

Demystifying Cannabis Regulations in Santa Barbara County

BY AMY STEINFELD AND JACK UCCIFERRI, BHFS

Cannabis—whether you support or oppose it, you certainly can't avoid this topic. But due to the patchwork of local regulations and its status as a Schedule I drug, there's still confusion over how cannabis is regulated. This article aims to clarify the regulatory regime governing cannabis farms in Santa Barbara County ("County"). Our hope is that with greater understanding of the cannabis industry's regulatory burden, there will be greater support for policies that allow legal cannabis cultivators to remain viable vis-à-vis extremely sophisticated black market operators who ignore their regulatory and tax responsibilities. Two years after legalization, it's increasingly clear that a properly regulated market benefits the public, the environment and consumers. In fact, the County, aided by millions in cannabis taxes, has shut down over 40 black market operations and is using the balance of funds to support local public services.

Background

Contrary to popular belief, Proposition 64 didn't legalize commercial cannabis cultivation throughout the state. Instead, it gave cities and counties free range to regulate, or even outlaw, commercial cannabis operations. In counties where growing cannabis is prohibited, illegal grows are often sited in pristine environments or in dark warehouses powered by lights that consume massive amounts of energy. Illegal farming operations also use pesticides that are extremely harmful to the environment. The negative impacts of illicit cultivation on the environment have been well-documented.²¹

Over the past few years, lively debates have unfolded as local governments grapple with the complexities of regulating cannabis. Santa Barbara County, after months of studies and public comment, opened its doors to outdoor cannabis farms in the county's inland zone, while requiring that cannabis be grown in greenhouses along the coast. As it turns out, the Central Coast is the perfect spot to grow pot due to the region's mild weather and topography, existing agriculture infrastructure, and proximity to Los Angeles—



Amy Steinfeld



Jack Ucciferri

perhaps the largest cannabis market in the world.

But before planting, growers must comply with hundreds of pages of regulations and obtain approval from a complicated web of state and local agencies. As a result, obtaining a cannabis cultivation license is a herculean task. This makes cannabis the most highly regulated and environmentally friendly crop in California.

The "Easy" Part: State Licenses

CalCannabis, a division of the California Department of Food and Agriculture, is responsible for licensing cultivators of medicinal and adult-use (recreational) cannabis and implementing a track-and-trace system to record the movement of cannabis through the distribution chain. To obtain a state cultivation license, an applicant must run a gauntlet of at least eight²² different state wildlife, water and agriculture agencies, pay hefty licensing fees, and ensure crops are free from heavy metals, pesticides and mold.

The Hard Part: Santa Barbara County Permitting and Licensing

Local cannabis regulation is highly dynamic. The County's original cannabis ordinance was adopted in February 2018²³ but has since been amended several times, and further amendments are being considered. There are two distinct but interrelated County processes a cannabis project must successfully navigate before operating: land use permitting and business licensing.²⁴

The County Planning and Development Department ("P&D") is responsible for processing and issuing land use permits.²⁵ For the past year, P&D's capacity has been tested by dozens of prospective cannabis applicants trying to discern how to navigate the complex and uncharted land use permitting process—a process that is generally applied to developers, not farmers. Numerous County agencies are

involved in the permitting process. It's not uncommon for an agency to change how it views a particular issue, which often translates to costly and time-consuming revisions on the part of an applicant.

Various surveys and plans must be submitted along with a land use permit application, including archaeological and paleontological surveys²⁶ in addition to security, screening, landscaping, lighting, noise, odor abatement, tree and habitat protection, wildlife movement,²⁷ and water efficiency²⁸ plans. Unlike other crops, cannabis is also subject to environmental review under the California Environmental Quality Act. These efforts often require the assistance of land use lawyers and planners, engineers, biologists, hydrologists and architects.

On May 1, 2018, the County adopted the Cannabis Business License Ordinance,²⁹ which requires a business license to operate a commercial cannabis business in any unincorporated area of the County.³⁰ The application process is coordinated by the County Executive Office, which has broad authority to revoke³¹ or deny³² licenses. The application process requires extensive information and documentation, including site visits by Environmental Health, County Sheriff and Fire Department personnel, and preparation of an energy conservation plan. Additionally, business licenses must be renewed on an annual basis.

Project Appeals and NIMBY Opposition

After months or even years of navigating the land use application process, the County is finally starting to issue cannabis permits. But most applicants are now facing planning commission or board review, often based upon an appeal,³³ which can further delay a project. Appellants, often neo-prohibitionist groups or neighbors, have expressed concern over odors, public safety, air quality, and impacts on wine grapes from terpenes created by cannabis flowers. These fears are being taken seriously. For example, two local industry groups, Carp Growers and the North County Farmers Guild, have launched educational campaigns to destigmatize the plant and educate the public. The County and cannabis industry are also diligently working to address adverse claims via scientific studies. For example, recent studies demonstrate that odors can be contained to greenhouses with odor control technology, that odors from outdoor farms do not cause a public nuisance, that properly applied pesticides will not contaminate cannabis crops, and that terpenes do not "taint" grapes.

Further, in response to public opposition over the proposed number of grows, the County established two separate acreage caps on cannabis cultivation: 186 acres in Carpinteria and 1,575 acres in the rest of the County. That

means that cannabis can only be planted on less than 1% of agriculturally zoned land in the County, which should alleviate concerns that the industry could expand exponentially.

Our prediction is that once cannabis growers receive permits and implement all required mitigation measures, they will prove to be great neighbors. For instance, cannabis farmers must implement odor abatement plans and they cannot apply chemical pesticides or use surface water for irrigation, all with continuing county oversight. We believe that all farmers, including grape and avocado farmers, can co-exist and together increase tourism. After all, agriculture is still the lifeblood of this county.

Conclusion

Operating a cannabis farm is not for the risk averse or poorly capitalized. Compliance with the complex and ever-changing regulations and the high tax burden has proven so onerous that many small farms have gone out of business. And while the black market has been nearly eliminated in our backyard, the statewide black market is still three times the size of the legal market. This reality puts additional enforcement burdens on police and financial burdens on public coffers, in addition to jeopardizing public health and safety. To ensure the survival of local cannabis farms, we urge the public to support smart policies that encourage regulatory certainty and streamline the permitting process. By supporting legal cannabis farmers, we can continue to eradicate bad actors and encourage environmentally friendly crops, which serve as the foundation for a new industry that is providing numerous, high-paying jobs. ■

Amy Steinfeld is an attorney at Brownstein Hyatt Farber Schreck and serves as office managing partner for the Santa Barbara office as well as co-chair of the firm's Cannabis & Industrial Hemp industry group. Jack Ucciferri is a law clerk with Brownstein and member of the firm's Cannabis & Industrial Hemp industry group.



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