

RICK L. FRIMMER, JD CPA

**PRESENTATION TO THE CALAVERAS COUNTY BOARD OF SUPERVISORS
COUNTY STAFF AND THE COMMUNITY
OCTOBER 17, 2017**

In the past year, Calaveras County has been inundated with political and social intrigue surrounding the cannabis question: to be or not to be. It has consumed the public as well as the Board of Supervisors. The County Planning Department released a draft “Ban Ordinance” on April 20, 2017 that, if adopted by the BOS, would ban all commercial cannabis cultivation in the County. In May 2017, the BOS released a Draft Environmental Impact Report (DEIR). It was hotly debated and, in my view, completely deficient. Recently, the BOS released a Final Environmental Impact Report (FEIR) dated September 2017. The Planning Commission had a meeting to discuss the FEIR on September 28 and the BOS is having a meeting on October 17. The draft “Ban Ordinance” and the FEIR give all the usual reasons for a cultivation ban, frankly all of which can be dealt with responsibly (and the FEIR says so, especially given the addition of new “Alternative 4”).

I write this as a concerned property owner. As an attorney and CPA with large national firms in my 40-year career, I specialized in municipal law and bankruptcy. I have counseled prominent clients in municipal bankruptcies, including the largest municipal bankruptcy in U.S. history, the City of Detroit. Folks, that’s where Calaveras is likely headed if there is a “ban.” Make no mistake about it. Detroit had the highest per capita income in the United States in 1959. Look what happened to it when its major industry disappeared. Bankruptcy.

In 1776, Thomas Paine wrote a time-honored piece called “Common Sense.” It was an important read for those puzzled over the then state of government and the opportunities and risks of independence. Some 241 years later, it has important lessons for Calaveras County.

Folks, it is time for Common Sense:

- **Calaveras County:**
Calaveras County has, at last count, some 45,600 citizens, almost equally divided among men and women. Of those, 13% live below the poverty line, 50% are over the age of 50 or under 20, and there are almost 19,000 households with a member over 60. Only 16,300 of those citizens, about 34%, have jobs. As I will discuss later, continued concentration on an aged population will accelerate the economic decline of the County.
- **Calaveras Voters:**
Of the total number of citizens, there are 36,098 eligible voters, of which 29,555, or 82%, have registered to vote.

- **New State Laws:**

In 1996, California adopted Proposition 215, permitting the legal growth and use of medical marijuana. In 2015, Governor Brown signed the Medical Marijuana Regulatory and Safety Act (MMRSA), with a new scheme for regulating the cultivation and sale of medical marijuana. In 2016, an overwhelming majority of California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA), legalizing and regulating recreational marijuana. In 2017, California passed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which supersedes MMRSA and AUSA.

- **The County Has Accepted These New State Laws:**

In May 2016, after 20 years of permitting cannabis cultivation under Prop 215, and reacting to some provisions in MMRSA, the Calaveras Board of Supervisors adopted an “Urgency Ordinance” to regulate marijuana cultivation. In reliance on this, some 750 applications were filed by cultivators (reportedly only 350 of which are actually real businesses which would receive permits) and permit fees of over \$5 million were paid to the County. Last November there were two Measures on the ballot – Measure D, to adopt a permanent ordinance and Measure C to tax cannabis cultivation.

- **There Has Never Been a Thoughtful Ordinance:**

Nobody, not even the “pro-cannabis” folks, liked the permanent ordinance. It was a one-size-fits-all, overly broad system. Sheriff Rick DiBasilio and Supervisor Dennis Mills both publicly supported Measure C, and not Measure D. Understandably, Measure D was voted down. The tax measure, Measure C, passed.

- **Even Poorly-Reviewed, Hastily Created Ordinances Were Close Votes:**

The Measure D vote, with some of the “pro” folks voting against and the Sheriff and at least one Supervisor against, went down by a narrow margin of 54% to 46%, with 9,479 voting no and 8,023 voting yes. An anemic total of 17,502 votes were cast, representing less than 60% of the registered voters and less than 30% of the County population. Indeed, the “no” votes represented less than 20% of the County population and barely 32% of the registered voters. Interestingly, the same 17,300 odd voters passed Measure C, the cannabis tax, by a whopping margin of 67% to 33% (11,671 for and 5,626 against). What did we learn from this?

The takeaway from this can only be that the voters, the Sheriff and Supervisor Mills all want the cannabis revenue, and thus the cannabis business. They just did not like the form of permanent ordinance.

- **Bansters Don’t Speak For All Of Calaveras:**

Notwithstanding the obvious, the “Committee to Ban Commercial Cultivation” (CBCC) believed there is a public mandate for a “ban.” In 2017 they went out and collected a scant 5,000 odd signatures to get a “ban” proposition, Measure B, on the May 2017

ballot. Yet, 5,000 signatures are not close to a public mandate and are barely half of the 9,500 that showed up against Measure D in 2016.

- **The Ban Will Cost Money:**

The Ban does not only stop a massive flow of revenue, it actually *costs* money. County Auditor Rebecca Callen agrees with this. Measure B resulted in costly litigation. First, Bill Bowerman sued the County and the Court ruled that many of the arguments given for Measure B on the ballot were “false and misleading.” Then, Calaveras Naturals successfully sued the County again and got Measure B thrown off the May ballot entirely for incorrect language in the form of the ballot.

- **The Controversy Itself Is Expensive:**

The Supervisors have been understandably preoccupied with this issue. In barely a year, we have had an Urgency Ordinance, a Supervisor recalled, two new Supervisors, two November 2016 Measures, a 2017 “ban” Measure, two lawsuit battles and a draft “Ban Ordinance,” a hotly-debated Draft Environmental Impact Report and now an FEIR, all causing endless controversy and uncertainty. The human and monetary cost has been significant.

- **The Environment Is Not The Issue:**

I don't have enough room in this letter to fully comment on the FEIR. I have read hundreds of reports such as these in my career. I will let others deliver a more fulsome and comprehensive critique of the FEIR. I can sum it up with an analogy: If the BOS presided over a coal mining county in Western Pennsylvania and some voters demanded that the mines be shut, the environmental report would state that eliminating coal mining would improve the air, noise, traffic, etc. Would the BOS shut down the mines? Of course not. A simple economic study would tell them that until they found something to replace the mining economy, the result of shutting the mines would be that there would be no people left in the county to breathe the newly cleaner air. Need I repeat what happened in Detroit here again? What if the supervisors of Cook County, Nevada banned gambling in Las Vegas? What would be left of it?

Bankruptcy. That's what we will face in Calaveras with a ban. As I will point out later, cannabis is a major part of the Calaveras economy, a \$340 million colossus, far eclipsing every other business sector in the County. It would be sheer dereliction of duty for the BOS to forego \$340 million in economic benefits without something to replace it with.

Moreover, it has been proven time and time again that regulating conduct that will occur in any event is far better than outlawing that conduct. The best way to minimize criminal activity is to legalize the conduct and force compliance. The criminals are then forced to look for other vices. So it has been proven with alcohol and gambling.

Common Sense.

CANNABIS ECONOMICS AND NATIONAL TRENDS

According to Forbes Magazine, Marijuana was a \$6 billion industry in the United States in 2016 and is expected to grow to \$20 billion by 2021, a 25% compound annual rate. Not even the “dot-com” growth in the early 2000’s topped that. California cannabis sales were \$2.8 billion in 2015 and expected to grow to \$6.5 billion in 2021. California expects to collect over \$1 billion in annual taxes from marijuana cultivation and sales. Governor Brown and the State are working on the final regulations under MAUCRSA which will go into effect on January 1, 2018, less than three months from now. MAUCRSA is a comprehensive regulatory statute which is a terrific blueprint for Calaveras.

Nationally, 30 of the 50 states have now approved either recreational or medical marijuana or both. Recently, a CBS News poll reported that over 60% of the American population favors legalizing cannabis and over 70% want the Federal government to leave regulation to the states. There are 13 bills pending in Congress respecting cannabis. No respected medical authority now considers cannabis to be a segue to hard drugs. I predict that the Federal government will de-schedule marijuana by the end of 2018. Folks, the cannabis train has left the station and is picking up speed.

Common Sense.

CALAVERAS CANNABIS ECONOMICS PART 1 – THE VALUE OF THE INDUSTRY

Calaveras County reportedly collected almost \$5 million from the permit fees generated by the Urgency Ordinance in 2016. It is expected that \$10-15 million will be collected in 2017 from the Measure C cannabis tax alone for 2016 grows, and a similar amount for 2017, assuming a full 2017 growing season (which now is in doubt). As Rebecca Callen, our County Auditor stated recently in a public interview, these amounts are already baked into the County budget and their absence will require government employee layoffs, disputes with unions and have a ripple effect on the overall County economy. The County’s own auditor says this. Why is it being ignored?

According to a February 2017 study done by the University of the Pacific, cannabis cultivation in 2016 in Calaveras had a direct economic output of \$251 million. There were 2,600 cannabis jobs yielding direct labor income of \$148 million. With indirect effects, the UP study estimated that the total output effect of cannabis in 2016 was \$339 million, affecting 3,404 jobs and producing labor income of \$172 million. The cannabis business affects everything from hospitality to groceries to soil and fertilizer sales to hardware and supplies to accounting and professional services, and more.

By contrast, the next highest commodity sales in the County come from livestock and poultry (\$15 million, or 6% of cannabis). The fabled hospitality industry produces \$167 million of revenue, a paltry 67% of cannabis. The jumping frog is great, but clearly second place finisher.

Since cannabis accounts for over 50% of the County’s GDP, Calavaeras is a “factory town,” just like it was years ago with gold, and just like Detroit was with automobiles. Look at what happened before in Calaveras and in Detroit and other “factory towns?” Are we not to learn the lessons of history?

To put this into further perspective, the total number of jobs in the County is estimated at 16,300. Thus, 2,600 direct cannabis jobs represent over 15% of the jobs in the County and cannabis indirectly affects over 20% of the County jobs. Without these jobs and the \$148 million in direct labor income, where will these workers go? They will move out of the County with their families, further decreasing a County population and a school-age population which has decreased steadily since 2009.

Despite the initial rush to buy Butte-fire damaged land at lower prices, property values are not increasing due to cannabis speculation. To the contrary, the County's collections from taxes have been steady the last three years at between \$16-17 million. Property values and sales (and thus tax collections) might have been higher but investors are sitting on the sidelines with so much uncertainty surrounding the cannabis industry in the County. On the flip side, many County residents have told me that without cannabis, they will have trouble selling their property if they wish to in the future.

Common Sense.

CALAVERAS CANNABIS ECONOMICS PART 2 – THE COST OF A BAN

On the fiscal side, the 2016-17 fiscal year County budget shows estimated General Fund revenue of \$60 million (which includes \$10 million attributable to the Butte Fire but including little or nothing for cannabis related fees and taxes). Instead of increasing revenue by a minimum of \$10-15 million, a "ban" could cost the County 5% of current General Fund revenue, or \$2.5 million, almost immediately. This is a potential \$17.5 million swing (35%) on a base budget of \$50 million. Will the citizens of Calaveras be happy with service cuts, school program cuts, etc.? Would you rather have no football, or resumed and increased art and music classes in the schools, road repairs, new parks, cultural opportunities, increased tourism, etc.?

The BOS was required to commission the FEIR to deal with environmental impact. Why have they not voluntarily and prudently commissioned an economic study? Answer: the results would be staggering as the University of the Pacific study has already demonstrated. The San Francisco Chronicle reported recently that one of the County's Supervisors "debunks the study, claiming it's based on false information." Yet, the BOS refuses to have the County commission its own study for the citizens to see. Without an economic study and with an impulsive ban, bankruptcy for the County and many of its merchants will be just around the corner.

Is the UP Study wrong? A few quick anecdotes: First, prominent merchants are reporting that they likely will have to close locations if there is a ban, terminating many workers. Next, a woman who collects for charity reported to me that the charitable donations for Calaveras' needy are 3-5 times higher during growing season than in the off months. Towns in the rural areas will go dark. There are hundreds of other dominoes that will fall. Without a County-authorized study, how will we know?

Further, under a ban, law enforcement will surely and sorely suffer. Sheriff DiBasilio requested \$586,000 in new direct appropriations for personnel and equipment in the 2016-17 County Budget, and an additional \$222,000 from the General Fund, all just to deal with cannabis. The Sheriff's General Fund budgeted expenditures have gone from \$5.2 million in 2014-15 to \$7.2 million in 2016-17. The Sheriff

needs this money whether or not a ban occurs, maybe more to combat the hundreds of illegal grows that will exist regardless of a ban. As it is, the deputies are short-staffed and working overtime. On the other hand, the Sheriff's office would likely benefit from \$3-5 million in extra appropriations with cannabis regulation. With these funds, illegal grows will be shut down and the County will not only be better off fiscally, but safer and cleaner. Indeed, every department in County government would receive extra funds, assuring that there would be enough staff and resources to effectively regulate and achieve the environmental and other objectives. The FEIR even admits as much. The County Auditor agrees.

The County will not be served by being held hostage by a small group of retirees who live in discrete areas far away from the main areas of cannabis activities and whose only concern is whether the golf course is mowed properly. Why do these people have the right to dictate how others can use their land? Is it fair for a few people in District 1 to bankrupt people in the other districts?

One Supervisor told me that he intends to convert the whole County into a retirement oasis since there would be County growth in attracting retirees. Well, you all know that Puerto Rico is bankrupt and in Federal court now. Why? The aged population of Puerto Rico cannot support the economy. Young workers are needed to support the economy. Thus business is required to provide jobs for those younger workers. Yet, without businesses, the younger workers have moved to the mainland. What's the takeaway – building an economy around retirees is fatally flawed. Calaveras will end up like Puerto Rico - Bankrupt. There is no problem attracting retirees. We absolutely should. You simply can't provide the range of services they need without a robust economy behind them. They will be very unhappy to move here and then find the grocery stores and restaurants closing around them.

I asked two of our Supervisors to commission an economic study. I was told flat out that it won't be done. This despite the fact that there is reportedly over \$3 million of the 2016 permit fees unspent and sitting in the County's bank account. So, without any real data, the BOS are going to toss out a \$340 million annuity? Is the public really going to stand for this?

Again, Rebecca Callen, County Auditor, cautions that, since the County elected to regulate cannabis in 2016 and collected tax money and permit fees, "we are pregnant" and undoing it will be hard and costly. Ms. Callen was only speaking about the public government sector and its employees. She didn't even attempt to calculate the "ripple effect" on the entire County economy. Folks, we left pregnant a long time ago; the cannabis baby in this County is already 20 years old and a needed part of our family.

Predicting the near future – unless some form of cannabis regulation adopted, an impulsive ban will surely lead to more acrimonious lawsuits, expenditure of County funds, strained law enforcement and potential recalls of Supervisors. Also, there would be nothing preventing a "pro" movement to put yet another regulatory ordinance on the ballot in 2018 and reverse a ban. In short, the costly fights and uncertainty will continue, not stop. The short-term damage will be substantial. The cost will be far more than an economic study. The immediate-term effect will be economic slide and eventual predictable bankruptcy for the County and many businesses. There will be more population declines,

resulting in the termination of teachers, government workers, grocery employees and on and on. To play on Rebecca Callen's metaphor – we will throw the baby out with the bathwater.

What happened to Common Sense?

REGULATION IS COMMON SENSE

The best and most Common Sense approach is for the BOS to adopt a regulatory scheme, adopting some of the principles of Alternative 3 or 4 of the FEIR.

The General Plan for zoning in the County is a decade old. This is a perfect opportunity to revisit it and adjust zones to insure that cultivation will be discrete and non-invasive. There is only one incorporated area in the County, Angels Camp, which has banned cannabis cultivation. Buffers can be provided around other populated areas such as Valley Springs, San Andreas and Copperopolis. The rest of the County is largely rural with large acreages. The County population is barely 44 people per square mile. There is plenty of open area. How many Copperopolis folks visited Sheep Ranch or Railroad Flat recently? Why does it make sense to ban outdoor or indoor grows miles and miles away from populated areas? Why shouldn't cannabis cultivation be permitted in District 2, for example? Those with 20+ acre properties should be able to cultivate an acre or two. Simply put, there is much room for compromise.

An analysis of the FEIR demonstrates that the only real environmental differences between a ban and regulation are aesthetics and water usage. As stated earlier, the central issues can be resolved with land use regulation. All of the alleged problems the County staff is having with compliance and enforcement can be solved easily with additional tax revenue and, thus, additional staffing. It is what is happening in Colorado, Oregon and the 28 other states that are getting on board, as well as the overwhelming majority of Cities and Counties in California. Why is it that they can achieve safety, environmental soundness and fiscal benefits, and Calaveras cannot? The plain answer is that they put some effort into it.

Put another way, California has the highest environmental quality enforcement rules and requirements in the country. Would over 70% of the population of California have voted to legalize cannabis, and the State acted swiftly to implement its rules, if our legislators and citizens thought that cannabis would damage the environment?

A SENSIBLE REGULATORY ALTERNATIVE TO A BAN

A group within the County called the Calaveras Cannabis Regulatory Coalition (CCRC) has drafted a sensible proposed regulatory ordinance that saves the County economy and, with some modifications, tracks Alternative 4 of the FEIR. I would change a few things, but it is a responsible blueprint that balances the environment and the economy. The CCRC draft regulatory ordinance, can be found at www.rickfrimmer.com/publications. Read it. Demand that your Supervisors read it before they take any action.

Common Sense.

Don't wait any longer. Call your Supervisors immediately. Demand that they prove that economic collapse and bankruptcy of the County and many of its residents will not be the result of a ban. Let them know how important and devastating an incorrect decision could be.

Any questions or respectful comments about this presentation or the CCRC draft regulatory ordinance can be sent to me at rickfrimmer@gmail.com. A downloadable copy of this presentation can be found at www.rickfrimmer.com/publications.

Respectfully submitted,

Rick L. Frimmer, JD CPA