

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

May 14, 2020

Commission Members

P John Hess, District I
P Bob Malley, District II
P Batsulwin Brown, District III
P Christina Price, District IV
P Daniel Suenram, District V

Staff Members

P Scott DeLeon, Interim CDD Director
P Tocarra Nicole Thomas, Dep. Director
P Mark Roberts, Principal Planner
P Nicole Johnson, Deputy Cty Counsel
P Danae LoDolce, Office Assistant III

REGULAR MEETING

May 14, 2020

9:20 a.m. CALL TO ORDER

Pledge of Allegiance

Action on minutes from March 12, 2020, March 26, 2020, April 9, 2020 and April 23, 2020.

Comm. Hess moved, 2nd by Comm. Malley to approve the above minutes; minutes approved by 5/0 roll call vote.

9:21 a.m. CITIZEN'S INPUT- None

Any person may speak for three minutes about any subject of concern, provided that it is within the jurisdiction of the Planning Commission, and is not already on today's agenda or scheduled for a future public hearing. Total time allotted for Citizen's Input shall be fifteen minutes. Speakers are requested to complete a simple form (giving name, address and subject) available in the Community Development Department office, prior to 9:00 a.m.

Agendas of public meetings and supporting documents are available for public inspection in the Lake County Courthouse, Community Development Department, Third Floor, 255 North Forbes Street, Lakeport, California

Request for Disability-Related Modification or Accommodation: A request for a disability-related modification or accommodation necessary to participate in the Planning Commission meetings should be made in writing to the Planning Commission Assistant at least 48 hours prior to the meeting.

9:26 a.m. Public Hearing on consideration of a Major Use Permit (UP 19-45) and Categorical Exemption (CE 20-11). The project applicant is BENMORE NORTH, BENMORE VALLEY RANCH, LLC proposing (39) A Type 3 (outdoor) Commercial Cannabis Cultivation licenses. The project is located at 2743, 3245, 2976, 3088, 3278, 3168, 3400, 3290, 3295, 3275, 2359, 3303 and 3417 Benmore Valley Road, Lakeport and further described as

APNs 007-001-13, 007-001-34, 007-001-35, 007-001-19, 007-002-07, 007-001-40, 007-001-38, 007-001-26, 007-001-27, 007-001-28, 007-001-16 007-001-06 and 007-001-25. (Victor Fernandez)

Comm. Hess noted that the applicant, Benmore North LLC, is now known as Benmore LPFN LLC.

Victor Fernandez, Assistant Planner, provided background information and a power point presentation on the project application. This presentation included the permit request, the project description, the site description, a zoning map and reference to the Early Activation that was issued on March 17, 2020. Also noted in the presentation was the project analysis as well as the subsequent recommendations and conditions of approval. Conditions of approval include the adoption of Categorical Exemption CE 20-11 under Class 4 Exemption; Air Quality-Dust Palliatives and Air Emission Standards; Geology/Soils-Erosion Control Measures; Water Quality – Obtain all Federal and State Agency Permits, and project cannot divert water; Cultural Resources: if cultural resources are found during ground disturbance, all work is to cease and proper agencies will be contacted for guidance. The proposed permit expiration will be May 14, 2030.

Comm. Hess shared his concerns about the wildlife corridors and what protections would be implemented. Also of concern, was the mention of there being roughly eight (8) to twenty four (24) employees, and what resources were to be provided during their shifts? He noted from the staff report that all he saw offered was, “portable hand washing stations and other accommodations”, and asked if there were any structures on the property with dedicated facilities. He asked how the number of facilities will be determined and how many are needed at any given time, and who will be providing these facilities.

Victor Fernandez said there will be cold frame greenhouses, and there are currently various structures on the property that are used for storage, tools, equipment and chemicals. Victor asked for clarification as to what specifically Comm. Hess was wanting to see on the property in terms of facilities.

Comm. Hess stated that he wanted to know if there were portable restrooms, or if there was a septic tank. He stated that normally on a property this size, there should be a dwelling on the property, but if there is not a dwelling, will the facilities be within walking distance of the large acreage where the employees will be working.

Tocarra Thomas, Deputy Director, responded that there is an existing septic onsite. She also clarified that there will be a minimum of eight (8) employees and a maximum of twenty four (24), depending on the season as well as shift work. The shifts will be from 7AM until 7PM, there will be a minimum of two (2) employees per shift, and she found this to be adequate. There will be a condition of use that the applicant will clearly state the amount of portable facilities that will be provided for the employees.

Comm. Hess agreed and stated that the employees should not have to walk a quarter (¼) mile just to use the facilities, and that the employees should be adequately accommodated.

Comm. Suenram cited CalOSHA requirements that employees not walk further than one hundred to one hundred and fifty (100-150) feet (per Agricultural Labor) to use the restroom; these requirements are similar to the rules for construction workers. Portable restrooms are appropriate for up to ten employees during a normal work week.

Tocarra Thomas stated that on the best management practices (BMP), they noted their staff requirements as well as their plan for erosion control and wildlife requirements. The plan for erosion control during the fallow times is to plant with alfalfa and amend the soil before planting.

Comm. Malley stated that there should be accommodations made for the day to day operations, as far as a place out of the sun that is free of pests and other things, so the employees have a place to sit and eat and take breaks, without having to sit on the ground. This will allow employees to catch their breath and rest. He said a project this size needs to have some kind of structure for their employees, whether it be an office or a breakroom. He said he cannot see how the project can be completed by only two employees. He understands that during harvest time there will be more employees.

Comm. Suenram said that as far as Ag goes, with CalOSHA, there are requirements to providing shade for employees, which includes the proximity to the work area as well as the amount of shade for each employee. There also needs to be provisions for providing options for seating, as the employees are not to be sitting on the ground, and they will need access to appropriate seating areas. Both the shade and the seating needs to be able to accommodate each individual that is working.

Comm. Malley added that if the social distancing stays in place, there will need to be adjustments made and there will need to be larger areas of shade/seating.

Comm. Suenram cited CalOSHA recommendations to not wear a mask unless you have been medically cleared by a doctor to wear a mask, and moreover, you cannot require your employees to wear a mask.

Comm. Malley stated he was ready to hear from the consultants in regards to the concerns of the Commissioners.

Mark Flamer, Consultant for the Benmore Project, commented on the conditions for the workers, and explained that the property was a previously fully operational two hundred and forty (240) acre vineyard, and is currently a fully operating ranch. He stated that there are currently several structures on the property, including barns and worker housing, and there are more accommodations currently available to workers, on top of the proposed portable restrooms in the application. He also commented on the fencing for the wildlife, and said there will be no alterations to the creek for the wildlife; the only fencing that is proposed is solely for surrounding the cultivation areas, and there will be no disturbance to the natural wildlife.

Comm. Malley voiced the concern of the applicant's neighbor, stating that the neighbor seems to feel that the wildlife should be able to move freely across this acreage, as opposed to being rerouted around the fenced cultivation areas.

Comm. Suenram stated that they have no authority to remove any existing fencing, although it is an option for the applicant to do so if they wish. He voiced his concerns for the storm water management and best management practices (BMP), and asked for more detail as far as the cold frames and how often they are covered. If they are only covered during the rainy season, his concerns are the amount of runoff that is going to be generated, and if that runoff is going to be running across any grounds that are used for open cultivation. He would like to see more monitoring of the storm water that is leaving the property, once a year, or every other year, as well as water quality samples taken.

Mark Flamer responded with an explanation of the cold frame (green house) situation, and stated that the frames have fabric covers, and they are not used during the entire season, but rather only for propagation of seedlings. The covers will be taken off in the winter as it is not a permanent structure. Overall, there should be minimal impact to the hydrological characteristics of the valley floor.

Comm. Hess spoke to the concerns about the setbacks from the creek, and cited Article 37, which states that the minimum setback for perennial waterways shall be thirty (30) feet from the top of the bank. He then cited that on the application it

states that all cultivation activities and development will maintain a minimum of one hundred and fifty (150) feet from the bank of the creek, which is roughly five (5) times the number stated in Article 37.

Comm. Suenram stated that that information does help his concerns.

Comm. Brown asked about cultural resources and how much ground disturbance will take place during the construction of the fencing, and how much earth will be moved during the planning process. He also would like to be able to review the cultural resource studies, numbers 145, 14733 and 22527, which come from the California Historical Resource Information System, and asked if they were available.

Mark Flamer responded to the request saying that those were old archaeological reports done as a part of the original vineyard development, which means that most likely the County has them on file, but he can search for them. Next, he addressed the question about ground disturbance, and stated that it was originally disturbed roughly twenty (20) to thirty (30) years ago during the initial development of the vineyard. Since then, fill has been brought in, and he is not sure how much of the valley floor is native. The additional ground disturbance will be very minimal because there is no new grading going on, it's only the ripping, tilling and planting of the same vineyard footprint. New ground disturbance would be minimal and include raised beds, and any fencing would be T-posts driven with a T-post driver, and corner posts will have a small hole done with an auger. Due to minimal fresh ground disturbance, there should not be any issues with it bringing up cultural resources. The ripping will be twenty four (24) inches into the ground.

Comm. Brown again resounded his concerns which include not being able to see the cultural resource reports in order to know where the sites are in relation to the operation location. He said that the Northwest California Historical Resource Information System is requesting a new field study be done in those areas to identify those sites to see if they are intact. In the conditions of approval, it is important to know where those sites are in relation to where the project is going to be.

Tocarra Thomas agreed to work with the California Historical Resource Information Center to get the studies pulled for review. She also noted that conditions were already put in place stating that if there were any archaeological resources found during disturbance, all work would immediately cease and they would contact a local tribal resource for guidance.

Comm. Brown stated that whomever would be doing the monitoring from the applicant's side, needs to have knowledge of where the sites are located in relation to where they are actually going to be working. The sites do not cover all of the property that is part of the application. He wants the studies so he can identify where the sites are in connection to where the ground disturbance is going to take place.

Tocarra Thomas added that condition to the application. She then confirms that what needs to take place is to know what sites are potentially identified as culturally rich before work begins in order to ensure that the monitors are in place during ground disturbance.

Comm. Brown agreed and stated that in reality, none of their staff is trained to observe and identify these resources.

Victor Fernandez read a condition of approval for ground disturbance. The condition of approval added states, "If ground disturbance occurs outside any previously disturbed area, a qualified archaeologist shall conduct further archival and field study for the entire project area to identify any unrecorded archaeological resources".

Comm. Suenram stated his concern that the project has been exempted altogether from CEQA; this is partially because they do not have a full idea of the concerns Comm. Brown raised regarding the cultural resources. He said while there was a CEQA done for the original vineyard, addressing the concerns for an actual vineyard, this conversion is for a completely different crop and it seems that it is now being completely exempted from CEQA.

Comm. Brown also raised concerns citing the power point presentation's last slide which shows a picture of the valley behind the site, which looks to be completely undisturbed. He wants to have a clear depiction of what ground has been disturbed and what remains undisturbed.

Tocarra Thomas stated that staff looked at the plan, which shows that thirty nine (39) acres had been previously disturbed, and has been in continuous use. They have sought out all tribal resources and obtained tribal input and guidance, including a tribal consultation which resulted in the finding that they would cease all work if any cultural resources were found during disturbance. Furthermore, the proposal is to not go outside the existing vineyard; this is a similar agricultural crop and it utilizes similar agricultural practices, and the developer provided a very detailed and thorough best management practices (BMP). With these facts, staff feels comfortable to move forward with the recommendation of this proposal.

Mark Flamer stated that every bit of this project is within a previously cultivated vineyard. There is no new disturbance to anything other than the valley floor that was previously used for the vineyard.

10:13 a.m. Opened Public Hearing

No one present wished to speak

10:14 a.m. Closed Public Hearing

Comm. Suenram stated that there will need to be an odor control plan submitted prior to any cultivation, and he assumes that there was already one submitted. He also raises a concern about whether or not there is a preventative containment basin for the tank of compost tea, in order to prevent excessive damage to the land should a leak or failure in the tank occur.

Mark Flamer stated that there are best management practices (BMP) in place to contain any fertilizers on site, and the current proposal is that it is a completely organic farm.

Comm. Suenram stated that organic does not always mean environmentally friendly, and if the fertilizer concentrate leaks, it could kill the plants, similar to Round Up. He wants to ensure that there is something in place to prevent that from happening, and that there are BMP in place for a containment basin.

Mark Flamer agreed that it seemed like a simple request.

Victor Fernandez stated that there is a condition in Section G Item 2 that all equipment shall be maintained and operated in a manner that minimizes any spill or leak of hazardous materials.

Comm. Suenram acknowledged that accidents happen and he would like to see extra precautions put into place.

Mark Flamer agreed with the concerns of the Commissioners and does not see any reason why these suggestions shouldn't be implemented.

Comm. Suenram suggested that in the conditions it should be added that extra precautions are to be taken for the transfer of fertilizers.

Tocarra Thomas stated three things to be added to the conditions: the CalOSHA worker requirements that were mentioned in the best management practices (BMP); the cultural resources conditions, as well as to add something in the BMP to make sure the containment is more than adequate for the fertilizer.

(TIME IS 10:24) WAITING FOR COMM. HESS TO RETURN TO THE HEARING

Comm. Hess joined by telephone.

Comm. Suenram reviewed what had been discussed during the hearing including issues with the cultural aspects, and a study that he was able to find but he could not locate the actual area in which the study was done. He also discussed the precautions for the mixing tanks for fertilizer to ensure there were more than adequate protections.

Comm. Hess had lost contact with the group while Comm. Brown was discussing the report, but has now been brought up to speed by Comm. Suenram.

Comm. moved, 2nd by Comm. that the Planning Commission find that the Major Use Permit (UP 19-45) applied for by Benmore North LLC on property located at 2743, 3245, 2976, 3088, 3278, 3168, 3400, 3290, 3295, 3275, 2359, 3303, and 3417 Benmore Valley Road, Lakeport, further described as APNs: 007-001-13, 007-001-34, 007-001-35, 007-001-19, 007-002-07, 007-001-40, 007-001-38, 007-001-26, 007-001-27, 007-001-28, 007-001-16, 007-001-06, 007-001-25 is exempt from CEQA because it falls within Categorical Exemption Class 4 (15304), based on the findings set forth in Staff Report dated April 23, 2020.

Categorical Exemption 3 Ayes 2 Noes (Comm. Brown & Comm. Suenram) Approved by Roll Call Vote

Comm. moved, 2nd by Comm. that the Planning Commission find that the Major Use Permit (UP 19-45) applied for by Benmore North LLC on property located at 2743, 3245, 2976, 3088, 3278, 3168, 3400, 3290, 3295, 3275, 2359, 3303, and 3417 Benmore Valley Road, Lakeport, further described as APNs: 007-001-13, 007-001-34, 007-001-35, 007-001-19, 007-002-07, 007-001-40, 007-001-38, 007-001-26, 007-001-27, 007-001-28, 007-001-16, 007-001-06, 007-001-25 does meet the requirements of Section 51.4 and Article 27, Section 1 [i,ii(g),i(ii)] of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated April 23, 2020.

Major Use Permit (UP 19-45) 3 Ayes 2 Noes (Comm. Brown & Comm. Suenram) Approved by Roll Call Vote

Comm. Suenram noted that there is a seven (7) calendar day appeal period provided by the Zoning Ordinance.

- For further details, discussion and public comments on the above items from the above Planning Commission Hearing, please go to the following link: <https://countyoflake.com/calendar.aspx>

10:37 a.m. Public Hearing on consideration of a Major Use Permit (UP 19-28) and Categorical Exemption (CE 19-75). The project applicant is BENMORE SOUTH, BENMORE VALLEY RANCH, LLC proposing (15) A Type 3 (outdoor) Commercial Cannabis Cultivation licenses. The project is located at 3621, 3561, 3470 and 3680 Benmore Valley Road, Lakeport and further described as APNs 007-001-30, 007-001-31 007-001-39 and 007-002-10. (Victor Fernandez)

Victor Fernandez, Assistant Planner, provided background information and a power point presentation on the project application. The recommendation is that the Major Use Permit submitted by Benmore South LLC be categorically exempt from the CEQA through a Class 4 Exemption (15304 – Minor Alterations to Land). Staff has determined that the proposed project complies with the Major Use Permit findings. The recommendation is the approval of Major Use Permit UP 19-28. Conditions of approval include: the adoption of Categorical Exemption CE 20-11 under Class 4 Exemption; Air Quality-Dust Palliatives and Air Emission Standards; Geology/Soils-Erosion Control Measures; Water Quality – Obtain all Federal, and State Agency Permits, the project cannot divert water; Cultural Resources: if cultural resources are found during ground disturbance, all work is to cease and proper agencies will be contacted for guidance. The proposed permit expiration will be May 14, 2030

Comm. Suenram asked why, if this land was used as a vineyard, there are no visible signs of the vineyard or signs of the vineyard being removed, and asked when they were removed.

Victor Fernandez said that when he did the site inspection he was informed by the consultants that the vineyard had already been removed.

Comm. Suenram asked how long ago the vineyards were removed.

Victor Fernandez said that he did the site inspection in February and suggested he turn this question over to the consultant in order to get a more accurate date of the vineyard removal.

Mark Flamer said that the vineyard had been removed a few years ago and that there has been cattle grazing on that land since the vineyard removal.

Comm. Hess stated that the language in the staff report is similar to the Benmore North project, and he feels his concerns regarding accommodations for staff facilities/handwashing facilities need to be echoed for this project. He said that the same attention needs to be given to the South project as it is for the North.

Comm. Brown stated that his concerns remain the same from the previous application. He said that without the reports that are listed in the California Historical Resource Information System, he really wants to make sure that the conditions of approval are followed. He does not know who is going to do the staff monitoring, as there has been no designation or information regarding how it will be conducted, and therefore wants to echo his concerns.

10:52 a.m. Opened Public Hearing

No one present wished to speak

10:52 a.m. Closed Public Hearing

Comm. Malley said that both projects are similar and that any changes made in the previous item should also be made for this one. He said he has the same concerns for workers and tribal artifacts/cultural resources. He said that both use permits are similar and should mirror each other. He also said that he has a concern with the road going through the property, and asked if it was a private road or a dedicated road and if the county helps to maintain it.

Victor Fernandez responded that it is a private road that leads up to the ranch.

Comm. Malley said there should be something in the conditions about requiring the maintenance of the road in order for emergency equipment access to be possible. The entrance and exit should have the standard requirements for the Knox Box in order to give emergency equipment access to either side, especially if there is a fire, it will take less time for them to get in and handle the situation.

Victor Fernandez said that staff can add a condition for adequate emergency access, including requirements for a Knox Box.

Comm. Malley asked that the condition be amenable to the applicant.

Comm. moved, 2nd by Comm. that the Planning Commission find that the Major Use Permit (UP 19-28) applied for by Benmore South LLC on property located at 3621, 3561, 3470 and 3680 Benmore Valley Road, Lakeport, further described as APNs: 007-001-30, 007-001-31, 007-001-39 and 007-002-10 is exempt from CEQA because it falls within Categorical Exemption Class 4 (15304), based on the findings set forth in Staff Report dated April 23, 2020.

Categorical Exemption 3 Ayes 2 Noes (Comm. Brown & Comm. Suenram)
Approved by Roll Call Vote

Comm. moved, 2nd by Comm. that the Planning Commission find that the Major Use Permit (UP 19-28) applied for by Benmore South LLC on property located at 3621, 3561, 3470 and 3680 Benmore Valley Road, Lakeport, further described as APNs: 007-001-30, 007-001-31, 007-001-39 and 007-002-10 does meet the requirements of Section 51.4 and Article 27, Section 1 [i,ii(g),i(ii)] of the Lake County Zoning Ordinance and the Major Use Permit be granted subject to the conditions and with the findings listed in the staff report dated April 23, 2020.

Major Use Permit (UP 19-28) 3 Ayes 2 Noes (Comm. Brown & Comm. Suenram)
Approved by Roll Call Vote

Comm. Suenram noted that there is a seven (7) calendar day appeal period provided by the Zoning Ordinance.

- For further details, discussion and public comments on the above items from the above Planning Commission Hearing, please go to the following link: <https://countyoflake.com/calendar.aspx>

UNTIMED STAFF UPDATE & OFFICE NEWS

Tocarra Thomas, Deputy Director of Community Development, is in her fourth (4th) week as Deputy Director.

Danae LoDolce is retiring after sixteen (16) years with Community Development. Kate Lewis will be replacing Danae LoDolce as OAI.

Michelle Irace will be coming on as a Senior Planner. Katherine Shaffer and Tracy Cline coming on as Planners.

Housing Element Update has officially launched.

Mark Roberts, Principal Planner, spoke about the Lake County fire resiliency plan. He also spoke about the May 28th Cannabis Ordinance discussion. They will also be doing a larger overhaul of the zoning ordinance.

Comm. Malley asked Tocarra Thomas for an email with a list of employees and contacts, as it can be difficult for the Commissioners to keep track.

ADJOURNED 11:10 a.m.

Respectfully Submitted,

Daniel Suenram, Chair
Lake County Planning Commission

By: _____
Kate Lewis

Office Assistant III