



Sonoma County Board of Zoning Adjustments  
STAFF REPORT

**FILE:** UPC17-0082  
**DATE:** October 24, 2019  
**TIME:** 1:20 PM  
**STAFF:** Everett Louie, Contract Project Planner

**Appeal Period:** 10 calendar days

**SUMMARY**

**Applicant:** CL5, LLC  
(Brian McInerney)

**Owner:** Bennett Rosa, LLC  
(Fernando Martinez, John Chen)

**Location:** 4065 Grange Road, Santa Rosa 95404

**APNs:** 049-130-005

**Supervisory District No.:** 1

**Subject:** Use Permit for Specialty Outdoor Cannabis Cultivation

**PROPOSAL:** Request for a use permit for 5,000 square feet specialty outdoor cannabis cultivation on a 4.9-acre parcel. The project site is currently operating under the Penalty Relief program.

**Environmental Determination:** Categorically Exempt under CEQA Section 15301 (Existing Facilities) and 15304 (Minor Alterations to Land).

**General Plan:** Resources & Rural Development (RRD 40), Riparian Corridor (RC), Scenic Resource (SR)

**Specific/Area Plan:** Bennett Valley Area Plan

**Land Use:** Resources & Rural Development (RRD 40)

**Ord. Reference:** Sonoma County Ordinance No. 6245; Zoning Code Section 26-88-350 (Commercial Cannabis Uses), Section 26-88-252



(Enforcement), and Section 26-88-254 (Cannabis Cultivation – Commercial).

**Zoning:** Resource and Rural Development District (RRD), B6 40/10 Combining District, Riparian Corridor Combining Zone (RC50/50, RC100/50), Scenic Resources Combining District (SR)

**Land Conservation**

**Contract:** Not Applicable

**Application Complete for Processing:** May 29, 2018

**RECOMMENDATION:** Approve the request for a five-year Conditional Use Permit for 5,000 square feet of specialty outdoor cannabis cultivation on a 4.9-acre parcel zoned Resources and Rural Development (RRD) with conditions.

**EXECUTIVE SUMMARY:** Staff is recommending approval of the Cannabis Conditional Use Permit application because:

- 1) The project is consistent with the goals and objectives of the General Plan in that it will consist of rural-scale development in a largely undeveloped rural area and will comply with policies seeking to protect natural resources of the area, preserve the rural character of the project area, produce an agricultural product, conserve the majority of the site for future agriculture, and help stabilize farm incomes consistent with General Plan objectives LU-5.2, -9.2, -9.3, -9.4, -16.1 and -16.2, and the policies for the Resources and Rural Development Areas;
- 2) The project is consistent with the Bennett Valley Area Plan policies and standards because it would support agriculture and conservation uses, preserve visual corridors and preserve the rural nature of the community and is consistent with Policies III (1), IV (1-3), and VII;
- 3) Commercial cannabis cultivation is an allowed use with approval of a conditional use permit in the Resources and Rural Development zoning district, subject to the development criteria of the Sonoma County Cannabis Ordinance No. 6189. The proposed project will meet operating standards and has been conditioned to ensure compliance with the County zoning standards and regulations;
- 4) The design, location, size, and operating characteristics of the project are considered compatible with the neighborhood and surrounding land uses in the vicinity because:
  - a. the outdoor cultivation area will occupy 5,000 square feet of the 4.9-acre parcel, or 2.3% of the property;

- b. The site is currently screened from any public views along Grange Road with existing vegetation and trees, intervening topography and setback distances;
  - c. access to/from the site will be controlled through a private gate on Bunnell Road (a private rural road, extending off Grange Road);
  - d. the parking area is also screened by vegetation and trees.
- 5) The proposed project has been analyzed under the California Environmental Quality Act (CEQA) and CEQA Guidelines, California Code of Regulations. Staff has determined that the project would be categorically exempt under Section 15304(b), Minor Alterations to Land as the project involves limited changes to the physical environment, including minimal grading, no tree removal and no encroachment into environmentally sensitive areas. Staff has also determined that the project would be categorically exempt under Section 15301(a) Existing Facilities as the project involves the permitting of existing cannabis cultivation facilities involving only minor alterations and no or negligible expansion of the existing use.

## **ANALYSIS**

### **Background:**

#### Regulations:

In October 2015, the Governor signed three bills into law collectively known as the Medical Cannabis Regulations and Safety Act establishing the State's first licensing system for commercial medicinal cannabis activity. In November 2016, California voters approved Proposition 64, legalizing the adult use and possession of cannabis. In June 2017, the Governor signed a bill creating a single regulatory scheme for both medicinal and adult use cannabis businesses.

In response to these changes in the regulation of cannabis, the Sonoma County Board of Supervisors adopted a series of ordinances to establish a comprehensive local program to permit and regulate medical cannabis. These ordinances were created to preserve environmental resources, protect the health and safety of communities, and ensure industry contributes positively to the economic vitality of the County. In December 2016, the Medical Cannabis Land Use Ordinance was adopted as Ordinance No. 6189 and codified in Chapter 26 of the Sonoma County Code, Sections 26-88-250 through 26-88-258. In November 2018, The Board of Supervisors adopted Ordinance No. 6245, Amending Chapter 26 of the Sonoma County Code, to refine and modify the regulations.

On September 1, 2017, a Use Permit application was submitted for Specialty Outdoor cannabis cultivation on the project site. The applicants enrolled in the Penalty Relief program on October 4, 2017 and are currently operating under the program. The application was initially deemed incomplete, as detailed in a Notice of Project Status, dated

September 28, 2017. In response to this notice, staff received additional application materials in April and May of 2018, and the application was deemed complete for processing on May 29, 2018. On October 16, 2018, the Board of Supervisors adopted Ordinance No. 6245 which amended the Cannabis Land Use Ordinance. The new Ordinance went into effect on November 15, 2018. The revisions to the ordinance included:

**a. Revisions to Operating Standards and Development Criteria**

- I. The term of the permit (up to five years with use permit)
- II. Allow for a 25% propagation area with use permit
- III. Allowance of Adult Use Cannabis with a use permit
- IV. Reduction of the required park setback through use permit

**b. Projects Located in Agricultural and Resources Zones on Parcels under 10**

**Acres:** The Board of supervisors voted to require a minimum lot size of 10 acres for all operations in agricultural and resource zones (LIA, LEA, DA, and RRD). Ordinance No. 6245 includes a pipeline provision that allows applications that were deemed complete for processing prior to November 15, 2018 to continue to be processed under the minimum lot size in effect at the time their applications were deemed complete.

Section III. of Ordinance No. 6245, Pipeline Projects, states:

*“Commercial cannabis cultivation operations that were approved or determined complete for processing prior to the effective date of this ordinance may continue to be processed and reviewed under the minimum lot size in effect at the time their applications were deemed complete or approved. Any of these applications for commercial cannabis cultivation may continue to be renewed as a legal, nonconforming use under limited term use permits in compliance with the provisions of Article 94 (Nonconforming Uses), except that the cultivation area shall not be increased in size.*

Pursuant to the updated Cannabis Ordinance No. 6245, the applicant submitted an updated project proposal to include the following requests: 1) Increasing the use permit term from 1 year to 5 years; and 2) allowing cultivation of both medical and adult use cannabis. The application is currently operating under the pipeline provision in that the project was deemed complete for processing prior to the December 3<sup>rd</sup> date of the new ordinance and the project resides on a Resources and Rural Development land designated parcel under the 10 acre minimum.

Based on the initial material submitted, project planners requested additional information addressing an updated hydrogeological report and an updated site plan. This supplemental information, accompanied by revised visual simulations of the project, was submitted to planners in March 2019.

On May 16<sup>th</sup>, 2019, Sonoma County Code Enforcement and the Agriculture, Weights and Measures Department preformed a site visit as part of the Penalty Relief site checks. Code Enforcement found two violations on the site. A more complete discussion can be found in Issue #9, below in this staff report.

On May 30<sup>th</sup>, the Permit Sonoma Fire Prevention Division preformed a Cannabis Use Permit Road Evaluation site visit. The site visit determined that the project is complaint with the Sonoma County Fire Safety ordinance 6184.

Permit Sonoma sent notification of the submittal of a complete application for the proposed cannabis use to residents located within 300 feet of the subject property on May 31, 2018. To date, Staff has received 18 responses to the neighborhood notification. These letters were subsequently registered to the public file and have been attached to this Staff Report for reference. Identified issues include potential inconsistency with the Bennett Valley Area Plan, environmental concerns related to water supply, odor control, soil conditions, biotic habitat, as well as safety concerns. The letters are part of the administrative record and have been attached to this Staff Report for reference as Exhibit H.

#### Property and Business Ownership:

The applicant for the project is CL5, LLC. Per the Articles of Incorporation and Statement(s) of information submitted under this application, CL5, LLC has one member and one manager, Brian McInerney.

Per the most recent Secretary of State Statement of Information submitted on July 29, 2019, the property owner is Bennett Rosa, LLC with the sole manager being John Chen.

#### **Project Description:**

CL5, LLC proposes to establish a specialty outdoor cannabis cultivation operation on an undeveloped 4.9-acre parcel. The cannabis cultivation area would be limited to a total area of 5,000 square feet of outdoor cannabis cultivation. The proposed use would have operational hours of 8:00 AM to 5:00 PM daily. The cannabis operation will employ 3 full-time employees. The use would be closed to the public and would not contain any retail components.

#### Cannabis Operation:

The proposed project includes a total of 5,000 square feet of outdoor cultivation. No nursery, propagation, processing, or manufacturing activity is proposed on the site.

Outdoor cannabis cultivation would occur seasonally, from May to October. Plant material will be transported to the site for planting and at the end of the season the whole plant will be picked up by a licensed transportation company and transported to an off-site facility for

processing. Cannabis will not be stored on site. The cultivation area is located 240 feet from the north (rear) property line, 174 feet from the east (side) property line, 133 feet from the south (front) property line, and 217 feet from the west (side) property line. The cultivation area is located over 400 feet from the nearest adjacent residence. The grow area would be surrounded by an existing chain link fence. The property has existing vegetation foliage which includes numerous oak woodlands that provide extensive natural screening. The project does not propose to remove any trees or vegetation. The application also includes a compost area and an area for storing products for shipping and materials that will be used in the operation. The compost and storage areas are located more than 100 feet from surrounding properties. The site contains an existing well and a 5,000-gallon storage tank.

#### Utilities and Infrastructure:

The proposed operations will be supported by utilities and infrastructure as described below:

1. The site would be served by an existing well that is directly adjacent to the existing 5,000-gallon water tank. The well is located in the southwest corner of the project parcel. O'Conner Environmental, Inc. performed a Groundwater Report for the parcel and determined that the well yields approximately 75 gallons per minute. The applicant has conducted the necessary hydrogeological analysis for the well, which meets the criteria required for cannabis cultivation use per Zoning Section 26-88-254(g)(10))-Water Source. The cultivation site was enrolled in the North Coast Region Water Control Board on October 4, 2018.
2. The power to operate pumps, security systems and other minor uses will be provided by Sonoma Clean power (PGE) renewable energy.
3. The project parcel does not have any existing structures, nor are any structures proposed. The parcel is in an area served by the Bennett Valley Fire Protection District.
4. Waste Management Plan Description:
  - a. The project proposal indicates that the applicant/operator will comply with storm water management requirements to avoid any impacts on on-site drainage conditions.
  - b. The project proposal indicates that the operation will recycle or properly dispose of all waste. All non-cannabis waste and recycling shall be stored in a secure area and collected by Recology, the County's waste hauler. Please refer to the Health Conditions of Approval No's 69 and 88.

- c. Green waste and excess medium will be composted and reused in subsequent years. The applicant is proposing a 100 square foot compost area. The composting area would be located outside the riparian setbacks.
- d. All garbage, refuse, and recyclable items would be stored in watertight, heavy plastic containers and would be disposed on a weekly basis at the Healdsburg Transfer Station.
- e. All cannabis products shall be stored in a secure area that is not visible to the public and locked at all times. All vendors shall be scheduled in advance and must present valid identification. Plant waste from plant trimming will be used as mulch in the cultivation area. Any product that fails testing shall be stored in secured storage bins and sent to be destroyed through a third-party cannabis disposal company and managed through the California Track and Trace program.

### **Site Characteristics:**

The project site is a square-shaped 4.9-acre parcel in rural, unincorporated Santa Rosa. Grange Road provides the only access to the property (through a private road Bunnell Road). Elevations of the cultivation site is less than 5%, gently sloping to the east and consists of open grassy areas and oak woodlands. Per the submitted site plan, the lower cultivation site would be setback more than 4,000 feet from Grange Road and the upper cultivation sites would be setback more than 2,500 feet from Bennett Valley Road. The property contains many several large trees and shrubs that screen cannabis activity from public view.

A riparian corridor bisects the property at its northeastern corner and a second riparian corridor bisects the southeastern extent. The proposed development would not encroach on the designated 100-foot and 50-foot riparian corridor setbacks. The subject property does not contain surface waters or wetlands.

Access to the project would be off of Grange Road via an existing gated driveway which will lead to Bunnell Road, a private road. As currently designed, the driveway to the project site is visually compatible with the rural area because the design of the driveway is similar to other driveways in the vicinity.

No grading is proposed on the parcel and there are currently no residential structures or use on the parcel. The nearest residential use is a single-family residence, occupied by the owner located on the adjacent parcel. The applicant is proposing an ADA compliant portable toilet with portable hand washing facilities which is in compliance with PRMD, Technical Bulletin B-46 adopted on 9/1/18.

## **Surrounding Land Use and Zoning:**

The project area is largely rural and located in the north of Bennett Valley about four miles to the southeast of Santa Rosa. Surrounding land uses include a single-family residence to the south, the Matanzas Creek and Matanzas Creek Reservoir to the north and east, and undeveloped Taylor Mountain to the west. Matanzas Creek is a tributary to the Russian River and Matanzas Creek Reservoir serves as flood protection from the Russian River for the Santa Rosa urban area.

The surrounding land uses all have Resources and Rural Development (RRD 40 du/acre) designations in the Sonoma County General Plan with some variation in the zoning for each parcel. The project parcel (4065 Grange Road) has the same property owner as 4050 Grange Road, the adjacent parcel directly south of the project site. 4050 Grange Road (neighboring parcel) is the closest parcel with a residence on site.

The property is also located in a designated Riparian Corridor. The minimum setback from the Riparian Corridor located in the northern portion of the parcel is 100 feet (RC 100/50) while the minimum setback from the Riparian Corridor located in the southern portion of the parcel is 50 feet (RC50/50). The property's Scenic Resources designation allows for development criteria to comply with the RRD and RC zoning districts, and whose purpose is to preserve the visual character and scenic resources of lands in the county and implement provisions of certain sections in the general plan open space element.

The parcel is designated as High/Moderate Fire Hazard Severity Zone with a State Responsibility Area designation. The site has not been affected by a previous wildfire. The groundwater availability of the site is a Class 3, (Marginal groundwater). The project is not located in a Critical Watershed Area or a Priority Groundwater Basin. A site visit in May 30<sup>th</sup> from the Permit Sonoma Fire Presentation Division determined that the project is compliant with the Chapter 13 of the Municipal Code, Sonoma County Fire Safety ordinance 6184 in that the project complies with the fire safe road standards.

## **DISCUSSION OF ISSUES**

### **Issue #1: Consistency with the General Plan**

The subject property's current General Land Use Designation of Resources and Rural Development ("RRD") is intended to manage and conserve natural resources and existing areas of rural character. Section 2.7 of the General Plan Land Use element identifies the intended policy and permitted uses for Resources and Rural Development areas. This land use designation is intended to protect natural resources, such as timber, geothermal and aggregate resources, and to accommodate very low-density residential development and

limited agricultural production where compatible with resource values and available services.

### **Staff Comments:**

The project is consistent with the provisions of the Sonoma County General Plan for the following reasons:

- (1) The project does not propose structures and is located in a depression surrounded by higher topography. The project location, which is below the ridgeline would not require any cut and fill. No grading is proposed.
- (2) The project will harvest cannabis, an agricultural product, and conduct activities similar to those that are typical for agricultural use.
- (3) The project would be fully screened by existing Oak Woodlands to the South, North, East, and West of the project. Utilizing the google map street view tool, the project site is not visible from the public access points on Bennett Valley Road or Grange Road.
- (4) Utilities are already existing on site. Outdoor cannabis does not require additional lights.
- (5) No existing on-site trees are proposed to be removed as a result of the project.
- (6) The total area for the outdoor cannabis cultivation will be limited to 5,000 square feet. This cultivation area amounts to 2.3% of the parcel.

Therefore, the project will preserve the natural, visual and scenic resources of the site; avoid urbanized development, and be consistent with General Plan Objectives LU-5.1, -5.2, -9.1, -9.3, -9.4, -10.1, -16.1 and -16.2 and the policies for the Resources and Rural Development designation.

### **Issue #2: Consistency with the Bennett Valley Area Plan *Development Guidelines***

The Bennett Valley Area Plan ("BVAP") was prepared pursuant to General Plan Policy LU-1a; it identifies issues, goals, and policies specific to the Bennett Valley Area. The plan was last modified in September of 2011.

The BVAP relies on the Resources and Rural Development zoning designation to support agricultural and conservation uses. Land Use goals and policies outlined in the Area Plan are intended to enhance rural character and reflect the environmental and economic constraints, suitability's and sensitivities of the area in the determination of the location and intensity of development. Specifically, low density development is fundamental to the Bennett Valley Area Plan. Per the plan, "*commercial development is not considered appropriate to the rural character of the area,*" and "*The Resources and Rural Development category supports agricultural and conservation uses and recognizes public safety hazards.*"

The Bennett Valley Area Plan also designates visual corridors that are considered sensitive scenic resources. The plan discourages certain types of development within these corridors (Bennett Valley Area Plan pgs. 13-14), and establishes the following objectives:

- “(1) [to] Avoid skyline development.*
- (2) Site and design structures in harmony with natural surroundings.*
- (3) Prohibit structures in visual/scenic corridors as mapped on the Critical Open Plan.*
- (4) Prohibit structures in visual corridors on the Critical Open Space Plan.*
- (5) Apply the Bennett Valley Design Guidelines. [see Issue 2a, below]*
- (6) Development in scenic landscape units shall comply with the General Plan and Zoning Ordinance.”*

**Staff Comments:**

The project is consistent with the Land Use designations in the Bennett Valley Area Plan as outlined in the analysis provided below for applicable policy issues in the Area Plan:

**Geologic Hazards**

A-1: Retain very low density

A-2: Site structure and design foundation in accord with recommendations of an engineering geologist.

*Currently, there are no existing structures nor are any proposed. The project is consistent with this measure.*

**Flood Hazards**

B-1: Prohibit residential structures within designated inundation area as mapped on Critical Open Space Plan.

*Currently, there are no existing residential structures nor are any proposed. The project is consistent with this measure.*

**Fire Hazard**

D-1: Retain low densities

*Currently, there are no existing residential land uses nor are any proposed on the project site. The proposed project is consistent with this measure.*

D-2: Encourage major subdivisions with mutual water systems and require adequate access for fire suppression equipment.

D-3: Where minor subdivision occurs, encourage cluster development with adequate water supply and access for fire suppression.

*The project is not a major or minor subdivision. The proposed project is consistent with this measure.*

D-4: Clear wildland grass and brush near associated structures.

*Currently, there are no existing structures on the project parcel nor are any proposed on the project parcel. The proposed project is consistent with this measure.*

### **Visual Amenity**

E-1: Avoid skyline development

*The project does not propose skyline development. The proposed project is consistent with this measure.*

E-2: Site and design structures in harmony with natural surroundings.

E-3: Prohibit structures in visual/scenic corridors as mapped on the Critical Open Space Plan.

E-4: Prohibit structures in visual corridors as mapped on the Critical Open Space Plan.

E-6: Development in scenic landscape units shall comply with the General Plan and Zoning Ordinance.

*Currently, there are no existing structures nor are any proposed. The proposed project is consistent with this measure.*

### **Maintain Valuable Open Space**

F-1: Prohibit structures in riparian corridors and unique biotic features as mapped in the Critical Open Space Plan

F-2: Site and design structures in harmony with natural surroundings.

*Currently, there are no existing structures nor are any proposed. The proposed project is consistent with this measure.*

### **Preserve and Protect Agriculture**

G-1: Encourage utilization of Land Conservation Act of 1965 as amended.

*The project site is not under a Land Conservation Act contract.*

### **Assess Impacts of Projects on Public Services**

I-1: To assess adequately the cumulative impact of individual projects on the public services of the area, plans for any major or minor subdivision or rezoning should reflect the ultimate potential buildout of that project.

*The project does not propose any major or minor subdivisions or rezoning. The proposed project is consistent with this measure.*

The project as proposed is consistent with the plan's policies and specific mitigation measures established for its subarea and maintains ample permanent open space in Bennett Valley, a major plan objective.

### **Compliance with Area Plan Guidelines**

Section (5)(a-e) of the Bennett Valley Area Plan's guidelines establishes that staff must make the following findings for all projects recommended for approval by the Bennett Valley/North Sonoma Mountain Design Review Committee or ultimately by the Planning Director:

- a. *That the site is adequate in size and shape to accommodate the proposed use.*
- b. *That private streets and driveways, both existing and proposed, are properly designed and located to carry the type and quantity of traffic generated by the proposed use and to minimize visual impact.*
- c. *That approval of the proposed use at the proposed site will have no significant adverse effect on adjacent property.*
- d. *That the proposed use is consistent with the County General Plan, and where applicable, the Bennett Valley Area Plan.*
- e. *That the minimum requirements are met with respect to:*
  - i. *Visual/scenic corridor, riparian corridor, scenic landscape unit and critical habitat and unique biotic feature setbacks.*
  - ii. *Height and location of fences and walls.*
  - iii. *Controlling erosion and screening structures with landscaping.*
  - iv. *Other conditions to insure conformity with the intent and purpose of this plan, where applicable.*

The 4.9-acre site is large enough to support the proposed land use. The applicant proposes 3 full-time employees with adequate parking. Private streets and driveways serving the site have the capacity to accommodate projected traffic for the project. Based on the submitted Cannabis Trip Generation Form (PJR-127), the average daily trip generation (ADT) for the proposed project is 6 ADT year-round. Access to the site is via Bunnell Road, a private gated road. Bunnell Road can be accessed directly off Grange Road. The project site is approximately 0.5 miles from Grange Road, accessed by a private road named Bunnell Road. To address emergency access to the site, the applicant is proposing to install a Knox gate key into the existing gate. In addition, Permit Sonoma Fire Prevention Division performed a site inspection on May 30<sup>th</sup> of 2019 and found no issues with the existing access. The site visit provided a recommendation to continue to provide defensible space around the existing private road and private driveway in accordance to Sonoma County Code Chapter 13A.

The proposed project would comply with all operational and development standards outlined in the Section 26-88-254 of the Cannabis Ordinance, helping to minimize any impacts on adjacent properties. There is an existing six feet high chain link

fence that encompasses the entire 5,000 square foot cannabis cultivation. The entire operation will take place within this fenced area. The proposed height and location of fencing is consistent with the Sonoma County Code and will be harmonious with the character of the area per section 26-82-030, Design Review guidelines. There will be no grading on site. As detailed in other sections of this report, the proposed use is consistent with both the County General Plan and Bennett Valley Area Plan, along with Base and Combing Zone Designations.

Land Use Compatibility Concerns:

The project is generally consistent with the Bennett Valley Area Plan because it would preserve visual corridors, support retention of land in open space, and promote conservation of land, consistent with Policies III (1), IV (1-3), and VII. While the Bennett Valley Area Plan does not consider commercial development to be appropriate for the rural character of the area, the proposed use would not have the characteristics typically associated with commercial uses in that it would not be visible or open to the public, would not generate significant traffic, and would be of a low-intensity. Cannabis cultivation is considered compatible and supportive of open space and agricultural uses in retaining the balance of the property in open space use.

**Issue #3: Zoning Consistency**

Cannabis cultivation is a permitted use with a Use permit approval in the Resources and Rural Development zoning district. The following zoning standards are applicable to the requested cannabis application:

- 1) Outdoor cannabis cultivation cannot exceed the maximum for the parcel which is 5,000 square feet;
- 2) Ordinance No. 6245 Section III. Pipeline Projects provides for processing of complete applications pursuant to the minimum parcel size in effect at the time the application was determined to be complete;
- 3) The minimum parcel size was 3 acres for Specialty Outdoor cultivation operations at the time the application was determined complete.
- 4) A single person or entity can cultivate a total combined cultivation area of not more than one (1) acre within the County;

**Staff Comment:**

The project is consistent with the development standards for the RRD zone and permit requirements for cannabis uses established in Ordinance No. 6189 in that it involves:

- 1) 5,000 sq. ft. of outdoor cultivation area;
- 2) The project qualifies under the pipeline provision because it was determined to be complete for processing on May 29, 2018. This is prior to the effective date of Ordinance No. 6245, November 15, 2018;

- 3) The 4.9-acre parcel meets the applicable minimum parcel size under the pipeline provision;
- 4) The applicant, CL5, LLC will cultivate a total area of 5,000 square feet.
- 5) All business owners do not violate the 1-acre maximum requirement.

I) *Setbacks*

Cannabis cultivation operations for commercial use are subject to the Zoning Code requirements of Sections 26-88-250 through 26-88-254 and must comply with the development criteria and operating standards contained therein.

Included within the above referenced development criteria are the following property setback standards for specialty outdoor cultivation:

***“Property Setbacks – Outdoor. Outdoor cultivation areas and all associated structures shall not be located in the front yard setback area and shall be screened from public view. Outdoor cultivation areas shall not be visible from a public right of way. Outdoor cultivation areas shall be setback a minimum of one hundred feet (100’) from property lines and a minimum of three hundred feet (300’) from occupied residences and businesses on surrounding properties. Outdoor cultivation sites and greenhouses/mixed light structures shall be setback a minimum of one thousand feet (1,000’) from a school providing education to K-12 grades, a public park, childcare center, or an alcohol or drug treatment facility. The distance shall be measured in a straight line from the property line of the protected site to the closest property line of the parcel with the cannabis cultivation use.”***

**Staff Comment:**

The proposed outdoor cannabis cultivation use complies with setback requirements listed above given the setback distances submitted in the site plan and project proposal. The cultivation site is 173.9 feet from the eastern property line, 240.6 feet from the northern property line, 217.4 feet from the western property line and 132.7 feet from the southern property line. The cultivation site is approximately 370 feet from the nearest residence. The closest residence is located on the adjacent parcel and is owned by Bennett Rosa, LLC. The nearest residence that is not owned by Bennett Rosa, LLC is located over 1,000 feet from the cultivation site. The proposed cultivation area is not located in the front yard setback and is screened from public view and the public right of way. There is no school, public park, childcare center, or alcohol or drug abuse treatment facility within 1,000 feet from the site.

II) *Riparian Corridor Zoning Designation (RC 50/50) and (RC100/50)*

The subject property is located in a Riparian Corridor combining zone, which, pursuant to Section 26-65-004 of the Sonoma County Code is “intended to protect and enhance riparian corridors and functions along designated streams...” Section 26-65-030 of the

Zoning Code establishes that development is restricted to protect riparian habitat and vegetation. The 50/50 designation denotes certain activities are prohibited within fifty feet on either side of the conservation area. Similarly, the 100/50 designation prohibits certain activities within 100 feet on either side of the conservation area. Prohibited uses include grading, vegetation removal, agricultural cultivation, structures, roads, utility lines, and parking lots.

**Staff Comment:**

The project site is located on a property zoned with the RC 50/50 and RC 100/50 overlay. The RC 50/50 bisects the southeastern corner of the parcel while the RC 100/50 bisects the northwestern corner of the parcel. The proposed cultivation area is located at least 250 feet from the RC 50/50 designation and 250 feet from the RC100/50 designation. There would be no grading, vegetation removal or structures located within the riparian corridors. Review of the National Wetlands Inventory's Wetland mapping online system indicated no presence of wetlands listed within the parcel and one wetland area approximately 250 feet east of the property boundary (Matanzas Creek). The biological assessment found no U.S.G.S mapped stream (a.k.a. blue line stream) within the proposed development area. The biological assessment found no ephemeral drainage areas on the property. The applicant's environmental consultant confirmed in a site survey that the Matanzas Creek does not enter the property nor is it located near the proposed development area. Staff have concluded that the cultivation site poses no threat to the riparian habitat and vegetation and no recommendations pertaining to the riparian corridor were identified in the applicant's biological site assessment.

*III) Scenic Resources*

**Scenic Landscape Concerns:**

The project is located in an area designated as a Scenic Landscape Unit, which is considered to be visually sensitive, as described by the Sonoma County Zoning Regulations and the Sonoma County General Plan. Per Zoning Code Section 26-64-020, Community Separators and Scenic Landscape Units, structures located within community separators and scenic landscape units are required to:

*“(1) be sited below exposed ridgelines;*

*(2) use natural landforms and existing vegetation to screen them from view from public roads (on exposed sites, screening with native, fire resistant plants may be required). In addition, cuts and fills should be discouraged; where practical, driveways should be screened from public view; and utilities should be placed underground, where economically practical;”*

Per Article 64 of the County Code, development criteria including building heights, minimum lot area and lot widths, yard requirements and maximum percentages of lot

coverages shall comply with the requirements for the base zone district (RRD). The base zone district (RRD) follows Zoning Code Section 26-64-020 above.

In the event that compliance with these standards would make a parcel unbuildable, structures should be sited where minimum visual impacts would result, as is the case with several residential and agricultural developments in the vicinity. With respect to compliance with these provisions of the Sonoma General Plan, staff presents the following discussion:

**Staff Comment:** The proposed use is compliant with provisions stated above, that are outlined in the Scenic Resource combining section of the Zoning Code. The project does not propose any structures nor are there any existing residential structures on site. There is no proposed cut and fill development and the parking lot will be screened with existing landscaping.

Staff has also assessed the site in conjunction with Permit Sonoma's Visual Assessment Guidelines.

Table 3  
Thresholds of Significance  
For  
Visual Impact Analysis

<b>Sensitivity</b>	<b>Visual Dominance</b>			
	<i>Dominant</i>	<i>Co-Dominant</i>	<i>Subordinate</i>	<i>Inevident</i>
<i>Maximum</i>	Significant	Significant	Significant	Less than significant
<i>High</i>	Significant	Significant	Less than significant	Less than significant
<i>Moderate</i>	Significant	Less than significant	Less than significant	Less than significant
<i>Low</i>	Less than significant	Less than significant	Less than significant	Less than significant

Potential for significant impact is determined based on the, "Site Sensitivity" and Visual Dominance" of the project location and proposed development. Per Sonoma County's Visual Assessment Guidelines, "Site Sensitivity" was determined to be "High" due to the Scenic Resource land use designation (Scenic Landscape Unit) associated with the subject property with a slope of less than 40% and no proposed construction on hilltops; "Visual Dominance" was determined to be "Inevident" because project elements are generally not visible from public view because of intervening natural land forms and vegetation.

Pursuant to the above conclusions, the proposed development and subject property do not have the potential for a significant visual impact.

#### **Issue #4: Hydrology and Groundwater Supply**

The project site's existing well is located in a Zone 3 Groundwater Availability area. Because of this designation, per Section 26-88-254(g)(10)(c) of the Sonoma County Code, the applicant was required to prepare a hydro-geological report. The project would be served by a groundwater well that was drilled approximately 10 years ago and has a reported yield of 20 gallons per minute (gpm). The purpose of the hydrological report is to provide supporting data and analysis that certifies the onsite groundwater supply is adequate to meet the proposed uses and that the operation will not:

- 1) *Result in or exacerbate an overdraft condition in basin or aquifer;*
- 2) *Result in reduction of critical flow in nearby streams; or*
- 3) *Result in well interference at offsite wells.*

On May 1, 2018, a hydro-geologic report for the project was conducted by O'Conner Environmental, Inc. indicating that the water supply would be pumped from an on-site well. The hydro-geologic report concludes the outdoor cannabis cultivation operation will not significantly impact basins, nearby streams, or interfere with offsite wells. On April 18, 2019, the Natural Resources Geologist at Permit Sonoma reviewed the hydro-geologic report and concluded that the project has little potential to impact groundwater resources or interconnected surface waters. Standard conditions of approval (Exhibit A, No.'s 63-68) were provided which direct the applicant to install well monitoring equipment and to submit data to Permit Sonoma quarterly for review to verify water use. The hydro-geologic report estimated that the project would use 0.22-acre feet per year of water while average annual recharge of the cumulative impact area was estimated to be 139-acre feet per year. O'Conner Environmental concluded the annual recharge is substantially greater than water use required for this project.

#### **Issue #5: Noise and Traffic Generation**

##### **I) Noise**

Regular day to day activities involve hand watering for irrigation, removing excess vegetation, and basic cultivation activities. During harvest, which is anticipated to occur once per year for 3-4 weeks, branches and excess vegetation will be removed from cannabis plants. The harvested material will immediately be transferred offsite to a licensed processing/manufacturing site. There are no backup generators proposed.

##### **II) Traffic**

The project would utilize a maximum of 3-full time employees year-round. As mentioned above, harvest would last 3-4 weeks and occur once per year. The project site has a parking lot area to support the employees. The applicant submitted a Trip Generation Form which has the employees making 6 average daily trips year around and 6 average daily trips during the harvest period.

**Staff Comment:**

Noise generated from the operation is anticipated to be minimal and compliant with Sonoma County Standards. The project would be conditioned to adhere to noise standards outlined in Table NE-2 of the General Plan. The loudest equipment associated with the project are employee vehicles and delivery/distribution trucks. The Sonoma County traffic counts indicate that the average volume for Grange Road is 3,571 trips per day and Bennett Valley Road has an average volume count of 5,857 trips per day from post mile 12.45 to 14.45 and 2,872 trips per day from post mile 14.45 to 19.88. The additional 6 average daily trips from the proposed project would not have a significant impact on the overall traffic. The proposed project does not propose the use of generators or fans. The project would not create traffic incompatible with the area as it would have three full-time employees on site.

**Issue #6: Neighborhood Compatibility**

Findings on the design, location, size, and operating standings are used to evaluate the project's neighborhood compatibility. These findings are used to determine if the proposed project/use would be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood. This determination does not require that there be an environmental impact to prove the project/use may be detrimental.

**Staff Comments:**

The nearest neighboring residence is located over 300 feet, directly south of the outdoor cultivation. The owner of this residence also owns the property that the proposed project resides on. The next closest neighboring residence is located over 1,000 feet southeast from the proposed outdoor cannabis cultivation location. The outdoor cultivation area is screened by existing trees, vegetation and vast open space surrounding the parcel. A site visit performed by MIG on 8/19/19 confirmed that the outdoor cultivation was not visible from neighboring residences and public access points (Grange Road and Bennett Valley Road). Access to and from the site will be controlled through a private gate and over a half mile of private access road. The outdoor cultivation site is protected by a fence, WIFI motion censored cameras will be installed at the access gate, driveway and grow areas, motion censored downward casting lights will be placed at the front gate, driveway and outer perimeter. Security measures are robust and will deter potential theft and other crime. Odor control and management meets all requirements outlined in 26-88-254(g)(2) of the Cannabis Ordinance; the outdoor cultivation operation meets and exceeds the required setbacks requirements. Traffic to and from the site is expected to be minimal: the traffic study expects an average of 6 trips per day. All exterior lighting will be required to be downward casting and to not project onto neighboring properties or the night sky. For these reasons, and compliance with the Cannabis Ordinance, the project is compatible with the surrounding neighborhood.

**I) Security**

In adopting Ordinance No. 6245, the Board of Supervisors found that security issues could be addressed through compliance with the below Security and Fencing requirements. To maintain effectiveness of the security measures, security plans are kept confidential.

**(21) Security and Fencing.** A Site Security Plan shall be required. All Site Security Plans shall be held in a confidential file, exempt from disclosure as a public record pursuant to Government Code Section 6255(a). Security cameras shall be motion-sensor and be installed with capability to record activity beneath the canopy but shall not be visible from surrounding parcels and shall not be pointed at or recording activity on surrounding parcels. Surveillance video shall be kept for a minimum of thirty (3) days. Video must use standard industry format to support criminal investigations. Lighting and alarms shall be installed to ensure the safety of persons and to protect the premises from theft. All outdoor and mixed light cultivation sites shall be screened by non-invasive fire-resistant vegetation and fenced with locking gate with a Knox lock. No outdoor or mixed light cultivation sites located on parcels adjacent to public parks shall be visible from trails or public access points. Razor wire and similar fencing shall not be permitted. Weapons and firearms at the cultivation site are prohibited. Security measures shall be designed to ensure emergency access in compliance with fire safe standards. All structures used for cultivation shall have locking doors to prevent free access.

**Staff Comment:**

The applicant has provided a security plan that complies with Ordinance No. 6245, Section 26-88-254(f)(21)). The applicant will comply with the above security standard by installing WI-FI censored cameras at the access gate, driveway and grow area, storing security video footage for 30 days, installing motion censored flood lights around the outer perimeter, and potentially hiring security guards when cannabis plants are present on site including harvest. To protect the area further, there is an existing fence that surrounds the entire grow area. The property itself also has additional fencing for the entire parcel and can only be accessed by a private locked access road. The surrounding land is hundreds of acres of vacant land owned by Kendall Jackson and Sonoma County Water which can help to deter criminal activity.

**Issue #7: Code Enforcement Violations**

Sonoma County Code Enforcement and the Agriculture Weights and Measures Department performed a penalty relief program site inspection on May 16, 2019. The site inspection revealed two violations, both of which apparently existed prior to the applicant's purchase of the property. The first violation is for stockpiling of fill importation of over 50 cubic yards of fill with no permit from 2006 and unpermitted well installation dating over 10 years ago. Code enforcement issued a Notice and Order for the unpermitted well.

**Staff Comment:**

The Use Permit creates an opportunity to correct violations in tandem with completing the Conditions of Approval and the vesting of the Use Permit for the project. Prior to vesting of the use permit, the applicant has indicated that he will apply for a well permit to legalize the un-permitted well and a grading permit that will legalize the unpermitted grading previously performed on the property. Obtaining the Use Permit will be necessary before the applicant can obtain the grading permit. The applicant will be required to provide remedy for the violations within 60 days of the signed approval letter.

### **Issue #8: Environmental Determination**

This proposed project has been analyzed under the California Environmental Quality Act (CEQA) and the CEQA Guidelines, California Code of Regulations. Staff has determined that the project is exempt under CEQA Section 15301, Existing Facilities and 15304, Minor Alterations to Land. The Section 15301 categorical exemption is applicable to permitting of existing private facilities, involving negligible or no expansion of use the existing or former use. The Section 15304 categorical exemption is applicable to “minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees, except for forestry or agricultural purposes.”

#### **Staff Comment:**

Categorical Exemption 15301 of the CEQA Guidelines is applicable to the proposed project in that it consists of permitting of an existing private facility currently operating under the Penalty Relief program that involves no expansion of the existing use. The project is currently operating under the Penalty Relief Program and has a baseline condition of 5,000 square feet of cultivation and utilizes the existing well. The proposed project will consist of permitting the existing operation including 5,000 square feet of outdoor cultivation, up to three full time employees, use of the same water source, and other components of the project and operation that are consistent with current practices.

Categorical Exemption 15304 of the CEQA Guidelines is applicable to the proposed project in that it consists of only minor alterations to the existing agricultural operation and does not involve the addition of structures or the removal of trees. The outdoor cultivation is a seasonal use of the land on a limited term basis having negligible or no permanent effects on the environment (Section 15304(e)). Additionally, the project involves no grading except to remedy a preexisting grading violation and is located on a slope of less than 10 percent (Section 15304(a)).

Additionally, the following facts show that the project is consistent with the above categorical exemptions and that none of the exceptions to these exemptions apply:

- 1) The applicant has submitted biological and hydro-geologic reports that found there would be no impact to biotic or groundwater resources. The project would not involve any tree removal.

- 2) The proposed project is not located on a Hazardous Waste or Substances Site as listed by the Cortese List.
- 3) Neither the NWIC or Tribal representatives identified the potential for impact to cultural resources or requested a study of potential cultural resources. The project proposes no grading or excavation and will not disturb the site. Cultivation will take place in pots above ground and the cultivation area will be irrigated using hand watering techniques which will not exacerbate existing landslide conditions.
- 4) The proposed project meets all setback requirements set forth in the Zoning Code including outdoor cultivation property setbacks and Riparian Corridor setbacks. All operations associated with the proposed project would be outside of the two Riparian Corridor setback requirements of 50 feet and 100 feet respectively.
- 5) The outdoor cannabis cultivation is a seasonal use, at which there is a maximum of three employees on site. The project proposes 6 average daily trips during the harvesting period which will not exacerbate traffic conditions. Outdoor cultivation does not generate noise because outdoor cultivation does not use generators, fans, cooling systems and lights.
- 6) The use is only authorized on a limited-term basis.

### **STAFF RECOMMENDATION**

Staff recommends approval of the limited-term Conditional Use Permit for the specialty, outdoor cannabis cultivation use subject to the attached Conditions of Approval.

### **FINDINGS FOR RECOMMENDED ACTION**

1. The project is consistent with all applicable General Plan land use designation and Policies as detailed in the staff report. Conditions of approval ensure that the project will not detract from the rural character of the project site or project vicinity by applying standards for development and operations for the project related to grading, lighting, security/fencing, energy use, hours of operation, noise, and waste/water management.
2. The project is consistent with the Bennett Valley Area Plan because it preserves visual corridors, supports an agricultural use, conservation of land, and is consistent with Policies III(1), IV(1-3) and VII. The particular circumstances supporting this case are; 1) proposed development would not be on a ridgeline and be at the lowest buildable area of the subject property; 2) the project would be fully screened by existing vegetation from publicly accessible views on (Grange Road and Bennett Valley Road).
3. The proposal is consistent with the Resources and Rural Development (RRD) Zoning Classification in that the proposed cannabis cultivation operation is allowed through the processing and approval of the Conditional Use Permit (UPC). The project proposes a use that is allowed by a Use Permit, that complies with the development standards, and adheres to the operation requirements of the Zoning District within the Sonoma County

Code. The project will meet all required setbacks, ownership, and square footage limitations. The project will incorporate a security plan and fencing plan, waste management plan, and source energy compliant with the Sonoma County Code. The project is also consistent with the Riparian Corridor zoning designation because all proposed activities are over one hundred (100) feet from riparian resources. The proposed cannabis operation would disturb no more than 2.3% of the project site. The proposed project would also exceed required setbacks for sensitive uses including schools, public parks, childcare centers, or alcohol/drug treatment facilities. The project is consistent with the development standards and operational limitations of the Resources and Rural Development zoning designation.

4. The project will incorporate a security and fencing plan, waste management plan, and source energy compliant with the Sonoma County Code. The operation will not significantly impact basins, nearby streams, or interfere with offsite wells.
5. The project is categorically exempt under CEQA Guidelines Section 15301, Existing Facilities and CEQA Guidelines Section 15304, Minor Alterations to Land, because the proposed project will involve negligible or no expansion of the existing use and involves only minor alterations to the condition of the land having negligible or no permanent effects on the environment. The project is currently operating under the Penalty Relief Program and has a baseline condition of 5,000 square feet of cultivation. The proposed project will consist of the same 5,000 square feet of cultivation and operate in the substantially the same manner as the existing use. The applicant has submitted professionally conducted technical reports on biology and hydrogeology, none of which presented concerns with the project. Due to these reasons, the project presents no significant environmental impacts. No exceptions listed under CEQA Section 15300.2 apply to the project.
6. The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances in this case are: (1) The specialty cannabis operation would not involve more than 5,000 square feet of outdoor cannabis cultivation, (2) Hours of operation shall be limited to 8:00 AM to 5:00 PM including delivery and shipping activities; (3) All cannabis cultivation areas shall be screened from public views from Grange and Bennett Valley Road by existing Oak Woodland trees and intervening topography; (4) The operation proposes solar pathway lights which will be downward casting and fully-shielded; (5) Security measures will be implemented to uphold the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such use; (6) No public access or retail sales are permitted; (7) There will be no hazardous materials stored on site; (8) All equipment shall be in compliance with the General Plan Noise Standard; (9) All electrical energy will be 100% renewably sourced.

## **LIST OF ATTACHMENTS**

- EXHIBIT A: Draft Conditions of Approval
  - EXHIBIT B: Vicinity Map
  - EXHIBIT C: Aerial Map with Site Delineated
  - EXHIBIT D: General Plan Map
  - EXHIBIT E: Zoning Map
  - EXHIBIT F: Project Proposal Statement and Operating Plan
  - EXHIBIT G: Site Plan
  - EXHIBIT H: Site Photos
  - EXHIBIT I: Letters from the Public
  - EXHIBIT J: Draft Resolutions
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