

How a Cannabis Ban Turned One California County Into 'Ground Zero for Chaos'

Leafly
Peter Hecht
January 22, 2018

On Jan. 10, supervisors in this historic county—where Gold Rush mining camps flourished in 1850—voted to kill off the Green Rush that exploded here in 2016. By a 3–2 tally, the Calaveras County Board of Supervisors declared all commercial cannabis farms illegal. The county planning department estimated that as many as 1,600 commercial cannabis growers were operating in the region in mid-2017. Many of them were licensed by the county. Now, the move to ban cannabis businesses means every one of those growers must cease operations by May 1. Millions of dollars in tax money will vanish from the economically beleaguered county of 45,000 residents.

In the vote's aftermath, protests have stirred amid fears over devastating cuts to the county workforce. Lawsuits appear certain.

"It is just ground zero for chaos," says Paul Smith, vice president of governmental affairs for the Rural County Representatives of California, an organization focusing on the Golden State's sparsely populated inland and northern coastal counties.

Calaveras has long been known for its dysfunctional politics. Even before its explosion of cannabis farming, there were frictions between a local "hippie culture and strong pockets of old ranchers and their constituency groups," Smith said. Against that backdrop, the county's move to regulate commercial cannabis production in 2016 was sure to strike a raw nerve.

"You have to go through wars in these types of communities before you reach consensus," Smith said. "Calaveras is kind of on steroids on this."

In the late summer of 2015, Calaveras, nestled in the Sierra Nevada foothills 70 miles east of Sacramento, suffered a devastating blaze—the Butte Fire. The following spring, unauthorized marijuana farms bloomed beneath scorched oaks and pines as cannabis speculators snatched up cheap properties devalued by the fire that had destroyed 860 homes. Urged on by local medical marijuana advocates, supervisors in the conservative county passed an ordinance to regulate the local cannabis industry. It promised strict rules for licensees, enforcement resources to drive out unwanted criminal growers, and some decidedly liberal cultivation rules: The county allowed commercial cannabis farming on parcels as small as two acres and gardens of up to a half-acre on parcels of five acres or larger.

In June 2016, Calaveras collected \$3.7 million in \$5,000-per-farm registration fees from more than 700 cannabis cultivators. Five months later, voters heartily approved an

initiative, Measure C, to impose cultivation taxes of \$2 per square foot on outdoor farms and \$5 per square foot on indoor gardens.

Yet the election also revealed a significant portion of the local citizenry that *hated* cannabis liberalization. Another initiative, Measure D, which would've further sweetened cultivation rules and permitted cannabis concentrate manufacturing, was defeated. Although California's Nov. 2016 adult-use measure, Proposition 64, passed easily statewide, 53% of Calaveras County voters cast ballots against it.

Two supervisors who backed the cultivation ordinance were due to retire after the Nov. 2016 election. Two others were drummed out by voters. In their place, voters chose a new board majority openly hostile to cannabis farms.

"This county has repeatedly spoken out against this," said Dennis Mills, who won a seat on the board after championing a cultivation ban, Measure B, that was blocked from the ballot by legal challenges. "My district solidly voted down Proposition 64. They solidly voted down Measure D. They wanted an initiative to ban."

"I won my seat in a landslide, sir," Mills told me recently. "Marijuana was one of the issues. People asked me how I felt about it. And I told them outright."

Mills, a former member of the Calaveras County Water District, saw cannabis farming as both an affront to the county's character and, worse, an environmental disaster that fouled streams and water supplies with illicit dams, sediment, fertilizers, and pesticides. He made little distinction between permitted growers and criminal cultivators.

After his proposed ban [failed in October](#), Mills pushed through a new ban this month with the backing of two other recently elected supervisors, Gary Tofanelli and Clyde Clapp.

Calaveras County has so far collected \$7.5 million in Measure C cultivation taxes in 2017, with more revenue due from tax bills that went out in November. The total two-year haul—including permit fees and renewals to cover costs of cannabis regulation, policing, and code enforcement—approaches \$12 million. The county has a \$63 million annual budget.

Since 2016, Calaveras has granted some 200 permits for commercial marijuana farms, with roughly 300 applications still pending and 200 denied or withdrawn.

One of those permittees was Burch Shufeldt, 34, an environmental studies major at University of California Santa Cruz who dropped out to grow in Calaveras for a Santa Cruz dispensary in 2006. At the time, with state and local rules ill-defined, he chose a secluded indoor growing location.

After Calaveras embraced regulated cultivation, Shufeldt made a major investment: \$1 million for two sprawling properties, a total of 220 acres, with the landowner providing

financing for the purchase. Shufeldt paid \$88,000 in cultivation taxes plus \$15,000 in fees in 2016 and 2017 for two permitted outdoor sites, with one renewal permit fee due.

“It seemed like Calaveras had decided to stick to its conservative and libertarian ideas when it came to property rights— even if many of its people were older and didn’t like cannabis,” he said.

Now, in the face of ban, he is looking to get by on income from cattle grazing and growing kale. That is unlikely, he says, “to keep us out of poverty.”

When supervisors took up the vote on Jan. 10, locally-licensed cannabis farmer Mark Bolger had just paid his November tax bill, bringing his two-year cultivation payments to the county to \$54,000.

Bolger, 30, the son of an agricultural industry investment broker in the nearby San Joaquin Valley farming belt, invested in Calaveras cannabis on a forested 20-acre parcel he dubbed Rimrock Farms. He invited county officers, sheriff’s deputies, and state water officials for walking tours through lush plants that flowered on terraces framed by security fencing and rock beds, with netting and straw for erosion control.

On Jan. 10, Bolger was one of a number of licensed cannabis farmers seated before the Board of Supervisors, watching his investment drain away.

Supervisors had directed staff to draft two ordinances – one to regulate the industry and another to ban it. The staff proposal to regulate would have allowed commercial cultivation on certain properties over 20 acres, but Bolger’s site didn’t meet the specific zoning requirements. In recent months, Supervisor Tofanelli also [advanced a plan](#) to set the standard at 50 acres or more. He later pushed for a 100-acre minimum.

Bolger had made an aggressive move to stay in business, buying 196 acres with plans to relocate his farm. A title company representative handling the last 80 acres of his purchase reached out as he was sitting in the supervisors’ boardroom.

“I got a text saying we just closed on the sale,” he said. “The title is transferred in my name. There is no turning back.”

Then he watched as supervisors banned his business.

The vote, effective next month, requires cannabis farms to cease operations within 90 days, meaning they will be out of business by May. For Bolger, it means no 2018 growing season.

“I’ve got six employees, people with young children, people from multigenerational families in this area,” Bolger said. “That tumultuous feeling I got in my stomach wasn’t just for our livelihoods—it was for the livelihood of our county.”

“When three people on the Board of Supervisors tank the economic driver of this county, you’re talking about losing hundreds of farm families and layoffs this county has never seen. It’s mind-numbing.”

Prapanna Smith, 56, a former school administrator in San Diego County who moved to Calaveras for its proximity to the Pacific Crest Trail and apparent amenability to cannabis, invested \$300,000 in a county-permitted indoor cultivation business.

Smith, who recently also secured a state license to grow adult-use cannabis, paid Calaveras \$10,000 in permit fees and \$25,000 in cultivation taxes. He hopes to harvest a final indoor crop before May and, after that, seek retribution in a lawsuit over a breach of trust.

“If they succeed in shutting us down, they owe me for all my investment,” Smith said of the county. “They owe me for my loss of income. And they owe me for the cost of having to move, because what they’re doing is bullshit.”

Ban supporters argue the county owes nothing to growers who gambled on local cannabis regulation. They assert the county’s ordinance that opened the door to the industry was a temporary measure that specifically offered no promise of permanency. The ordinance was to be replaced by a standing regulatory measure—until the new Board of Supervisors majority opted for a ban instead.

“You’ve given people a privilege. You’ve taken their taxes and fees. And now you’re taking that privilege back,” said Khurshid Khoja, former general counsel for the California Cannabis Industry Association. “That leads to the questions: Do these (cultivation) licenses now have a property right? And is this a taking? Has Calaveras taken away the value of that property?”

While Khoja was uncertain on the answers, he suggested Calaveras may be liable for refunding cultivation taxes, particularly recently paid taxes funding county operations after the ban.

Robert Reich, an attorney who represented some Calaveras growers in the licensing process, took a harder view. He says the county is now on the financial hook “for a misguided decision.”

“There was hard-earned money (from growers) that was put into paying those taxes,” Reich said. “The government just can’t take that money away.”

In December, prominent Oakland cannabis attorney William Panzer filed a legal claim—a precursor to a potential class-action lawsuit. It argued that the county never had the right to pocket taxes from growers under the voter-approved Measure C.

While numerous California cities and county have enacted voter-approved taxes on medical marijuana businesses, Panzer argued that [new state rules](#)—which require both

California and local cannabis business licenses—prohibit anyone but dual licensees from being taxed. Most permitted Calaveras growers are still in the application process for state licenses.

“I’m going to assume that litigation will ensue,” said Smith of the Rural County Representatives. “I have to believe that those (cannabis) operators will find some leg to stand on for a case. That may lead to more chaos. Or it may lead to a settlement. This is just really tough for Calaveras.”

Faced with no 2018 growing season—and now on the financial hook for large properties he fears will plummet in value—Bolger says things are hard enough already.

“The county is saying ... you gambled by investing your money. They look at it as if they have no liability, that this is on us,” he said. “No way.

“But we’re not looking to be awarded damages. We want our fucking jobs back.”

Supervisor Mills says he wants the county’s pristine environment and rustic rural character back from unwanted marijuana growers—permitted or otherwise—that steamed into the county.

In a [video posted Jan. 13](#), Mills walked the grounds of a cannabis grow raided by Calaveras authorities and cited for 23 environmental violations by state agencies. The wooded site was littered with pots, garbage, and fertilizer bags. A stream had been illegally diverted to provide water for the farm.

“We’re a tourist-oriented county and we have a lot of people retire here,” Mills says in the video. “We’re now seeing something very different, and this is a result.”

Mills produced a damning report—he called it *Silent Poison*—that cited general studies on environmental damage in California from marijuana growing in sensitive woodlands and watersheds. He argued that fertilizer and pesticide runoff from cannabis farms in Calaveras threatened a critical drinking water source, the Mokelumne River.

While cannabis advocates argue that licensed and inspected cannabis farm offer a solution—and revenue stream—to protect the environment, Mills and his campaign consultant depict a cultural assault by growers compliant and criminal alike.

“I don’t agree that the legal sites are any better than the non-legal sites,” said Calaveras resident Jack Cox, a former Los Angeles broadcast journalist who worked on Mills’ 2016 campaign. “By and large, it is bringing out the same character. These are people that don’t particularly care. I’m sure there are some doing the job properly. But the bad guys are hiding in with the legal ones.”

During the 2017 outdoor growing season, the Calaveras County Sheriff's Department, including a nine-member cannabis compliance team funded by fees from permitted county growers, eradicated 52,000 plants from unlicensed growers.

The county, with three code enforcement officers also funded by cannabis fees, filed abatement notices against 159 illegal gardens and issued 244 citations, seeking fines of \$551,000.

Prapanna Smith says Calaveras is now carrying out a fool's errand if supervisors think they can drive off illegal marijuana farms and protect the environment without the taxes and permit fees from licensed growers.

"They're not going to be able to eradicate. They're not going to be able to have code enforcement officers look for illegal grows. They're shutting down their ability to control cannabis in Calaveras County and, instead, will allow unregulated growers to come in unabated."

There may be more challenges. Bill Petrone, regional director for the Service Employees International Union, representing 275 county workers, fired off a letter to supervisors a day after the ban vote.

Petrone said the action, and the resulting loss of Measure C cannabis tax revenues, could undercut the county's ability to pay negotiated raises of 2% for most employees and 5% for planning department workers—including those working on marijuana code enforcement. He said the ban should be withdrawn because the board broke an agreement to consult with the union.

"We believe that the Board of Supervisors is making a decision that impacts our members, either financially or regarding keeping their jobs," Petrone told me. "They have a responsibility to negotiate with us over the impacts."

Mills scoffs at claims the county is due for catastrophic staff cuts. He insists there will be no cuts in law enforcement personnel, who are covered by a different bargaining group, and says the cultivation ban means Calaveras can get by with fewer code enforcement officers. He says the county may well avoid any financial hit for cutting off cannabis revenues, reasoning that a ban would cut considerable expenses and staff time required to regulate and police marijuana.

"I have been asking for a full and complete financial accounting for all the expenses associated with this activity," he said. "We have been making some very blatant assumptions."

After the board voted to ban, Supervisor Michael Oliveira, a retired Oakland police officer and Calaveras sheriff's deputy who favors regulation, characterized the vote as blatant and rash. Addressing the boardroom audience, including speakers who railed

against the ban, he called on supervisors to put pro-regulation and ban initiatives before voters and let them decide.

“Ladies and gentlemen, I’ve sat here and listened to you and we’ve done you a great injustice,” Oliveira said. “We’ve still got your money. We talked about re-registration. Is that bait-and-switch? We didn’t give you an opportunity to vote on this. I want to propose an immediate moratorium from this moment until we can put this item on the June ballot with the ban and the regulation proposition. ... The only people who can fix this are you, the voters.”

Other board members weren’t keen on kicking the matter back to constituents. And distrustful cannabis advocates suggested that they preferred to write their own initiative, with Bolger calling for reasonable cultivation rules that can sustain the industry and assure skeptical voters.

“If we run another initiative and that fails, we’re done,” Bolger told me. “It’s got to be well-thought-out, well-funded, and with broad support—not just in the cannabis community.”

In a surreal exercise, the Board of Supervisors has continued to hear appeals from cannabis farmers who were earlier denied county cultivation permits. A week after the ban vote, the board referred one grower’s application back to the planning commission for consideration after getting proof the farmer had received a required state water permit.

Despite the ban, Mills told the audience, the growers appealing earlier permit denials would get hearings as scheduled. But, amid reports of cultivators burning off remnants of outdoor gardens, some cannabis farmers didn’t bother showing up. One who did, Elizabeth Denhart, turned out to tell supervisors that she was withdrawing her application because she was done with Calaveras.

“I don’t see any purpose in pursuing this, given that the county has decided to ban,” she said. “I am selling my property. I am pulling my children out of school and leaving.”

On his Calaveras cannabis farm, Ron Ervin, 57, drove an all-terrain vehicle past some 800 planting beds for his half-acre cultivation. It is barren, the season is in serious doubt, and yet he has hope.

Ervin quit a 35-year-career in the trucking business to become a cannabis farmer on acreage that has been in his wife’s family since the 1930s.

He paid \$42,000 in taxes and \$5,000 in permit fees to the county. His family invested \$300,000 in the venture, making land improvements and hiring biologists to recommend a cultivation regimen that prevented harm to sensitive flora and fauna. “We did everything we were asked,” Ervin said.

As the Calaveras cannabis controversy roils on, Erwin says he is counting on still another shift in the political winds so that his garden may bloom again.

“We think we have some of the best ground here and best temperatures to grow,” Erwin said, looking over his property. “This is phenomenal. For us not to be part of California’s economic future, well, that kind of sucks.”

<https://www.leafly.com/news/politics/cannabis-cultivation-ban-turned-california-calaveras-county-into-ground-zero-for-chaos>