated in the Sierra foothills on inexpensive, marginal land with little agricultural history that is now especially vulnerable to climate change-driven wildfires and droughts. Part of the legacy community included what some described as

multi-generation “hill people,” an earlier wave of “back to the land” migrants, numerous patient-cultivators, and, after the county passed a permissive medical cannabis ordinance in 2012 that allowed cultivators to grow up to 99 outdoor plants, young in-migrant families.

Legacy and medical cultivators in Yuba County described communities that had experienced economic marginalization, often consisting of majority white growers who experienced poverty, meaning that many could not afford licensing processes even if they were an option. Additionally, some held conservative and anti-government ideologies and described relying on neighbors and trusted local support networks. Under Proposition 215, medical cannabis cultivation played a crucial role in economic livelihoods and community vitality in the region and growers often described a desire to return to medical cannabis regulations. Despite this, legacy cultivators also described a shift prior to Proposition 64 wherein more “bad actors” invited enforcement that made cultivation difficult for everyone.

Everyone we spoke to described how this has changed with the outdoor cultivation ban that the County Board of Supervisors passed in 2015. Since the county ban, and with the passage of Proposition 64, the community has become more atomized. Since the ban, interviewees noted, more growers now come to the remote region only for a growing season, and then leave. The legacy community no longer has the relationship, trust, or power to set norms, like organic production. Several legacy cultivators we spoke to described that even for those who would like to grow using ecological practices, few have the financial resources to do so with downward economic pressures from the market price decline of cannabis.

Yuba went from a permissive county for cultivation to a 2015 ban as a culmination of several factors. Local officials and residents described politically powerful water users, including water agencies and rice farmers, expressing concern over water access, which helped justify the cultivation ban.<sup>6</sup> In 2014, a staunchly anti-cannabis supervisor was elected on an anti-cannabis campaign. Yuba County passed an emergency declaration on cultivation in 2017. When the ban went into effect, cultivators began organizing politically, forming groups like the Yuba Patients Coalition, which grew to about 300 members at its height, and another group led by dispensary owners. These groups met regularly, registered voters, and put two cultivation measures on the 2016 ballot that would have offered a permit path. When the cultivation measures failed, many growers were defeated and burnt out, moving to Nevada and Calaveras Counties with the hopes of establishing legal cultivation businesses or to other nearby ban counties that were more permissive at the time.

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<sup>6</sup> Interviewees with expertise in Yuba’s hydrologic and water policy/management landscape said anti-cannabis justifications that enrolled arguments of local water scarcity were unfounded. One expert said simply, “water is just not an issue in Yuba County” due to aggressive and successful local water management, which has become a model for the rest of the state in meeting requirements under the Sustainable Groundwater Management Act. Multiple people noted that, as one farmer described, “Yuba’s rich in water, but there’s no access.”

The county increased law enforcement efforts between 2015 and 2018. Yuba, Siskiyou, Trinity, and Calaveras Counties coordinated enforcement efforts, using Black Hawk helicopters and enlisting the National Guard and federal Counter Drug Task Force in these efforts. In 2018, an officer and a cultivation worker were shot and killed during a raid, marking a significant turning point in the county’s approach to enforcement. The Sheriff began to withdraw personnel from cannabis enforcement at this point, becoming backup for code enforcement efforts that became increasingly aggressive until COVID-19 again dramatically shifted the county’s enforcement approach.

Since COVID-19 began, Yuba County has taken what informants described as a softer enforcement approach, prioritizing limited enforcement capacity towards particularly large or environmentally harmful cultivation sites. Some interviewees, including growers, described code enforcement (and even local police) as good people who were fair and understanding, targeting large scale growers (even if their assessment of code enforcement a few years prior was much more critical). One grower said that he still advises people to grow under 99 plants to this day, and that usually if they do, they can go under the radar. As several informants noted, if you have good relationships with your neighbors, complaints are unlikely, and without complaints there’s no reason to enforce. While code enforcement used to begin fining cultivators and property owners on day one, there is now an abatement period that gives growers and landowners an opportunity to address the issue before fines begin.

Norms about the scale of cultivation, community reciprocity, and cultivation practices used to be held and governed by the cultivation community itself, particularly under medical cooperative structures. Key to understanding Yuba’s “softer” enforcement approach today is the fact that similar norms are now shaped by enforcement practices (seated in code enforcement). This softer approach is not effective because it “goes easy” on cultivators, but rather because it uses enforcement pedagogically, as instructive in forming an unregulated milieu that is less environmentally and socially harmful.

***Table 4: Yuba County Key County Actions Regarding Cannabis Cultivation***

<b>Date</b>	<b>Key County action</b>	<b>Purpose</b>
May 2012	Ordinance 1518	Establishes cultivation limits based on parcel size, from 6 mature plants on less than 1 acre to 25 mature plants on over 20 acres. Advocates sue the county for violation of Prop. 215
December 2012	Ordinance 1522	More permissive allowance of medical cultivation on fenced and occupied parcel with greater plant numbers allowed: e.g., under 1 acre a total of 18 plants - 6 mature maximum; over 20 acres a total of

		99 plants allowed - 60 mature maximum
April 2015	Ordinance 1542	Prohibits outdoor cultivation; regulates structures within which marijuana may be cultivated; and establishes a registration process justified by California Drought State of Emergency
June 2016	Yuba voters rejected Measure A	"The Yuba County Medical Marijuana Cultivation Act of 2015," which proposed allowing outdoor cultivation and in greater quantity than the County Code allowed
June 2016	Yuba voters rejected Measure B	"The Patients Access to Regulated Medical Cannabis Act of 2015," which proposed licensed medical marijuana dispensaries
November 2016	Yuba voters rejected Measure E	"Cannabis Cultivation & Commerce," which proposed an ordinance for commercial medical cannabis activities
April 2017	Ordinance 1563	Prohibits outdoor medical and non-medical cultivation; limits personal use gardens to six indoor plants per parcel, irrespective of number of residents, and establishes parcel/structure requirements
November 2017	Ordinance 1568	Prohibits all commercial cannabis activities; defines cannabis cultivation as a nuisance; identifies landowners as responsible parties for abatement; expands enforcement capacities, including "enforcement without warning"

### *Napa County*

Napa is one of the few coastal counties that have banned cultivation.<sup>7</sup> Residents in Napa have consistently grown cannabis in small quantities since the 1960s, particularly in the Mayacamas mountains, on the county's western edge. Since Proposition 215, the county has also hosted a significant tradition of activism regarding medical cannabis access.

In 2016, under guidance from the Medical Marijuana Regulation and Safety Act (MMRSA), the county banned dispensaries and cultivation in unincorporated areas, with a small exception for indoor cultivation for medical use. The county cited numerous reasons including attraction of criminal activity and nuisance, environmental, and public health threats that stemmed from cannabis. In 2018, the county loosened restrictions on personal cultivation, allowing six plants

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<sup>7</sup> Along with Los Angeles and Orange Counties.

outdoor or indoor and without significant permitting or cost barriers. Access was also facilitated by Napa City's allowance of dispensaries. In 2019, the county moved to make the ban on commercial cannabis permanent, and also banned industrial hemp production.

Uniquely among ban counties, Napa upheld patient and user access to outdoor cannabis cultivation without prohibitive permitting and cost barriers. Increasing accessibility to personal cultivation proved key in segregating the issue of commercial cannabis activity from medical advocacy. Would-be commercial cultivators then had to combat the ban not on terms of medical or personal access but on a different terrain of economic development, industrial formation, and environmental dynamics. Prior to the 2019 ban, advocates from Napa Valley Cannabis Association (NVCA) collected signatures to qualify a local voter initiative to permit commercial cannabis cultivation. The measure would have allowed gardens of up to one acre on properties over 10 acres in agriculturally zoned areas of the county. The county ordered a 9111 report, in response, which weighed the pros and cons of permitting cannabis cultivation. The initiative would define cannabis as agriculture, and thus prevent the Board from capriciously changing rules for cannabis, applying exceptional standards to cannabis not expected of other crops, and imposing inordinate fines on cannabis cultivation. Defining cannabis as agriculture may have made it possible to apply Right to Farm codes to cannabis, thus allowing cannabis growers to deflect some nuisance complaints, bring suit against farms that used practices impacting their operations (such as pesticide drift), and avoid discretionary and local CEQA review. Nonetheless, cannabis would have been subject to particular setbacks, restrictions on tree removal, conservation, viewshed, and groundwater rules, and best management practices partly decided by the county's Agriculture Commission. In short, the measure would have regulated cannabis much like agriculture (albeit with notable restrictions) and thus posed a competitive challenge to the county's primary crop—wine grapes.

Though the 9111 report was officially neutral, it was guided by Supervisors, several of whom visited Santa Barbara on a trip to hear about conflicts between wine and cannabis businesses—a trip coordinated by influential grape growers (raising questions for some interviewees about untoward influence). The 9111 report emphasized negative dimensions of cultivation such as: smells that might affect wineries/grapes; potential conflicts over pesticide drift and the introduction of pests and diseases; negative effects on tourism and property values; competition with wineries over land, labor, tourists, and housing for farmworkers; impacts on water; and impacts on the name “brand” and viewscape. These renderings became critical in supporting the Board of Supervisors' decision to ban cultivation permanently—a decision it made only after advocates withdrew the ballot with an understanding that the county would make a “good faith” effort to develop a permitting program.

The ban was supported by the county's four major farming organizations—all of them revolving around wine grapes. Above most considerations, they were concerned cannabis would threaten

the Napa Valley wine industry's brand and correlated tourism. One heavily circulated story cited a winery in Santa Barbara that was downwind of a large-scale cannabis operation, resulting in a decline of tourism at the winery due to smell. While the wine industry expressed concern over "drift" of cannabis smells to winegrapes, many cannabis advocates and residents believed the opposite: that the wine industry was more concerned about a *reverse* drift of the pesticides sprayed on winegrapes to cannabis. With cannabis more heavily regulated for adulteration by pesticides, the wine industry feared lawsuits by neighboring cannabis growers whose crop could so easily be rendered un-salable by pesticide drift. One vocal winemaker pointed to a case in Santa Barbara where a winemaker was forced to use a less effective fungicide after a lawsuit from a cannabis grower and she subsequently lost her crop. At issue was not only Napa's brand, but also the vision of its future. Cannabis proponents argued that cannabis could draw a younger tourism base and push into new frontiers of the wine industry. Opponents sought to protect the specific wine reputation that Napa had built from incursion by other crops or tourist experiences.

Other cannabis-producing regions of the state have sought to emulate Napa's successful, boutique branding of its wine terroir, yet the wine industry in Napa has largely resisted local efforts for cannabis to capitalize on the Napa brand. The ban's passage and maintenance is largely traceable to the political power of winegrape organizations. The wine industry was established in the 1960s and 1970s when it surpassed plums and walnuts as Napa's dominant crop, innovating new land use designations and designating appellations as intellectual property. As wine tourism grew, the area's "viewscape"—the aesthetic appearance of the Napa Valley—became critical to the industry's brand.

No organization played a larger role in recent years in protecting this position than the Farm Bureau. The Farm Bureau had been an active part of local politics and society for decades, but many people we interviewed, including county leaders, felt that in recent years it had been captured by wine interests to the detriment of other agriculturalists, local residents, infrastructure and housing, and the environment, symbolized to some by the Farm Bureau's formation of an affiliated powerful Political Action Committee. Commercial cannabis advocates *also* hail from the wine industry, breaking with the Farm Bureau's hardline anti-cannabis cultivation stance. These advocates suspect the Farm Bureau of not only wanting to protect current grape growing territory but all *potential* lands the winegrape industry may later choose to expand toward.

In 2020, advocates of cultivation permitting began efforts to reintroduce the initiative but were derailed by COVID-19. In 2021, the issue was revisited by local supervisors, out of concern that the lack of legislative movement by the supervisors would lead to the reintroduction of a voter initiative. Despite 2019 polling showing that 70% of the county supported cultivation, the Farm Bureau vowed to vigorously oppose any such measure. At a stalemate, the energy to pass a permit ordinance seems to have evaporated (though recent changes in the Board of Supervisors may present an opening for advocates). In lieu of an ordinance change, commercial cannabis

advocates are practicing a slow politics of cultural change, (e.g. hosting educational events, talking to neighbors). With commercial cultivation banned on unincorporated land, the city of American Canyon became the only municipality to allow cultivation. A leader of Napa Valley Cannabis Association was, as of October 2022, set to open the first (indoor) facility in that city and planned to take advantage of brand (but not appellation) law by calling his product the first legal cannabis grown in Napa. Meanwhile, large, unpermitted commercial grows (or at least their detection by local police and state agencies) seems to be virtually non-existent. This lack of unpermitted cultivation may indicate the success of the ban in preventing unpermitted cultivation, though we suspect the lack of unpermitted cultivation is at least equally influenced by the policy to *allow* personal cultivation, as well as high property values in Napa that discourage local cultivation.



*Image 5: Wine grapes dominate the landscape in Napa County. Wine growers, vintners, and others in the industry have worked to establish the Napa brand, which some worry cannabis would taint. Additionally, wine grapes are a pesticide, fungicide, and fertilizer-intensive crop. If permitted cannabis were allowed, pesticide drift could ruin cannabis farmers' crop, and threaten the ability of grape growers to spray chemicals. (Photo by Petersen-Rockney, 2022.)*

**Table 5: Napa County Key County Actions Regarding Cannabis Cultivation**

Date	Ordinance	Purpose
February 2016	Ordinance No. 1410 - Chapter 8.10	Prohibits large scale cultivation of marijuana in unincorporated areas of Napa County while regulating small amounts of marijuana grown indoor for medical purposes. Also prohibits medical marijuana dispensaries in unincorporated areas of the county.
October 2017	Ordinance No. 1425	Extends the moratorium on commercial cannabis activity and outdoor cultivation within the unincorporated areas of the county.

January 2018	Ordinance No. 1426	Until there are more solidified state regulations that can be enforced, commercial cannabis activity will be insufficiently regulated and poses a public threat.
July 2018	Ordinance No. 1431	Prohibits large scale cultivation of cannabis in unincorporated areas of the county save for small grows by individuals with Medical Marijuana ID Cards for personal use.
July 2019	Ordinance No. 1444: Napa County Hemp Moratorium	Temporary moratorium on the issuance of registration, permit or entitlement, or approval of any type for any cultivation of Industrial Hemp in the unincorporated area of the county.
August 2019	Ordinance No. 1448	Extension of the time frame of Ordinance No. 1444.
June 2021	Ordinance No. 1469	Cultivation of industrial hemp is expressly prohibited in the unincorporated areas of the county, even for research and academic purposes.
March 2022	Ordinance O2022-003	Allows cannabis retailers to sell medical marijuana as well as adult-use marijuana if the retailer has obtained a Cannabis Establishment Clearance.

## Cross-County Preliminary Findings

Below we outline preliminary findings from our research on the causes and effects of local-level cannabis bans. These findings are provisional and not final. Final findings and conclusions will be presented after the analysis stage in a final report.

*Bans and their enforcement vary across ban jurisdictions, namely on a gradient from “hard” to “soft” enforcement.*

Bans and their enforcement come in various forms. For instance, bans may apply to some or all commercial activities; they may be led by code enforcement or police or multiple agencies; they may make different provisions for indoor, outdoor, and mixed light cultivation and for personal, medical, and commercial use. Broadly, enforcement can be divided into a “harder” approach, often led by law enforcement, and a “softer” approach, led by code enforcement or some constellation of government agencies. Whether law or code enforcement takes the lead in enforcement, however, is not the only characteristic that distinguishes these approaches.

San Bernardino and Siskiyou County’s approach to ban enforcement has been hard-lined. While in both counties the Sheriff’s Office now leads enforcement, code enforcement (when they are

deployed) is also aligned with a harder approach. In Siskiyou County, enforcement of early cannabis cultivation regulations fell under the purview of code enforcement. By 2016, however, the Sheriff's Office had assumed enforcement of cannabis cultivation. This transition was partly due to limits of code enforcement capacity, but was also linked to public alarm over the "problem" of new cultivation, much of it by ethnically-marked Hmong-American in-migrants. The assumption of control by law enforcement has led to significant contention, including lawsuits by Hmong farmers over racial profiling and voter intimidation by law enforcement and a day of police raids on legacy white growers in the county's western region in 2016 that approaches vigilantism. Siskiyou code enforcement appears to have been instrumentalized toward law enforcement purposes. Steep fines are levied with the apparent aim of punishing offenders (often for quality of life violations common among rural residents). The aim of fines does not appear to be for education or remediation. Instead, many sites are raided, destroyed, and fined until they are non-functional or abandoned, resulting in them remaining unremediated indefinitely. Many Siskiyou residents pointed to the incongruity of the county's strong anti-cannabis cultivation approach in a place that cherishes private property rights, autonomy, and independence.

San Bernardino's approach to cannabis enforcement has similarly been firm. With a relatively significant budget, San Bernardino's Sheriff Department led a hard-hitting eradication approach (e.g. "Operation Hammer Strike") against expanding cultivation. This expansion, however, was at least partially caused by other bans and anti-cannabis enforcement in neighboring counties, which pushed the "problem" into San Bernardino. Code enforcement and other county agencies were enlisted later in enforcement efforts, leading to a multi-pronged approach to address code violations, environmental harms, and landowner accountability. This diversified approach has the advantage of *preventing* unpermitted cultivation by holding landowners accountable. Indeed, San Bernardino's multi-agency approach seems to have drastically reduced the prevalence of cannabis cultivation (unlike Siskiyou). However, the immediate leveraging of fines upon discovery by code enforcement inhibits preventive, educational, and civil interactions with cultivators, workers, and landowners. There are few, if any, opportunities for mitigation without punishment. This can result in abandoned properties, ruined livelihoods, and an "us vs. them" mentality that belies the civil, legalized status of cannabis cultivation. While San Bernardino has not been challenged with charges of racial/ethnic profiling, it is likely (based on yet-to-be-analyzed arrest logs) that those most affected by ban enforcement are vulnerable populations—immigrants, those with less formal education, felons barred from the formal economy, racialized populations, those with less English proficiency or comfort with governmental interactions. This "hard" approach to bans repeats a similar pattern that was enacted under the War on Drugs, not only in its punitive approach to marginalized populations but also in its consistent and escalating requirement for more resources to "fight" criminalized peoples.

Yuba and Napa Counties highlight a different “softer” enforcement approach. Since banning cannabis cultivation, both counties have placed enforcement primarily in the planning, not law enforcement, divisions of county government. Treated primarily as a land use concern, a different set of tools are used to educate growers and mitigate environmental harms. This softer approach led by Code Enforcement still often includes law enforcement, whose officers accompany Code Enforcement on raids, but creates a starkly different set of dynamics and interactions with growers than raids led by law enforcement. Additionally, in some cases, as in Yuba County, compliance/abatement time before fines are leveraged for violations have increased over time, allowing growers and landowners time to address issues before being penalized or punished. Not only does this encourage residents to take appropriate action to address violations and improve the situation, but it also helps build good will and trust. In both Yuba and Napa Counties, illicit cultivation has decreased and stabilized since cultivation bans were implemented, resulting in lower levels of illicit activity, smaller-scale cultivation where it does occur, and fewer obvious environmental consequences of cultivation and eradication actions. When enforcement focused on large, environmentally deleterious operations, we have witnessed the emergence of informal norms regulating the behavior of smaller cultivators, especially regarding garden size and ecological practices. Paradoxically, creating some gray area in ban counties, where good actors and best (or better) practices can persist informally, as they did under medical regulations, can significantly reduce the scale and impact of cultivation.

*Bans require significant public resources.*

Bans are not the absence of a policy, but are themselves policies that create their own expenses, burdens, and responsibilities. They can require significant enforcement, prosecution and regulatory costs. Each locality has to decide whether this enforcement expense is worth not only expended resources but also the opportunity costs of what other problems could be addressed by police and other agencies. While fines might be able to recuperate part of the costs of enforcement and prosecution, they are unlikely to pay for these efforts altogether.

In weighing costs of bans, the costs of regulatory programs should be considered. The consequence of local control is that each locality is left to its own devices to establish its own regulatory and permitting programs, often from scratch and with expensive, litigious missteps. In the last few years, hopes of significant tax revenue for localities has diminished as the regulated cultivation sector has struggled with high regulatory costs and low prices. Many localities impose such significant restrictions that revenue hopes are all but forfeited. For many localities, creating regulatory programs is a fiscal impossibility, even if the political will were present. Yet, in passing bans, counties should also consider the significant costs that such a path requires. The State has used fiscal policy to incentivize counties to permit cannabis and to offload the financial burden of bans onto counties. Moves to alleviate the costs of local regulatory programs –

including encouragement of localities to create a default, opt-in program that abides by state law (as set out in Proposition 64) – may be advised.

*Well-resourced, consistent, and multi-pronged enforcement can limit cultivation, though at a cost.*

San Bernardino was an outlier in our study in terms of the resources it was able to dedicate to the ban and its enforcement. At this moment (early 2023), cultivation sites have been significantly reduced, yet we have already seen signs that many people – particularly those with few other economic options – will be re-planting this year. The county’s coordinated efforts across law enforcement, code enforcement, environmental health, the district attorney, and other agencies has created a kind of “wrap-around” enforcement approach that has effectively shut down many cultivation operations. We were unable to determine the extent to which this decline was aided by declining market conditions, which would have forced many out of business. As we have seen elsewhere (including in San Bernardino), there is reason to suspect unpermitted cultivation has simply been displaced elsewhere or driven toward more secretive practices. While San Bernardino’s efforts have been effective at reducing cultivation, we also note that the budgetary resources are atypical for ban counties, most of which are rural, low-revenue counties. Duplicating San Bernardino’s model is fiscally infeasible for most. Especially for low-revenue jurisdictions, the wisdom of dedicating significant resources fighting a legalized crop begs questions, especially to the degree that this enforcement de-prioritizes other budgetary, social, and environmental needs. With limited government resources, ban counties have to decide what kind of price they are willing to pay to enforce bans on an activity that is only responsive to enforcement under certain conditions, for certain periods, and with sprawling programmatic resources.

*Bans may discourage cultivation, but as long as cultivation is economically viable, cultivators will innovate new methods to avoid enforcement.*

Some ban counties have seen immediate, year-to-year reductions in unpermitted cultivation as a result of enforcement. Yet, in each county (with the apparent exception of Napa, discussed below), growers innovate new ways to cultivate under changing enforcement conditions. These innovations include: camouflaged cultivation facilities and sites; underground or indoor cultivation; smaller gardens; operations that distribute gardens across multiple property parcels or broad swaths of land; gardens that avoid environmental “trips” that bring enforcement; the phenomenon of “whack-a-mole” enforcement and cultivation, where operations simply move to other sites after being busted (at significant cost to the public); and/or the emergence of more well-funded, sophisticated operations, designed to avoid detection. The latter trend brings about other, new concerns over organization, labor treatment, and environmental effects. Sophisticated, funded operations are adaptations to the shutting down of smaller cultivation sites and are forms of protection for unpermitted farmers to band together, especially when farmers are treated as

criminals and outsiders. It should be noted that scaled-up operations and their negative impacts can be attributed to bans that force cultivation deeper into secrecy. Paradoxically, these negative impacts are used to justify bans even as bans often *create* the conditions for those impacts to occur.

Cultivation is primarily an economic – not legal – decision for cultivators. Fighting economic practices with legal consequences, especially after “legalization,” can lead to unintended consequences. The reason cultivators innovate new methods of farming under bans is often because they determine that cultivation is still an economically viable activity. Other times, even if it is not economically viable there are more “sticky,” social reasons people continue cultivating—out of hope, sense of community, or being location-bound with few other economic opportunities. Though we heard from many that the State should move to re-felonize cultivation, we are concerned that this move may serve not to stop unpermitted cultivation, but to penalize marginalized populations. This phenomenon is well-documented under the War on Drugs.

*More lenient code enforcement can foster norms among and promote an educational influence on informal actors; more strict civil enforcement can result in punishment without recourse.*

As explored above, code enforcement can be deployed in punitive or pedagogical ways. More pedagogical approaches often include: 1) reasonable time between notice of violations and imposition of fines; 2) interactions between code enforcement that are not mediated by law enforcement or coincident with armored raids; 3) the avoidance of cascading, roving and punitive citations for every code violation on a property; 4) reactive (not proactive or aggressive) utilization of code enforcement; and 5) educational, informational engagement by code enforcement with cultivator communities. This approach engages cultivators not as criminals but as citizens/residents, deserving of respect and fair treatment, that are engaging in unapproved land uses. More punitive code enforcement: does not have abatement periods; imposes immediate fines; is linked to law enforcement, uses code violations in punitive ways; proactively, often aggressively, seeks out code violations; and does not make information readily accessible about county codes. This approach frames violators as criminals with ill intent that cannot be trusted to take corrective action once they are informed of land use violations.

Pedagogical, civil approaches to law enforcement can encourage the growth of informal norms that can ameliorate negative impacts. Implementing this, however, requires a shift in governing outlooks. Banning an activity does not mean it will stop. It simply means it is not allowed and is not regulated. If bans are to exist, local governments may want to consider how to influence banned activities, since regulation is not an option. That is, under bans localities can govern through norms and civil engagement. Further, as addressed below, allowances to protect individuals’ capacity to cultivate for themselves in reasonable, affordable ways can go a significant distance in affording citizens/residents a way to cultivate legally. When people have

an option to cultivate legally, this may prevent a kind of compounding illegality, where the violation of one rule allows people to increase the scale or quantity of violations.

In sum, civil enforcement can be an effective tool in creating norms, educating the public and potential violators, and preventing undesired outcomes. However, when enforcement does not allow for opportunities to remediate, it becomes merely punitive.

*Self-provisioning of medical or adult-use cannabis has generally suffered under bans.*

Bans on commercial cannabis are often accompanied by bans on outdoor cultivation and the heavy restriction of indoor cultivation. The cost of growing one's own medicinal or recreational cannabis (six plants) often requires significant investments in electric, plumbing, security and building enhancements, not to mention the cost, administratively and financially, of permitting. Many jurisdictions create self-provisioning allowances but have yet to permit even one self-cultivator, a sign that local regulations are too onerous. People who cultivate for themselves are put in legal jeopardy because of localities' infeasible regulations. Because of lack of clear messaging and jurisdictional variation, many patients are still unclear as to whether their doctors' recommendations are sufficient to cultivate, leading many to be penalized for activity they thought was still protected. This is especially true for elders, those with less formal education, less English language proficiency, and people uncomfortable with government interactions (e.g. immigrants, felons, people of color). The only place where self-cultivation appears to be protected is in Napa, where residents can grow 6 plants indoors or outdoors, do not have to seek permits or, for outdoor plants, invest significant funds, and, when conflict arises, are dealt with by code enforcement and not law enforcement. In sum, the ability of patients and residents to access personal and medical cannabis depends upon the jurisdiction within which they reside, the enforcement practices employed, and the permitting and investment requirements placed upon cultivation. The common result is that the ability to self-provision, as written into Proposition 64, is often abridged.

When counties focus on banning cultivation they may neglect to inform patients and residents of what they *can* do. Indeed, in some ban counties, there is very little one is allowed to do. This leads to a situation in which medical patients and California residents have to operate in the legal shadows and are subject to legal jeopardy, simply because their ability to provision their own plants has been so restricted by the county.

*Cultivation bans produce negative equity consequences.*

Broadly, bans have excluded more than half of California's population from participation in commercial cannabis cultivation (and often personal and medical cultivation), simply as a result of where they reside. This creates inequities as residents in some localities are barred from permit processes and legal industry participation that residents of permit localities in California

can enjoy and benefit from. These exclusions are not evenly felt. As mentioned, bans disproportionately harm people with low formal educational backgrounds, those with limited literacy or English language skills, and people who are low income or immigrants. These populations often have fewer resources to move to permit localities or navigate for permitting processes. These growers may face challenges to working with local officials, limited trust and communication barriers. Cultivation bans have led to racial and ethnic enmity and to conflictive local dynamics between neighbors and in public fora. This is especially true for populations excluded from or fearful of public, policymaking processes. This exclusion creates a civic silence, where enterprising anti-cannabis officials and residents can create and perpetuate bias-inducing ideas about cartels, violence, crime, environmental harm, etc., to garner support and resources for bans and their enforcement. The presence of large-scale “cartels” on private lands is not supported by any evidence we have seen, but it does serve to support efforts to re-criminalize cannabis actors and banish them from civic engagement.

The current patchwork of ever-shifting local regulations also creates opportunities for people to be exploited and to exploit others in the cannabis industry. While larger-scale or well-capitalized actors can move to permit areas, smaller-scale or resource-limited cultivators are often left with few options in jurisdictions that have banned cultivation. Legacy growers displaced from ban counties who do not have resources to invest in new land and permitting processes - or who fear they will be cut out of the industry as local political winds change - have become a pool of easily-exploited knowledge and labor for the large-scale actors rapidly controlling California’s regulated cannabis industry. Meanwhile, the lack of regulatory programs in ban counties means location-bound residents who persist in cultivation are often abandoned to cultivation sites with few guardrails for laborers, the environment, or surrounding communities. This is especially true when bans are more intensive and operations are driven further underground. Finally, county bans facilitate broader market capture in local municipalities. Within counties that have banned cultivation, cities that allow permitting - like Adelanto in San Bernardino, Napa City in Napa, Weed in Siskiyou, and Marysville in Yuba - are able to attract wealthy cultivation operations and associated economic benefits of industry activity. This dynamic may serve to exacerbate inequities in wealth concentration between urban and rural areas. Conversely, some localities may absorb any negative externalities of legal cannabis business operations, while other localities escape them.

### *Bans create/amplify divisiveness and foster other non-related political agendas*

On their face, cannabis bans reflect a jurisdiction’s disposition toward the plant. However, cannabis bans often conceal other political and economic agendas. As we have explored in previous work, these agendas can be centered around the cultural-political dominance of local elites and the correlative exclusion of marginal economic and social actors. The historic, century-plus stigmatization of cannabis cast cultivators in a negative light and this bias—against countercultural people, people of color, low-income people, patients, immigrants and “drug

criminals” – continues in the present day. This stigmatization is insinuated into the discourses around and public support of cannabis bans, however, anti-cannabis attitudes are not necessarily or always the cause of bans. Instead, we have seen the utilization of anti-cannabis attitudes to achieve varied agendas. Sometimes institutions stoke anti-cannabis sentiments as they search for new resources, as frequently appears to be the case with sheriff’s departments but can extend to water, code enforcement, and district attorney offices, among others. Politicians also use anti-cannabis sentiment to fortify their elected position. Other competing land users and industries have also utilized bans and stoked anti-cannabis attitudes to protect or divert attention from their own resource use, although in cases like Napa we see that industry can oppose cultivation as a competing industrial land use without being anti-cannabis *per se*.

Residential/neighborhood activists, who often have direct cause for complaint, are often enlisted in these broader political-institutional agendas and oriented toward anti-cannabis solutions, such as re-felonization of cultivation or intensified enforcement, often with little discussion of other alternatives or debate over the efficacy of enforcement-only approaches. Indeed, an outcome of this utilization of cannabis policy for other ends can be a kind of resentful politics, where “moral entrepreneurs” play upon the remote possibility of re-criminalizing cultivation in order to rally forces toward varied agendas.

Debates may be more civil or accepting of the motivations of cannabis cultivators, as in present-day Yuba and Napa, but debates may also veer toward accusatory and stigmatizing, as in Siskiyou and San Bernardino, where cultivators are blamed for various social ills, from the squandering of public resources to the cultural decline of small communities. In Siskiyou the racial-ethnic dynamics of these accusatory debates are apparent, as recent lawsuits allege, though the impact of San Bernardino’s recent eradication campaign on ethnic minorities is also suggested in their operation summaries.

Cultivators are consistently blamed for water problems and other environmental problems, even when cannabis only uses marginal amounts, absolutely and in relation to other local crops and industry. These concerns are very real, but various actors harness them for their own agendas. The Sustainable Groundwater Management Act, for instance, has proven powerful in justifying banning cannabis and enforcing against cannabis farmers (and those that provide water to them). Part of this is the “newcomer” water user problem: where cannabis is blamed for overall stresses on local water systems. This blame provides simple answers to complex questions like water curtailments in Siskiyou and can be used for other political purposes, as in Yuba, where water management groups stand to profit by inflating concerns over cannabis’ water use, banning the crop, and facilitating out-of-county water sales. Other environmental concerns are also used to justify bans and enforcement in order to protect existing industries, as in Napa with winegrapes (see county summaries above).

Proposition 64's allowance for "local control" (including bans) presumed that local jurisdictions can democratically represent the concerns and preferences of their populations better than a uniform state rule. However, our study has consistently found that bans are being used to represent one part of the county's population against others. At one end are counties like Napa, this has revealed a struggle between cannabis and wine growers, which, while important to the county's economic development, may not be viewed as a fundamental question of equity, access or representation, even if there may be questions about democracy and representation and the dominant role of the Farm Bureau in county politics. At the other end are places like Siskiyou, where "local control" has resulted in the dominant role of the Sheriff and affiliated economic and political allies in targeting ethnic populations.

When public policy is, or appears to be, guided by other agendas, distrust results and marginalized populations experience further alienation. Cannabis cultivators are already skeptical of government intentions after living under the drug war. In numerous interviews, we have been continuously met with skepticism of government intentions that are only bolstered when other agendas appear to use cannabis as a lever.

*Bans do not stop environmental harms, and they may worsen them.*

Bans do not stop cultivation, but do push cultivation onto more remote, ecologically sensitive sites and into indoor, energy-intensive and sometimes-hazardous environments. Additionally, bans encourage more intensive and less ecological growing practices, as cultivators try to grow more product more quickly before detection. This can include: a) the use of more pesticides and fertilizers, which can leach into the surrounding environment and pollute waterways and other ecological resources; b) the cultivation of more limited genetic stock with a preference for fast-maturing determinant varieties, with potential to limit the genetic diversity of cultivated strains; and c) a transition from outdoor cultivation to indoor and mixed-light (greenhouses and high tunnels) cultivation to reduce risks of visible plant detection.

Counties that pursue cultivation bans generally do not consult with environmental scientists or agencies. For example, the California Department of Fish and Wildlife (CDFW) consults with permit counties in assessing cultivation impacts due to regulated cultivation, yet CDFW is not generally consulted by ban counties on the adverse effects of bans. Many state environmental agencies, like CDFW, have a double (and arguably contradictory) mandate to both regulate and police cannabis cultivation activities. In ban counties, agencies like the CDFW and the State Water Resources Control Board (SWRCB) do not have the chance to regulate, educate, or provide technical assistance and support to cultivators around environmental protection. The only way these agencies interact with cannabis cultivators then is through enforcement, either directly enforcing (e.g. through CDFW's law enforcement officers) or indirectly by supporting law enforcement (e.g. through CDFW or SWRCB scientists assisting local law enforcement in documentation on raids to cite cultivators with Fish and Game Code violations).

Since voters approved Proposition 64, cultivating this crop itself has become a misdemeanor violation, if not an infraction. District Attorneys in ban counties have sometimes used water and wildlife codes to charge cultivators with felonies. One pathway to re-felonizing cannabis cultivation activities is through Fish and Game Code citations. Violations such as disposal of trash near a water body (code violation 5652) or water pollution (code violation 5650) can elevate a cultivator's charges to felony status. Sometimes, as in San Bernardino and Yuba, county code enforcement can work with landlords to remediate properties, though in other places, like Siskiyou, highly-expensive environmental fines are not reinforced by a systematic remediation process.



*Image 6: A cultivation site in Siskiyou County where Representative Doug LaMalfa (R-CA) bulldozed cannabis greenhouses in July, 2021. Photographed more than a year later, trash and debris had still not been removed. With public resources for law-enforcement but not remediation, many sites, once raided, become an even greater environmental disaster. (Photo by Petersen-Rockney, 2022.)*

Enforcement of bans can actually be the cause of large and frequently unmitigated environmental consequences. Raids on illicit cultivation sites often involve removing plants (often called “chopping”), the destruction of cultivation infrastructure, and even the spraying of harmful pesticides. Greenhouses, water tanks, plastic pots, generators, and input containers (containing fertilizers etc.) are often bulldozed by law enforcement to render them unusable and deter re-establishment of cultivation at that site (see image below of bulldozed cultivation site in Siskiyou County). Though some ban counties like allocate resources to these eradication efforts, they may not provide resources for clean-up and environmental remediation. County governments often place this responsibility, from a legal perspective, on the landowner. But, we found, many landowners abandon properties after a raid, often fearful of legal consequences and owing more money to the county in fines and fees than their property is worth. Raided sites then often sit, unoccupied and filled with trash and debris, sometimes for years (see below image). These sites pose environmental risk as plastics and other trash can ensnare wildlife, smother native plants, and enter waterways. Additionally, inputs such as fertilizers and pesticides once monitored by the people growing on that site are now left exposed, or in containers punctured by law enforcement to render them unusable in the future, posing high risks of soil and water contamination. After a raid has turned growing infrastructure into trash, after cannabis cultivators

leave a parcel, then, a question arises about the new, and perhaps more deleterious land uses that might occur on these parcels.

## **Recommendations based on preliminary findings**

### *Greater protections for medical and personal cultivation across the state*

- Ensure personal-use grows are accessible and regulations reasonable across jurisdictions by prohibiting localities from imposing onerous regulations (likely requiring a ballot initiative) or by providing standard boilerplate ordinance language for localities to adopt (voluntary). Such provisions would allow many, if not most, would-be cultivators to do so in reasonable ways that satisfy their needs and This recommendation could also be established via carve-outs for property size or zoning type to allow for statewide outdoor cultivation below the six plant limit. Core protections would include: protections for renters to grow for personal-use, protections for outdoor personal-use cultivation (particularly where other gardening is allowed), and reductions or eliminations of onerous requirements such as expensive infrastructure. In the immediate term, require localities with extensive requirements for personal-use cultivation (e.g. indoor only) to do a cost/feasibility allowance and make declarations that their policies do not impede Proposition 64 rights to self-provision cannabis. The state may also establish a commission to ensure that the ability of California residents to produce their own medicine and personal harvest is not being unduly burdened (in line with Proposition 64).
- Create a state-wide expedited on-ramp for smaller-scale medical collectives modeled on Proposition 215 law. Create a local ban carve-out for these smaller-scale medical growers, allowing localities to establish land use and zoning requirements, but not completely ban these operations.
- Clarify statewide allowances for personal and medical cultivation and educate enforcement entities, including local law and code enforcement and agencies such as CDFW and SWRCB, as well as medical professionals.

### *Create boilerplate smaller-scale cultivation regulations at the state-level*

- A smaller-scale cultivation program could be administered at the state level, reducing regulatory burdens on local jurisdictions by providing state regulatory capacity and agency staff to manage the program. Local jurisdictions would retain the ability to zone where these farms could be located. This program should set standards for:
  - maximum cultivation sizes for indoor, mixed light, and outdoor cultivation to reduce overproduction;
  - Facilitating market entry, like access to information on cooperative formation, farmstand, medical collective, or direct-to-consumer sales options, and correlated special allowances to bypass distribution and affiliated licenses
  - high environmental and labor standards that are economically feasible;

- and provide reduced regulatory burdens (and a cheaper and faster compliance and permitting process) by, for example, providing state-administered CEQA or CEQA exemptions for farms below designated scales.
- Such a program would:
  - encourage small-scale and environmentally and socially responsible cultivation;
  - allow smaller-scale, cottage, and legacy cultivation to persist;
  - reduce ineffective and inefficient total-ban systems that absorb local-government capacity, fuel distrust, and exacerbate cultivation and environmental harms;
  - and help increase equitable access to legal markets for residents across California.
- This program could be implemented in two ways:
  - A voluntary “opt-in” model wherein the state would provide standard ordinance language to cities and counties that provide the above protections. An “opt-in” smaller-scale cultivation program would likely reduce the number of banned jurisdictions as many have banned cannabis cultivation because they do not have the capacity to create a new regulatory system on their own. This would require drafting model ordinance language and educating officials. It would also, we anticipate, drastically reduce the number of “illegal” cultivators, as many cultivators would opt into such a program.
  - A state-level carve-out to local jurisdictions' ability to ban cultivation. This could be modeled after Proposition 64’s protections that provide - in theory - a carve-out wherein local jurisdictions cannot ban personal-use cultivation.

### *Reform enforcement approaches*

- At local and state levels, expand and institute compliance time before fines to allow cultivators to address violations. Educate (and encourage education to) cultivators through outreach by various agencies.
- Stop the practice of punitive code enforcement, consisting of immediate fines, no abatement times, high fine rates, proactive (rather than reactive) enforcement (as is the case with most other code enforcement activities), and little to no education element.
- Work with landlords to remediate after busts. Require localities that receive any kind of state enforcement assistance to identify matching resources for clean up and remediation.
- Require local jurisdictions to match cannabis cultivation enforcement funding with remediation funding to ensure that sites are not left as environmental hazards.
- Provide education to county governments on the issues of seating cannabis cultivation enforcement primarily in the Sheriff's Department, and the benefits of treating this as a land use issue with enforcement primarily in Planning/Code Enforcement.
- Discourage the use of “us vs. them” rhetoric in law enforcement agencies at state and local levels

### *Redirection to state agencies, particularly CDFW*

- Require CEQA for bans to evaluate (and compare) the expected environmental impacts of bans themselves as they push cultivation into other territories and growing methods and cause their own impacts via enforcement actions.
- Create CDFW educational/prevention campaigns.
- Only allow CDFW cooperation in counties where remediation plans and resources for after raids occur are in place.

#### *Establish DCC commission to review local-level ban enforcement*

- To ensure fair enforcement and reduce legal risks for local governments, the DCC should review - through mandatory reporting or regular audits - city and county cannabis-related enforcement reports for both discriminatory intent and outcome in ban counties.
- Specifically focus on: punitive fines; discriminatory policing (intentional and as outcome); rhetoric that “re-criminalizes” cultivators; and the effects of bans on labor relations, farmer vulnerability, rural poverty, and community health.

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