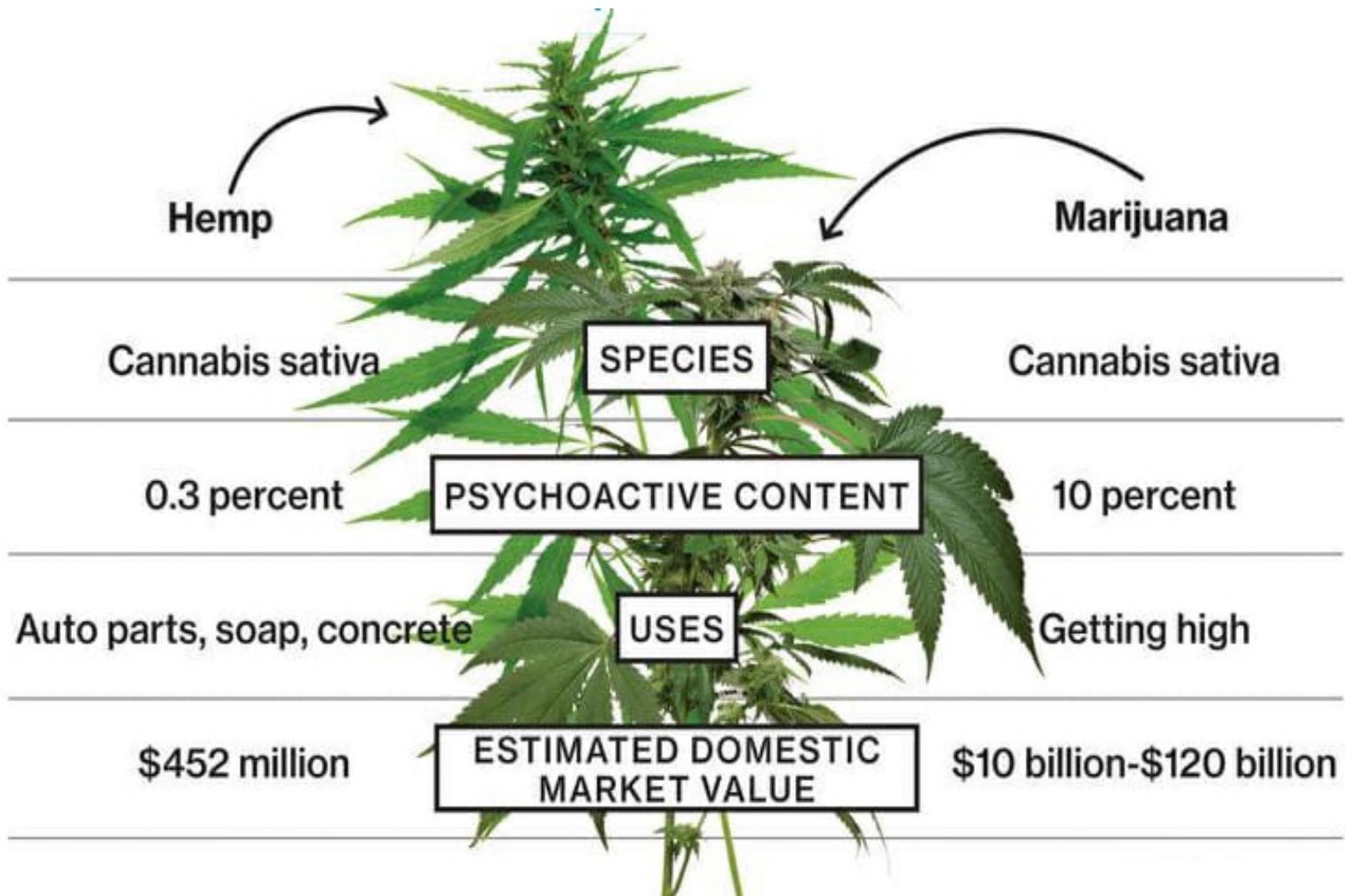


Cannabis and Land Use Law: An evolving regulatory framework for a rapidly growing industry.



 Brownstein Hyatt
Farber Schreck



Let's Talk about Hemp

- **The Farm Bill of 2018** now allows hemp cultivation broadly, not simply pilot programs.
- Industrial hemp will now be treated like an **agricultural commodity**, not a controlled substance. Allows the transfer of hemp-derived products across state lines.
- **California law** regulates the cultivation of industrial hemp, and specifies certain procedures and requirements on cultivators.
- Before cultivation, a grower of industrial hemp for commercial purposes must “**register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.**”

Types of Cannabis Products

- **Marijuana (Flower):** most common form is the dried and cured flowers of female plants. High in terpenes and cannabinoids.
- **Distillates/Oils/Concentrates:** a highly refined oil containing pure cannabinoids. Separated from the cannabis plant via hydrocarbon or CO2 solvent-based extraction techniques.
- **Cannabis-Infused “Edibles”:** the process involves activating and then extracting THC and other cannabinoids from ground flower using fatty substances like oils and fat. Used in sweets and drinks.
- **Infusions/Topicals:** Cannabis topicals are products designed for skin application. Today, topicals come in the form of lotions, sprays, shampoos and soaps infused with THC and CBD.



- California was the 1st state to legalize medical cannabis in **1996**.
- Prop 64 (Adult Use of Marijuana Act) was a 2016 voter initiative intended to merge the growing and distribution of medical & **recreational** cannabis into one approach.
- Legalized recreational use of cannabis by anyone 21 and older.
- Passed with 57% voter approval, leading to recreational cannabis sales in California starting January 2018.
- State regulates commercial activities related to recreational use and allows possession/cultivation of certain amounts for personal use statewide.

California Regulatory Structure

- **Bureau of Cannabis Control (Bureau):** lead agency in regulating commercial cannabis licenses for medical and adult-use cannabis in California. The Bureau is responsible for licensing retailers, distributors, testing labs, & microbusinesses.
- **Manufactured Cannabis Safety Branch:** a division of the California Department of Public Health (CDPH) that is responsible for regulating the manufacturers of cannabis-infused edibles for both medical and nonmedical use.
- **CalCannabis Cultivation Licensing:** a division of the California Department of Food and Agriculture (CDFA), is responsible for licensing cultivators of medicinal and adult-use cannabis and implementing a track-and-trace system to record the movement of cannabis through the distribution chain.



Environmental Protections



- Prop 64 requires cannabis businesses to comply with all applicable environmental laws to maintain their licenses: (1) CEQA; (2) Endangered Species Act; and (3) Clean Water Act.
- Prop 64 restricts pesticide use and provides funding to enforce regulations on **water diversions**.
- Directs the existing multi-agency task force developed by the California Department of Fish and Wildlife (DFW) and the State Water Resources Control Board to enforce these regulations.
- Portion of revenues from state taxes goes to the Department of State Parks and DFW to fund environmental cleanup efforts.

Why So Strict?

The impacts of illegal grows

- Planting (illegal) cannabis for commercial production in remote locations has led to:
 - Forest fragmentation
 - Stream modification and dewatering
 - Soil erosion and landslides
 - Harmful chemical practices
 - Improper disposal of waste
 - Poisoning of wildlife
 - See Emerald Triangle



What does Prop 64 mean for local jurisdictions?

- Every local government in California can enact different rules and regulations for commercial cannabis activities in the areas they govern. As a result, the rules vary depending on where you are located.
- Prop 64 creates a state licensing structure, meant to function with any local regulatory program by requiring that all licenses issued by the state work well in concert with local rules.
- Using cannabis in public remains illegal.
- Most counties have banned commercial cannabis. Others have limited uses (e.g. only retail).



Local Land Use Still Reigns

- **Land Use:** Prop 64 includes multiple local-control provisions that respect local government police powers to:
 - ban all commercial cannabis activity; or
 - regulate businesses through local zoning and land-use requirements, and/or business license requirements within their respective jurisdiction by ordinance, such as requiring businesses to obtain local permits or licenses in addition to state licenses.
- However, no local jurisdiction may ban:
 - the consumption of cannabis within its jurisdiction,
 - growing up to six plants for personal use, or
 - the transportation of cannabis through the jurisdiction



Comparative Regulatory Postures:

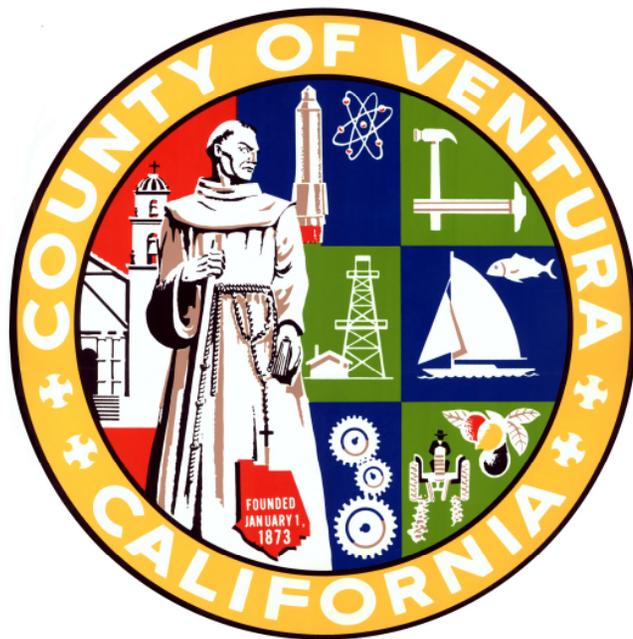
San Luis Obispo, Santa Barbara, & Ventura Counties

- **SLO:** Restrictive Permitting
- **Santa Barbara:** Heavily regulated but state leader in outdoor cultivation and vertical integration.
- **Ventura:** Prohibition



Ventura County: No grow.

- Cannabis cultivation, manufacturing, and retail is expressly prohibited. County is studying industrial hemp.



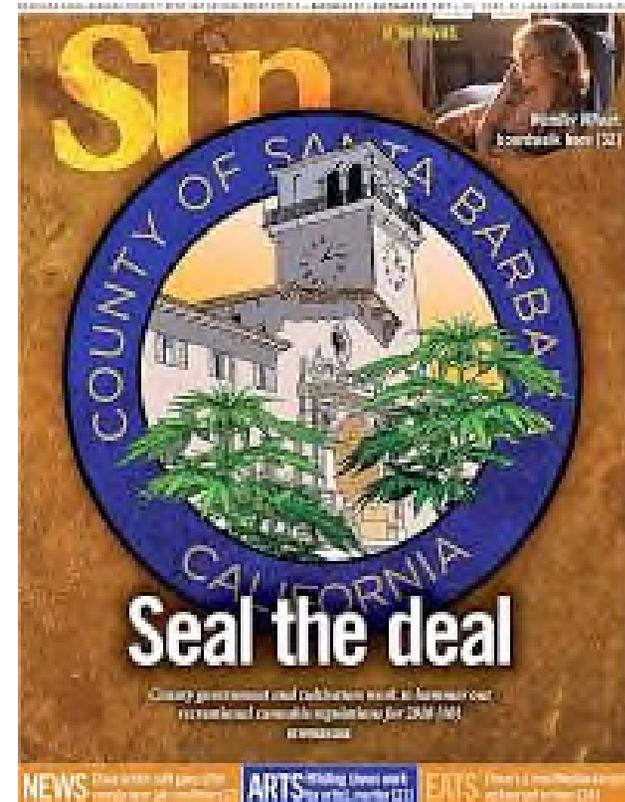
SLO County: Grow SLO

- Caps on cultivation acreage. Requires a land use permit and business license.
- Indoor cultivation is limited to 22,000 square-feet per site.
- Allows cannabis nurseries (no limit); testing facilities; distribution.
- Requires separation from sensitive uses.
- 1:1 water offset. Tax is 4% on gross receipts.
- So far, SLO has received 89+ applications for cannabis land use permits — mostly cultivation; some up on appeal.



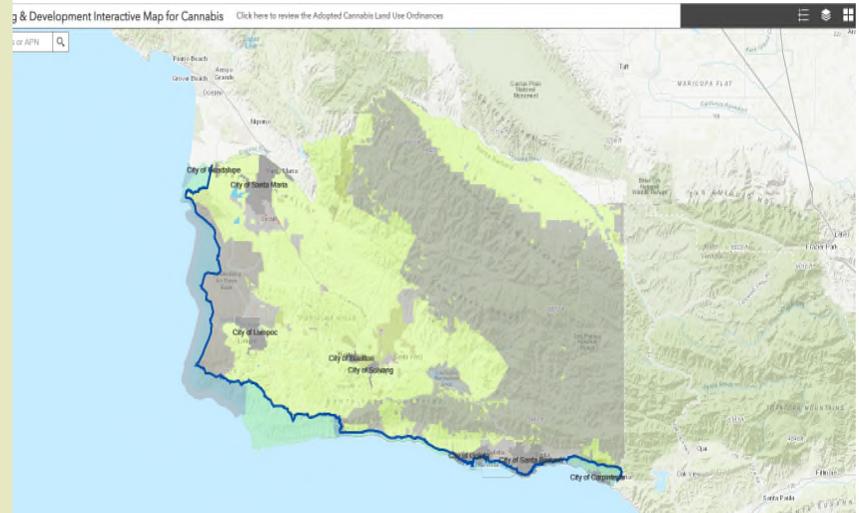
Santa Barbara County: GROW

- Highest number of state licenses
- Most acres under legal cultivation
- Relative regulatory clarity and political commitment (unlimited acreage in inland zone)
- Ideal climate/soil
- Existing ag Infrastructure
- Proximity to major markets (LA)
- Future tourist opportunities (tastings/tours)



What's Allowed on my Property: Zoning & Permitting

The screenshot shows the website for Cannabis Regulation & Licensing in the County of Santa Barbara. The page is titled "Zoning & Permitting" and includes a navigation menu with options like "PERMITS AND LICENSING", "WHAT'S ALLOWED ON MY PROPERTY?", "NEWS & EVENTS", "RESOURCES", "FAQS", "COMPLAINTS", and "CONTACT". The main content area is titled "Zoning & Permitting" and contains a "Zoning" section. This section explains that on February 27, 2018, the Santa Barbara County Board of Supervisors adopted ordinances categorizing cannabis operations into 8 permit types. It also states that where and how to start a commercial cannabis operation depends on the zone of the parcel. A link is provided for users unsure of their zoning. Below this text is a grid of "Allowed Uses by Zone Type" with buttons for Agriculture-I, Agriculture-II, M-RP, M-1 / M-2, C-1 / C-2 / C-3, CS, SC, and MU, CM-LA, OT-R/LC, OT-R/GC.



Santa Barbara County: Outdoor Cultivation

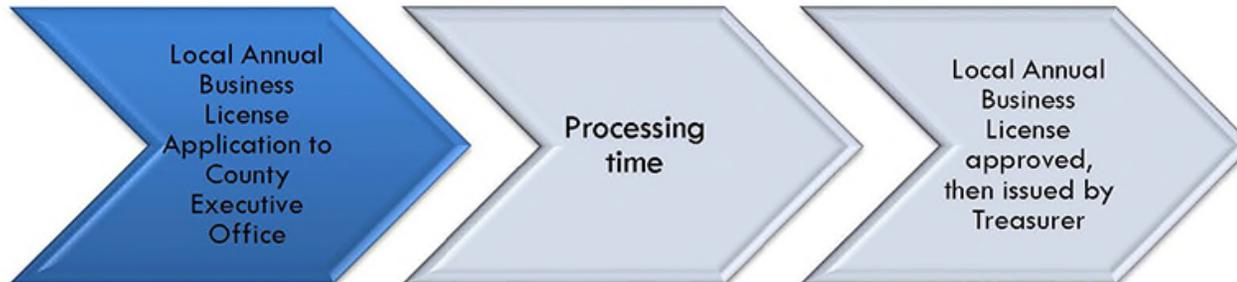
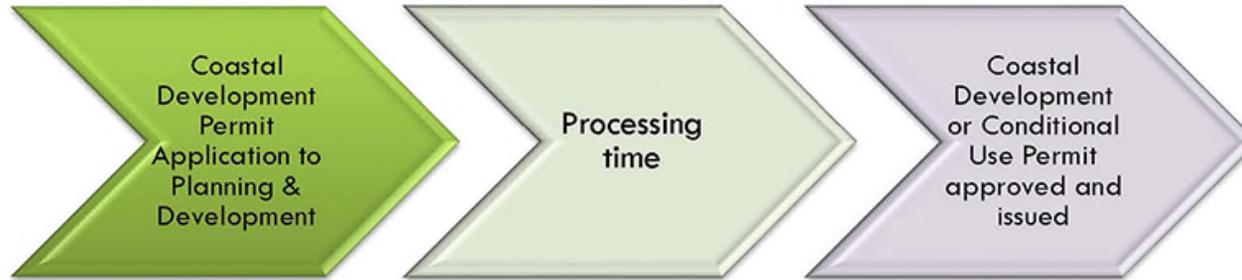
- Prohibited:
 - AG-I 20 acres or less; AG-I-5; AG-I-10
 - Within 1,500 feet of a residential zone
 - Within 750-feet from a sensitive receptor
 - Within Coastal Zone
 - Within 750-feet from a sensitive receptor

Ok on Ag-II

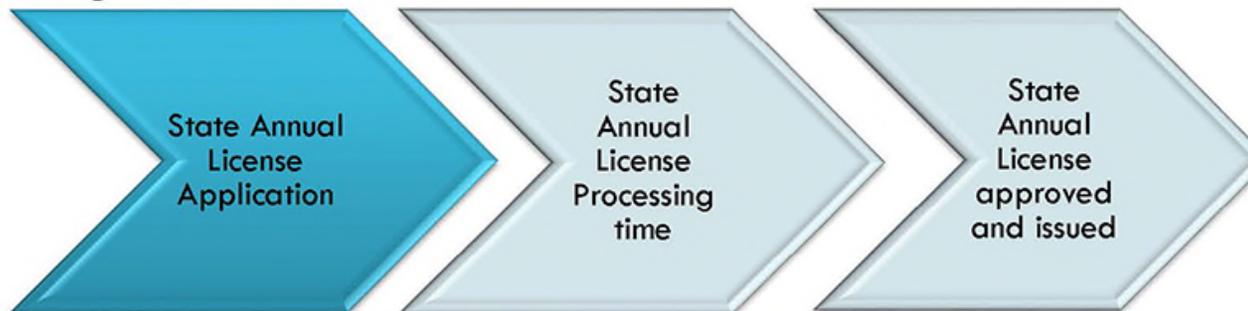




County of Santa Barbara Permit and License Application Process – New Operators



After receiving Land Use Permit . . .



Outdoor Cultivation:

General Development Standards

- Archaeological and paleontological surveys for lots that have not been subject to prior surveys
- Fencing and security plan
- Landscape Plan and Screening Plan
- Lighting Plan
- If a CUP is required, then an Odor Abatement Plan is required
- Signage Requirements
- Tree/Habitat/Wildlife protection plan?

Water & Cannabis

- Water could set an upper limit on California cannabis.
- Water use and water quality is one of the biggest issues with cannabis cultivation
- CA requires site-specific water supply evaluations and water management plans
- CA prohibits use of diversionary water sources for summer irrigation of cannabis; requires grower to construct storage.
- State testing standards make it impossible to use pesticides, essentially requires organic growing practices.



City of Santa Barbara

- On 12/2017, City adopted an ordinance to regulate and permit **Commercial Cannabis Businesses** within city limits, including indoor cultivation, manufacturing facilities, distribution, and testing facilities, as well as both delivery-only and storefront retailers.
- City has awarded recreational cannabis **retail** permits to 3 operators (competitive process). None open yet open.
- City currently has two medical marijuana store fronts.
- You can grow one plant outside.



City of Goleta

- Goleta's City Council voted to allow as many as 15 dispensaries: does it have the population or sites (considering buffers)?
- Outdoor cultivation banned.



City of Lompoc

- Lompoc issues licenses for all commercial cannabis activities, except outdoor cultivation.
- Lompoc could become the recreational cannabis capital of the Central Coast.
- Lompoc has not limited the number of recreational storefronts and has also approved cannabis lounges — where on-site consumption is permitted.
- Leaf Dispensary just opened (first recreational dispensary in the County).



Where we stand

- Local farmers are being regulated out of existence due to the complex licensing system and the need for start-up capital.
- Some believe local governments need to reduce regulations and taxes or legal cannabis businesses could start to vanish.
- Others are concerned that the industry has been able to spread unchecked and that local jurisdictions have not done enough to regulate.
- It will take years of post-legalization effort to move illicit growers and consumers into the legal system.
- Tax revenue isn't yet "filling the coffers" as promised.

We like cannabis, just NIMBY.

- Legalization of recreational and medical cannabis in California has changed communities.
- When cannabis arrives, often there are impacts and concerns over odors, increase in rents, safety, etc.
- Wine v. Weed fight is brewing.
- But this chaos will likely end as the industry becomes established and synergies between weed & wine develop.



California is on the verge of becoming the legal cannabis capital of the world. There is a lucrative opportunity at stake for those who can make sense of this uncharted territory.

