

**Planning Commission/Board of Zoning Adjustments
Appeal Form**

PJR-021

To: Board of Supervisors
County of Sonoma, State of California

File # UPC 17-0082

Appeal is hereby made by: Bennett Valley Citizens For a Ban on Commercial Marijuana Facilities
Please Print (Craig Harrison)

Mailing Address: 4953 Sonoma Mountain Rd
Santa Rosa CA 95404-8879

Phone: 707-573-9990 Email: Craig Spencer Harrison @ gmail.com

The Sonoma County Planning Commission / Board of Zoning Adjustments (circle one) on

November 14, 2019 approved / denied (circle one) a request by

CLS IIc for CUP For

outdoor Cannabis Cultivation

located at 4065 Grange Road, Santa Rosa

APN 049 - 130 - 005 Zoned RRD Supervisorial District 1

This appeal is made pursuant to Sonoma County Code Chapter 26 Section 26-92-160 for the following specific reasons:

See attached letter to Supervisors (November 19, 2019)

Date: November 19, 2019 Appellant: Craig S. Harrison for BUCFB CMF
Signature

Appeal Fee: See current PRMD Project Review Fee Schedule

----- DO NOT WRITE BELOW THIS LINE - To Be Completed by PRMD Staff -----

This appeal was filed with the Permit and Resource Management Department on the _____ day
of _____, 20_____, receipt of which is hereby acknowledged.

PRMD Staff

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue ♦ Santa Rosa, CA ♦ 95403-2829 ♦ (707) 565-1900 ♦ Fax (707) 565-1103

November 19, 2019

Board of Supervisors
Sonoma County
Santa Rosa, CA 95403

Re: Appeal of Cannabis CUP Application UPC17-0082, 4065 Grange Road

Dear Supervisors:

This appeal is filed by Bennett Valley Citizens for a Ban on Commercial Marijuana Facilities, a group of almost three hundred Bennett Valley residents who have signed a petition to make Bennett Valley a commercial cannabis-free exclusion zone. Each issue was raised during the BZA process. This commercial marijuana cultivation permit should be rejected due to:

- The grower's false and misleading statements, including submitting a fraudulent lease
- The criminal conduct of the landowner
- This violation of three standards in the Bennett Valley Plan ("BV Plan")
- The failure of the access road to meet fire safe requirements
- The lack of a valid easement to the property
- The failure to do a legal CEQA analysis.

1. The Grower's False and Misleading Statements Require Rejecting the Permit

The Penalty Relief application, signed under penalty of perjury, claims that cultivation began on June 30, 2017, just before the July 4 deadline. But the corporate operator (CL5 llc) formed on July 17, and John Chen formed Bennett Rosa llc (the corporate landowner) on July 18. The property was deeded to Bennett Rosa llc on August 30, two months later. A satellite image on July 9, 2017 shows nothing had been planted then. The October 21, 2019 staff report (p. 4) states that PRMD "determined that aerial images did not refute that the operation was in existence in the County" before July 5, 2017. There is no dispute that outdoor cannabis cultivation had not begun before July 5.

We asked PRMD in June 2018 to require the applicant to produce ordinary business records to show it was in existence by July 4, 2017. On October 14, 2019, we wrote to BZA that we had received no such records from Public Records Act requests. We noted that a lease between John Chen and the previous owner for "new agricultural purposes" began August 1, 2017, proving our point that the project was in the PRP under false pretenses (Lease Version 1, attached). The October 21, 2019 staff report (pp. 3-4) then claimed a different lease shows the project began January 1, 2017 (Lease Version 2, attached). The second version of the lease is identical to the first version, including precise signatures, except that the crucial dates were back-dated. By submitting the second version, the applicant shows a lack of respect for the diligence, intelligence, or judgment of county staff and the BZA. Sadly, that lack of respect and gullibility seem warranted.

The October 21, 2019 staff report (p. 4) claims that the applicant also provided tax receipts and invoices that show the operation existed before July 5, 2017. In response to a Public Records Act request for such records, we received a large PDF that contains no tax receipts or invoices.

PRMD used the applicant's fraudulent lease to deem that the PRP application was legitimate. The PRP form states "providing false or misleading information in this Application or at any time during the permitting process will result in the rejection of the application and/or nullification or revocation of any issued permit." The ordinance when the PRP application was filed provided "[a]pplicants providing false or misleading information in the permitting process will result in rejection of the application and/or nullification or revocation of any issued permit." The supervisors weakened that provision in Phase 2 because, according to Sita Kuteira at the BZA hearing, PRMD wants to allow permit applicants to be able to lie or commit fraud.

Approved Condition 19c for this permit states an applicant "providing false or misleading information result in nullification or revocation of this issued use permit." If the cannabis program is to maintain any integrity, the supervisors must reject this permit.

2. The Criminal Conduct of the Landowner Requires Rejecting the Permit.

John Chen owns Bennett Rosa llc which, in turn, owns the property. In 2012, Chen was convicted of three felony counts of filing false instruments and three felony counts of presenting false claims to the state. Then-Attorney General Kamala Harris brought suit, and a press release stated Chen had attempted to fraudulently collect more than \$1 million from the State of California. Convictions involving fraud and deceit cast doubt on all of Chen's filings, as exemplified by the fraudulent lease. At the BZA hearing, Chen claimed his felonies have now disappeared, but provided no proof. His Felony Plea Agreement was obtained via a Public Records Act request to the Santa Clara Superior Court, a copy of which was certified on October 17, 2018. It has obviously not been expunged from public records.

3. The Project Violates the Bennett Valley Plan.

The Board of Supervisors adopted the BV Plan in 1979. Policy LU-1a of the General Plan states that if there is a conflict between the General Plan and an Area Plan, the more restrictive policy or standard shall apply. The BV Plan has three unique standards that are violated.

a. Commercial Development is Banned.

Land Use Policy 2 of the BV Plan bans commercial development in Bennett Valley. The ordinance, § 26-02-40, defines "cultivation" as **commercial** cannabis activity. A letter from Adam Brand, Sonoma County Deputy County Counsel, to Kevin Block (January 18, 2019, pp. 2-4) concluded that that any use permit is "development." Commissioner Greg Carr conceded during the BZA hearing that this project is "technically" a commercial development. This project is both in fact and in law a commercial development, and violates Land Use Policy 2.

b. A Cannabis Permit Cannot Be Approved Without Enhanced Law Enforcement.

Land Use Policy 3 requires development to be coordinated with improved law enforcement. Cannabis businesses attract crime. According to Sheriff Essick, since 2013 ten marijuana-related

murders and 22 marijuana-related home invasions were reported in unincorporated Sonoma County. During the past 18 months, five marijuana-related crimes were reported per month in the unincorporated area that do not involve murder or home invasions. PRMD has not acknowledged Land Use Policy 3. For example, the county might establish a sheriff's substation in Bennett Valley at the fire station to reduce the 30-45-minute response times. The county might ban permits on properties located on long, shared access roads as a means to minimize home invasions of non-growers. By doing nothing, PRMD has violated Land Use Policy 3.

c. This Project Violates the Bennett Valley Plan's Development Guidelines.

The Planning Director must find for any development located in Bennett Valley that "private streets and driveways, both existing and proposed, are properly designed." Under the plain language of the BV Plan (p. 21), the requirements for existing and new streets are identical. Bunnell Road (the access road for 4065 Grange Road) is a private, 10-foot wide, mile-long dead-end street. No new street in Sonoma County would be approved today with these characteristics. Under the BV Plan, Bunnell Road must be substantially upgraded to new street standards before the county can approve any development.

4. The Access Road Fails to Meet Fire Safe Requirements.

Bunnell Road fails to meet the requirements of Chapter 13 of the Sonoma County Fire Safety Ordinance 6184. During a conference call meeting on March 8, 2019, the Sonoma County Fire Marshal and Sonoma County Senior Fire Inspector stated an access road must be a minimum of 12 feet in width, and this requirement can rarely be mitigated.

Bunnell Road also fails to comply with the California Board of Forestry and Fire Protection SRA Fire Safe Regulations. Those regulations require a minimum of two ten-foot traffic lanes, not including shoulder and striping (§ 1273.01); specifications for turnarounds (§ 1273.05); and turnouts (§ 1273.06). A letter from Kevin Block to Bruce Goldstein (November 30, 2018) confirms that any permit approval that does not meet the Cal Fire standards is invalid.

5. The Applicant Has No Road Easement Over Bunnell Road.

The applicant has no legal access, a fact that can readily be ascertained from public records. The adjacent landowner, Carol Guanella, told Chen when he bought the property that he has no easement. The prior owner tried for years to get Ms. Guanella to grant an easement, and then tried to get the Water Board to provide an easement on other county property. It refused. The PRP application item 7a required the applicant to show he had a valid easement by June 1, 2018. There is no reason to allow another 90 days (condition 35) to show there is an easement.

6. This Project Is Not Exempt From CEQA.

PRMD asserts that because this grow has been allowed to proceed without a permit since July 2017, it is now an existing use so that environmental impacts are never analyzed. To the contrary, CEQA review for this project requires the disclosure and evaluation of potential environmental impacts, including cumulative and reasonably foreseeable impacts. CEQA review is required whenever substantial evidence supports a fair argument that a project may have a

significant effect on the environment. “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR . . . and the courts owe no deference to the lead agency’s determination.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

Thirteen cannabis projects have been proposed in Bennett Valley (Table 1), and if CUPs are issued there will be more. Under § 15355 of the CEQA Guidelines, an adequate CEQA analysis must address the cumulative impacts of what may be the highest concentration of proposed or potential commercial cannabis cultivations in Sonoma County.

Table 1. Bennett Valley Cannabis Projects That Have Been Proposed.

APN	Address
049-130-015	4944 Bennett Valley Road
055-010-031	7170 Bennett Valley Road
049-150-005	4050 Grange Road
049-130-005	4065 Grange Road
049-071-054	4265 Sonoma Mountain Rd
049-030-090	5365 Sonoma Mountain Rd
136-201-004	6480 Eagle Ridge Road
055-150-018	3141 Matanzas Creek Lane
055-150-011	3220 Matanzas Creek Lane
055-150-010	3400 Matanzas Creek Lane
055-140-015	3575 Matanzas Creek Lane
055-140-006	3700 Matanzas Creek Lane
055-140-024	3803 Matanzas Creek Lane

The county must address the cumulative impacts of this project, and all other reasonably foreseeable projects on the following:

a. Sensitive Species in the Matanzas Creek Watershed.

The Biological Site Assessment prepared for the applicant is totally inadequate because it was done on a single day—August 25, 2017—during the driest period of the year. It cannot possibly assess the use of the property and nearby riparian areas by aquatic creatures. Watershed-wide field investigations are needed to determine the occurrence of special status aquatic species. These include field assessments during the wet season of the aquatic biology of both forks of Matanzas Creek, including adjacent lands.

The piecemeal diminution of aquatic habitat is why the species that live in it are endangered. One factor that the California Department of Fish and Wildlife considers in listing a Species of

Special Concern is when they occur in small, isolated populations or in fragmented habitat, and development threatens further isolation and population reduction. That is the situation in the Matanzas Creek watershed. The cumulative effects of this and all foreseeable cannabis projects must be evaluated with respect to year-round water flows, summer water flows, and elevated water temperatures. These will affect the ability of the following species to survive:

- California giant salamander (special concern)
- Foothill yellow-legged frog (candidate threatened)
- Red-legged frog (federal threatened)
- Red-bellied newt (special concern)
- California freshwater shrimp (federal endangered)

b. Declines in Property Values for Residences Located Near Grows.

Some cannabis industry advocates assert that properties that are permit-eligible for cannabis cultivation increase in value. This is irrelevant. The information that needs to be analyzed and disclosed is the effects of inserting a marijuana grow into a rural neighborhood on the value of existing residences that are **not** involved in the cannabis business.

It may be true that if a parcel of land were sold to a developer of a hog farm, cattle feedlot, sewage treatment plant, marijuana grow, nuclear waste disposal site, or oil refinery the selling price might be above market value if the necessary permits might be obtained. But the values of nearby residential properties would diminish. Telephone interviews with a statistically-chosen sample of Sonoma County voters in June 2018 revealed that 75% want to live at least 1/4 mile away from a grow; 62% want to be at least 1/2 mile away; and 52% at least one mile away. These findings are similar to a poll taken by the Press Democrat that same month. Commercial cannabis cultivation clearly depresses property values of nearby residences. Here, the value of the Guanella residence on a milelong dead-end road that may be shared with two commercial marijuana operations would find far fewer potential buyers and inevitably lower prices.

c. Crime and residential safety.

d. The effects on the character and quality of life in Bennett Valley.

Conclusion

This project should not be imposed upon the Bennett Valley community. There are thousands of locations elsewhere in the county where cannabis can be grown without adversely affecting neighbors. We urge the supervisors to deny this permit.



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions")

1.1 Parties: This Lease ("Lease"), dated for reference purposes only

is made by and between Malice K. Gachua, Trustee of The Malice K. Gachua
Business Living Trust dated April 5 1993 ("Lessor")
and John Chen ("Lessee"),
(collectively the "Parties," or individually a "Party")

1.2 Premises: That certain real property, including all improvements thereon as to be provided by Lessor under the terms of this Lease,
and commonly known as 4050 + 4065 Ganga Road, Santa Rosa
located in the County of Sonoma, State of California
and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project)

1.3 Term: 1 years and 12/31/17 months ("Original Term") commencing 12/31/17 ("Premises") (See also Paragraph 2)
("Commencement Date") and ending 12/31/17 ("Expiration Date") (See also Paragraph 3) the Premises are

1.4 Early Possession: If 12/31/17 available Lessee may have non-exclusive possession of the Premises commencing
("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ [REDACTED] per month ("Base Rent"), payable on the First day of
each month commencing [REDACTED]. (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph [REDACTED]

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: [REDACTED] for the period one year

(b) Security Deposit: \$ [REDACTED] ("Security Deposit") (See also Paragraph 5)

(c) Association Fees: \$ [REDACTED] for the period [REDACTED]

(d) Other: \$ [REDACTED] for [REDACTED]

(e) Total Due Upon Execution of this Lease: \$ [REDACTED]

1.7 Agreed Use: Commercial operation in preparation of property
for new agricultural uses (See also Paragraph 6)

1.8 Insuring Party: Lessor is the "insuring Party" unless otherwise stated herein (See also Paragraph 8)

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☒ [REDACTED] represents Lessor exclusively ("Lessor's Broker").
☐ [REDACTED] represents Lessee exclusively ("Lessee's Broker"). or
☐ [REDACTED] represents both Lessor and Lessee ("Dual Agency")

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage
fee agreed to in a separate written agreement (or if there is no such agreement, the sum of [REDACTED] or [REDACTED] % of the total Base
Rent) for the brokerage services rendered by the Brokers

1.10 Guarantor: The obligations of the Lessee under this Lease are to be guaranteed by

John Chen ("Guarantor") (See also Paragraph 37)

1.11 Attachments. Attached hereto are the following, all of which constitute a part of this Lease

☒ an Addendum consisting of Paragraphs [REDACTED] through [REDACTED]
☐ a plot plan depicting the Premises;
☐ a current set of the Rules and Regulations;
☐ a Work Letter;
☒ other (specify) [REDACTED]

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and
upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in
the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment

sc
INITIALS

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: San Francisco
On: 8/1/17

Executed at: San Rafael
On: 8/1/17

By LESSOR:

Melissa K. Gardner Trustee of the
Melissa K. Gardner Revocable Trust
Trust dated April 5, 1993

By LESSEE:

John Chen

By:

Name Printed:

Title:

By:

Name Printed:

Title:

Address:

Telephone:

Facsimile:

Email:

Federal ID No.

By:

Name Printed:

Title:

By:

Name Printed:

Title:

Address:

Telephone:

Facsimile:

Email:

Federal ID No.

BROKER:

Alt:

Title:

Address:

Telephone:

Facsimile:

Email:

Federal ID No.

Broker/Agent BRE License #:

BROKER:

Alt:

Title:

Address:

Telephone:

Facsimile:

Email:

Federal ID No.

Broker/Agent BRE License #:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: A/R Commercial Real Estate Association, 600 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8818.


**AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET**

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions")

1.1 Parties: This Lease ("Lease"), dated for reference purposes only

is made by and between Malice K. Gardner, Trustee of the Malice K. Gardner
Reversible Living Trust dated April 5 1993 ("Lessor")and John Chen ("Lessee").

(collectively the "Parties," or individually a "Party")

1.2 Premises: That certain real property, including all improvements thereon to be provided by Lessor under the terms of this Lease.

and commonly known as 4050 & 4065 Grove Road, Santa Rosa
located in the County of Sonoma, State of California

and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project)

("Premises") (See also Paragraph 2)

1.3 Term: 1 years and 11/1/17 months ("Original Term") commencing("Commencement Date") and ending 12/31/17 ("Expiration Date") (See also Paragraph 3) the Premises are

1.4 Early Possession: if available Lessee may have non-exclusive possession of the Premises commencing

("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 12,500 per month ("Base Rent"), payable on the First day of
each month commencing

. (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: 12,500 for the period one year

(b) Security Deposit: \$ _____ ("Security Deposit"). (See also Paragraph 5)

(c) Association Fees: \$ _____ for the period _____

(d) Other: \$ _____ for _____

(e) Total Due Upon Execution of this Lease: \$ 100,000.001.7 Agreed Use: Commercial operation in preparation of property
for new agricultural uses (See also Paragraph 6)

1.8 Insuring Party: Lessor is the "Insuring Party" unless otherwise stated herein (See also Paragraph 8)

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John Chen ("Guarantor") (See also Paragraph 37)

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INITIALS

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: San Francisco

Executed at: San Rafael

On: 1/11/17

On: 1/11/17

By LESSOR:

Marlice K. Guehen Trustee of the
Marlice K. Guehen Revocable Living
Trust dated April 5, 1993

By LESSEE:

John Chen

By:

Name Printed:

Title:

By:

Name Printed:

Title:

Address: 2053 Vallejo St
San Francisco, CA

Telephone: ()

Facsimile: ()

Email:

Federal ID No.

By:

Name Printed:

Title:

By:

Name Printed:

Title:

Address: 204 Second Ave, Ste 508
San Mateo, CA 94401

Telephone: (415) 999-7388

Facsimile:

Email: john@infoloan.com

Federal ID No.

BROKER:

BROKER:

Alt:

Title:

Address:

Telephone: ()

Facsimile: ()

Email:

Federal ID No.

Broker/Agent BRE License #:

Alt:

Title:

Address:

Telephone: ()

Facsimile: ()

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JC
INITIALS

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