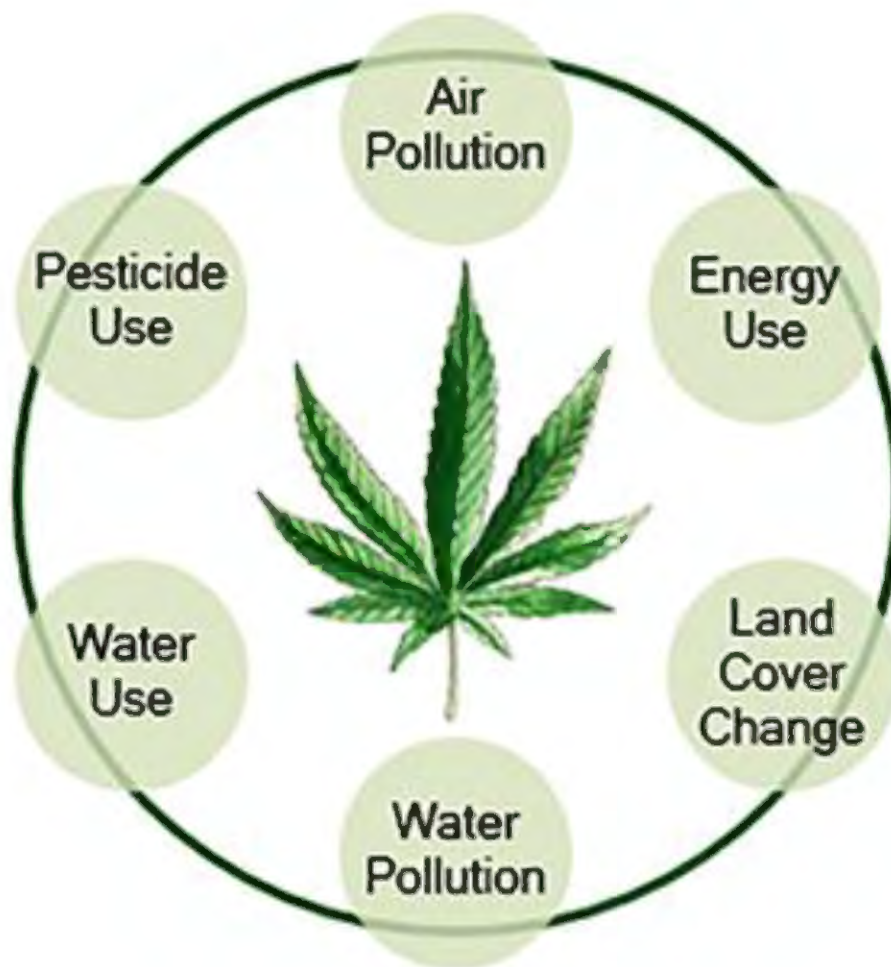


Calaveras County Civil Grand Jury

Calaveras Cannabis Dis-Jointed

June 22, 2023



SUMMARY

Several articles in the Calaveras Enterprise, reports in other California counties, and by other news stories and reports regarding the changing conditions of commercial cannabis cultivation prompted the Calaveras County Grand Jury (CCGJ) to conduct this investigation into the local cannabis industry. During our investigation, we found that several California counties are suffering from inefficient, impractical, and uncoordinated cannabis regulatory programs. Calaveras County is among those counties that have allowed cannabis cultivation but have not developed a regulatory program that addresses all environmental concerns in the County. Problems created by poor regulation include little to no reduction in the number of illegal cultivation sites, excessive tax burden on those cultivators attempting to grow legally, harm to the environment from widespread use of fertilizers, pesticides and other processing chemicals, pollution of the county's water system, and uncoordinated regulation from numerous county agencies.

GLOSSARY

The following acronyms were used in this report:

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| BOS | Calaveras County Board of Supervisors |
| CC | Code Compliance |
| CCGJ | Calaveras County Grand Jury |
| CCSO | Calaveras County Sheriff's Office |
| DA | District Attorney |
| DCC | Division of Cannabis Control |
| EH | Environmental Health |
| EMA | Environmental Management Agency |
| LE | Law Enforcement |
| MET | Marijuana Enforcement Team (Unit of Calaveras County Sheriff's Office) |

METHODOLOGY

The CCGJ reviewed reports regarding cannabis regulation from several other county grand juries in California to determine if problems with the legalization of cannabis was unique to Calaveras County. The CCGJ learned that the problems in other counties are widespread and similar to those of Calaveras. The CCGJ also interviewed over a dozen people related to Cannabis.

The following interviews were conducted:

1. Calaveras County Sheriff's Office staff members
2. Code Compliance staff
3. Current and former Board of Supervisors members
4. Division of Cannabis Control staff
5. Environmental Management Agency staff
6. Former Calaveras County Water District board member
7. Licensed cannabis cultivator
8. Private timber company manager
9. Registered professional forester

BACKGROUND

In 2016 the state of California passed Proposition 64 which legalized the casual or recreational use of cannabis. It was left to the counties to decide whether to allow cannabis cultivation or not, and to determine how to regulate growing, processing, distributing, and selling cannabis products.

Starting in 2017 the residents of Calaveras County passed various measures to regulate and tax cannabis operations within the County.

The CCGJ found the regulatory process to be inconsistent in its application and generally ineffective in protecting the environment. In 2019 the BOS created the new Division of Cannabis Control (DCC) to oversee the permitting process in coordination with California State requirements. That division is efficient in that respect but does not address any issues with potential environmental damage resulting from commercial cannabis cultivation.

DISCUSSION

Disjointed Protocols for Environmental Protection

The number of licensed cannabis sites in Calaveras County varies year to year, but typically is under 100. The exact number of illegal cultivation sites is unknown but is estimated to greatly exceed the number of licensed cultivation sites. The DCC does not regularly advise the EMA of potential violations or environmental issues. The CCSO and the EMA do not coordinate or communicate regarding possible remediation needs. The Marijuana Enforcement Team (MET) first gets a search warrant, then eradicates any illegal plants, and confiscates any illegal drugs and guns. During the raid of a cultivation site, they can issue citations, collect evidence, and determine what additional investigation is needed, if any. Evidence is collected, then turned over to the District Attorney's office (DA). MET determines what other departments to call i.e., Code Compliance (CC), or Environmental Health (EH). The EMA has not issued a citation to a legal cannabis grower in the last five years. Personnel in the department indicated that the EMA does not address or have specific knowledge of illegal cultivation sites in the County.

The CCGJ also examined how the burden of excessive state and local regulation forced some licensed growers to switch to illegal farms or abandon production altogether. A clear and strategic plan is needed to instill confidence in the legal process with some assurances that the policies will not change abruptly.

Within two years of the passage of the Urgency Ordinance in 2016, which allowed limited, safe cannabis cultivation in the county, Measure B was initiated, scheduling it for a public vote. This Measure would have banned legal cannabis cultivation. Just prior to the vote, a judge struck down the measure for containing misleading language. The BOS then passed a ban in January 2018 on all commercial cultivation making the previously licensed grow sites illegal. An ABC10 news story in September of 2018 included statements from Calaveras County Sheriff Rick DiBasilio stating that the potential cannabis environmental infractions were not with the licensed growers who had registered, but with illegal growers. The article quotes the Sheriff, "We've seen a big decline in illegal cultivation sites, but they're still there," DiBasilio says. "I'd be blowing smoke if I said we were going to get every one of 'em. It's not possible. We couldn't get them all back in the 70's and 80's. You can't realistically do it. You don't have the personnel."

Enforcement of code violations or illegal grow sites has been generally prompted by resident complaints. Penalties imposed on illegal cultivation sites are relatively light and do little to deter the establishment of illegal cultivation. Property owners can delay remediation through legal tactics. Properties that are “red tagged” by CC as uninhabitable because of environmental hazards or cited for failure to pay fines can take up to five years to have liens imposed. During this time, the environmental damage remains unremediated.

Inadequate Environmental Cannabis Briefings to the BOS

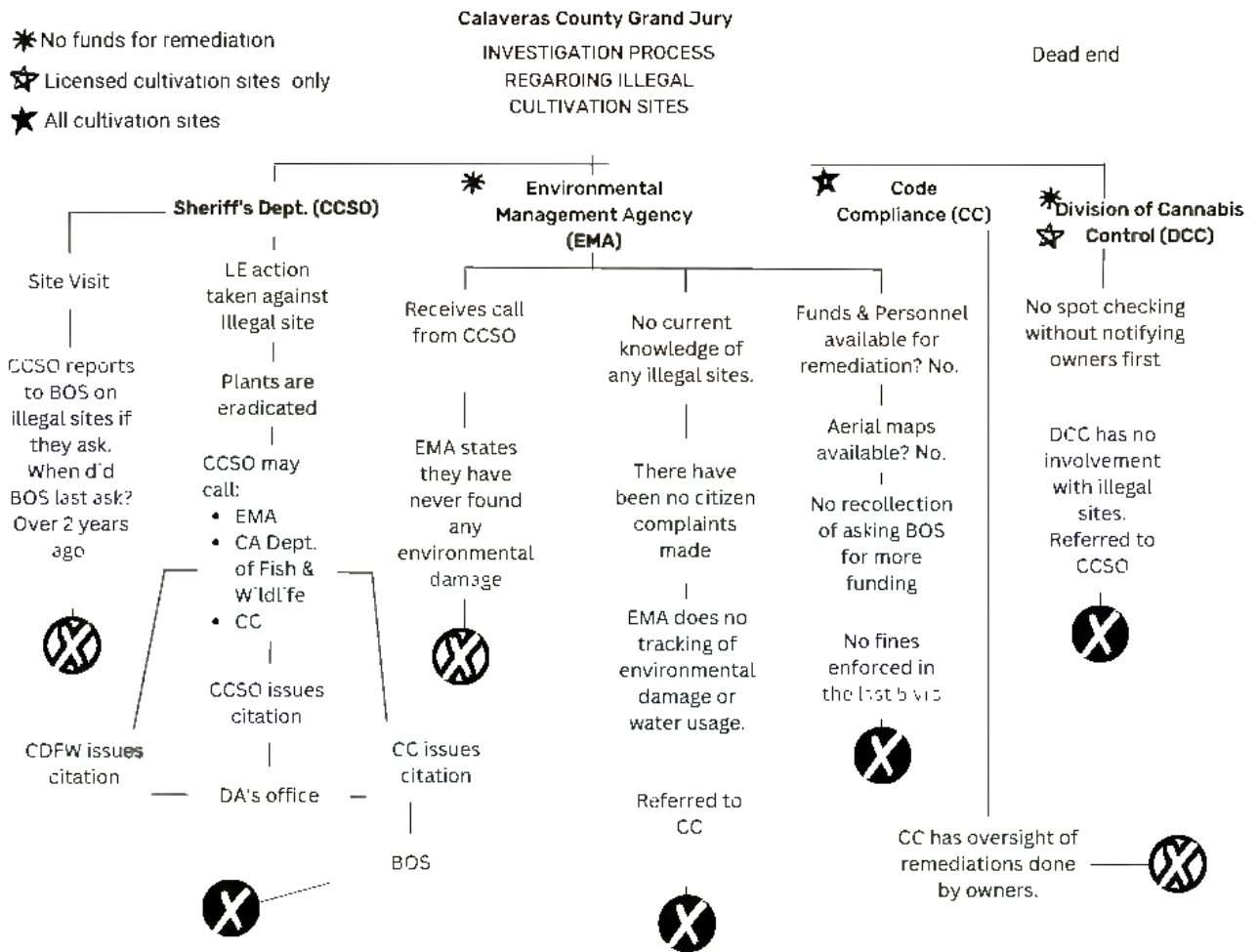
The BOS no longer receives regular briefings from either DCC, EMA, or the Sheriff’s Office about the environmental ramifications of cannabis cultivation in the county. This includes briefings about the current activity of the CCSO regarding warrants executed against illegal cultivation sites. The last briefing was on July 27, 2021, at a BOS regular meeting. It was a PowerPoint presentation detailing statistics about the numbers of indoor and outdoor illegal operations with warrants executed and contraband eradicated. At that same BOS meeting, the BOS were briefed about the permitting process in the more general context of requesting an increase in the permit fees. There was no mention of any environmental testing at those sites, nor any reports of negative environmental impacts from those illegal operations. EH, a division within the EMA, has not given the BOS any presentations about any environmental effects of commercial cannabis cultivation in the County. The environmental health of the County cannot be adequately assured if necessary data is not provided to the main governing body, the BOS.

Unenforced Remediation

Remediation is the process of restoring the property to be safe and usable. The first step involves Law Enforcement (LE) removing all plants and destroying them. Removal of hazardous materials or other environmental concerns is the responsibility of the EMA and/or CC. County Codes ultimately hold the current property owner responsible to pay for and achieve remediation. When property owners cannot be located, the County must absorb clean-up costs. The CCGJ could not confirm that these remediations were taking place. The CCGJ did not identify any funds or staff available for remediation of contaminated illegal cannabis cultivation sites.

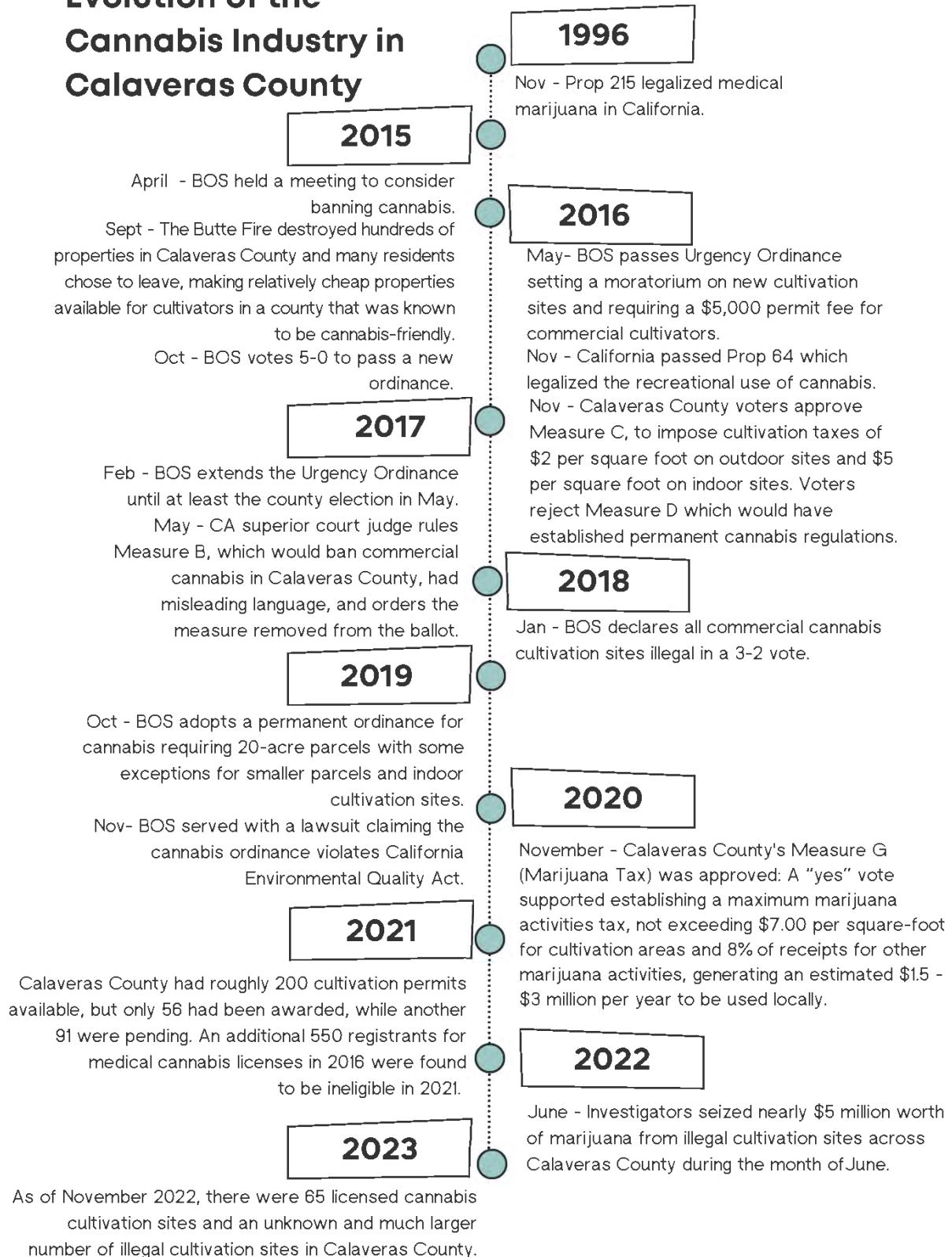
When the BOS was crafting the initial Urgency Ordinance, applicants were already growing cannabis crops, as part of a requirement to apply. Before they could be officially registered, they had to prove they were already growing. This created a situation wherein those who ultimately were denied registration but who had invested money and time to grow cannabis commercially, continued to cultivate their crops and sell via the black market. As a result, these illegal cultivation sites were not monitored, and they were not subject to the same regulations as licensed sites. The production and improper disposal of hazardous wastes, uncontrolled water usage, and soil contamination went unchecked.

After an illegal cultivation site has had a warrant executed by the CCSO, the remediation process can begin. The CCSO can contact the EMA and CC for the remediation element of the process, but limited funding and limited staff at those departments make widespread remediation difficult and costly.



The Timeline below shows efforts by Calaveras County to first regulate and control the cannabis industry, and then make modifications to those regulations in response to voter wishes. Confusion over the legal status of commercial cannabis, plus changing market conditions, drove some growers out of the legal market to leave the industry or County altogether or to resort to growing illegally.

Evolution of the Cannabis Industry in Calaveras County



Water is the main vector for environmental contamination and waste, and yet water testing is not routinely performed after a warrant execution. There is also no legal requirement for water meters on wells so water usage for cannabis grow sites, whether licensed or illegal, cannot be accurately determined. Going back as far as 2014 in Siskiyou County, illegal cultivators were estimated to use 1.5 to 2 million gallons of unpaid water per day. The 2021-2022 Siskiyou County Grand Jury had determined that cannabis cultivation contributed to the reduction in the local groundwater. This may also be happening here in Calaveras County, and without any form of metering, we cannot know.

The EMA does not have clear policies or procedures related to its responsibilities once a warrant is executed. In addition, law enforcement is stymied because “...illegal marijuana cultivation is only a misdemeanor in California. Deputies can sometimes build a case for a felony based on environmental laws when unlicensed growers use chemicals and water in illegal ways.” (ABC10News, Sept. 6, 2018). Because testing for contaminants is not a part of the EMA’s standard operating procedures, building a case for a felony charge is hampered. A misdemeanor is the default citation. A felony conviction carries harsher penalties and is a much greater deterrent.

Lack of Environmental Data

The Division of Cannabis Control and Code Compliance do not test for soil or water contamination at either licensed or illegal cultivation sites. In the current DCC Policies and Procedures manual, which is a project being finalized, there is no mention of any process related to testing for contaminants or procedures related to remediation.

The only monitoring of well water related to cannabis is for legal cultivation sites, which are required to have an annual well-production test performed by a qualified professional. These simple well tests are performed by measuring the amount of water required to run the well dry. The tester then returns 24 hours later to measure the well output again. The county code requires 90% of the water quantity be produced during the second test. The CCGJ reviewed well tests for the past six years and found all wells were in compliance. An EMA staff member also corroborated this fact. These simple tests for well water quantity at legal cultivation sites say nothing about the water quality at these sites. Since no testing of water quality is being performed at both licensed and illegal cultivation sites, the environmental value of only conducting quantity testing is limited. Both quality and quantity testing for water would be beneficial for decision-makers. A lack of data on environmental conditions caused by licensed and illegal cultivation sites prevents decision-makers from making informed decisions. When there is no testing, there is no relevant data regarding contaminants.

FINDINGS, RECOMMENDATIONS, AND REQUEST FOR RESPONSES

Pursuant to Penal Code §933 and §933.05, the Grand Jury requests responses within 60 days from elected county official(s), and within 90 days from governing bodies. In order to be included and published in the next Grand Jury report, invited responses must be received within 90 days.

After conducting interviews and reviewing reference documents and websites the Grand Jury findings and recommendations are as follows:

F1. The Environmental Management Agency and Code Compliance do not test for contaminants in soil and water at cannabis cultivation sites, so any environmental impact remains unseen.

R1. The Calaveras County Grand Jury recommends that the Environmental Management Agency, Code Compliance, and the Sheriff's Office work together to coordinate efforts in the collection of soil and water samples at cultivation sites that have been identified by the Marijuana Enforcement Team, to be tested for contaminants by January 1, 2024.

Required Responses

- Calaveras County Board of Supervisors
- Calaveras County Sheriff's Office

Invited Responses

- Code Compliance
- Environmental Management Agency

F2. The Calaveras County Board of Supervisors does not request or hear, in a timely and ongoing way, information specific to cannabis cultivation, thus they and the public are not adequately informed of the environmental consequences facing the county.

R2. The Calaveras County Grand Jury recommends that the Calaveras County Board of Supervisors get a periodic briefing from the Division of Cannabis Control, Environmental Management Agency, and Sheriff's Office about any activity related to environmental impacts of the cannabis industry in the County.

Required Responses

- Calaveras County Board of Supervisors
- Calaveras County Sheriff's Office

Invited Responses

- Code Compliance
- Environmental Management Agency
- Division of Cannabis Control

F3. The Calaveras County Cannabis Code allowed for environmental remediation on cultivation sites to alleviate concerns about environmental damage, but available records do not support that this code has been actively enforced, leaving any environmental damage unchecked.

- R3.** The Calaveras County Grand Jury recommends that the Calaveras County Board of Supervisors instruct the Division of Cannabis Control and Code Compliance to actively enforce Calaveras County Codes §17.95 and §8.06 related to remediation of cannabis cultivation sites by January 1, 2024.

Required Responses

- Calaveras County Board of Supervisors

Invited Responses

- Code Compliance
- Division of Cannabis Control
- Environmental Management Agency

DISCLAIMER

Reports issued by the grand jury do not identify the individuals who have been interviewed. Penal Code section 929 requires that reports of the grand jury not contain the name of any person or facts leading to the identity of any person who provides information to the grand jury.

REFERENCE SOURCES

The grand jury reviewed the following Calaveras County Codes:

- Cannabis codes:
https://library.municode.com/ca/calaveras_county/codes/code_of_ordinances?nodeId=C D ORD TIT17ZO_ART2AD_CH17.95RECONMMCACUCOEXCAREPUCH17.91;
- Remediation codes:
https://library.municode.com/ca/calaveras_county/codes/code_of_ordinances?nodeId=C D ORD TIT8HESA_CH8.06PRMAADENPR;

We also reviewed:

- ABC10 News, September 6, 2018, <https://www.abc10.com/article/news/local/aftermath-of-a-ban-calaveras-countys-pot-struggle/103-591662812>
- Big Cannabis is funding UCLA, Harvard, MIT studies on weed - Los Angeles Times
<https://www.latimes.com/california/story/2022-12-15/big-cannabis-weed-funding-ucla-harvard-mit-research-studies>
- Calaveras County Board of Supervisor meeting minutes, agendas, and agenda packets from 2017-2023
- Calaveras County FY 2020-2021 budget
- Calaveras County FY 2021-2022 budget

- Calaveras County FY 2022-2023 budget
- Calaveras County Sheriff's Office Marijuana Team Advisory Message: MEDIA RELEASE Contact: Lieutenant Greg Stark Release, August 24, 2022, <https://sheriff.calaverasgov.us/Press-Releases-Logs>
- Calaveras Enterprise, April 12, 2016: Board presented with urgency ordinance to limit cannabis cultivation
- Calaveras Enterprise, April 30, 2021: Calaveras County settles lawsuit over cannabis ordinance
- Calaveras Enterprise, March 10, 2022: Calaveras County BOS: Supes adopt temporary cannabis cultivation tax reduction 4-1
- CBS News report, <https://www.cbsnews.com/sacramento/news/cannabis-control-ride-pot-bust-grow-house-discovery-bay/?intcid=CNM-00-10abd1h>
- Los Angeles Times article, Sarah Parvini, February 28, 2018 <https://www.latimes.com/local/california/la-me-calaveras-county-marijuana-20180228-htmllstory.html>
- Monterey County, 2021-2022 Grand Jury Report, *Monterey County's Cannabis Industry, Up In Smoke*, May 2022 <https://www.co.monterey.ca.us/home/showpublisheddocument/102928/637593723761270000>
- Once Pot-Friendly, Calaveras County Bans Marijuana | KQED <https://www.kqed.org/news/11642488/once-pot-friendly-calvaras-count...> January 17, 2018
- Orange County, 2020-2021 Grand Jury Report, *"Pot Luck" Santa Ana's Monopoly on Licensed Retail Adult-Use Cannabis in Orange County* https://drive.google.com/file/d/1t-EEklpbjbeth9jIMuV93bo6Je3UkxIzU/view?usp=share_link
- *Rand Report: Legalizing Marijuana in California Would Sharply Lower the Price of the Drug*, July 7, 2010, <https://www.rand.org/news/press/2010/07/07.html>
- Siskiyou County, 2021-2022 Grand Jury Report, *Siskiyou County Commercial Impact of Cannabis Grows*, June 2022 https://www.co.siskiyou.ca.us/sites/default/files/fileattachments/civil_grand_jury/page/3421/gj_20220607_report_impactcommericalcannabisgrowssiskiyoucounty.pdf