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February 25, 2018

## VIA E-MAIL & OVERNIGHT MAIL

Brad Wagenknecht, Chairman  
Ryan Gregory, Supervisor  
Diane Dillon, Supervisor  
Alfredo Pedroza, Supervisor  
Belia Ramos, Supervisor  
c/o Jose Luis Valdez, Clerk  
BOARD OF SUPERVISORS  
COUNTY OF NAPA  
1195 Third Street  
Napa, CA 94559

**Re: 270 Kreuzer Lane – Napa, California  
Caldwell Vineyard Use Permit No. P17-00074-MOD  
APN Nos.: 045-310-056 and 045-310-055  
Appeal of Planning Commission Denial of Use Permit Modification**

Dear Chairman Wagenknecht and Supervisors:

This firm represents the Kreuzer Lane Protection Committee (the “KLPC”), a group of concerned property owners on Kreuzer Lane and in the surrounding neighborhood (See Exhibit A) in full support of the Planning Commission's appropriate 4 – 0 denial of a Use Permit Major Modification application (aka the “Project”) for Caldwell Vineyard (“Caldwell”). The Planning Commission properly denied the Caldwell request for unreasonable increases in wine production, by appointment visitation, and tasting hours, as well as to allow for the on-site consumption of wines. The existing zoning and one-lane dead-end road and infrastructure does not support the Project.

As the record from the Planning Commission hearings makes clear, the Commission gave careful thought to the proposed Use Permit Modification, and for the reasons articulated at the hearing, properly exercised its discretion to unanimously deny the application. There is no basis to overturn or modify the Commission's decision.

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**Background**

Because of the many factual inaccuracies in the Applicant's memorandum submission, it is important to accurately state the history here.

The Caldwell Vineyard Winery is situated on two parcels at the very end of Kreuzer Lane, which is at that point is a narrow one-lane dead-end private road. The Winery is in an Agricultural Watershed zone, which only allows wineries and accessory uses subject to strict use permit control.

Mindful of the location of the Winery, as discussed below, the original Use Permit for the Caldwell Winery placed significant and appropriate restrictions on the approved use. However, despite numerous violations of that Use Permit (discussed herein), on February 24, 2017, Caldwell submitted an Application for Use Permit Major Modification to exponentially expand the approved use. Outlined below are the existing and originally proposed increases in use.

**Total Production Capacity.**

*Approved:* 25,000 gallons per year, a minimum of 12,500 gallons per year must be processed from grapes grown in the immediate vicinity of the winery parcel.

*Proposed:* Increase to 35,000 gallons per year. An increase of 40%.

**Custom Production Activity.**

*Approved:* A maximum of 4 custom crush producers utilizing 10,000 gallons of the winery's 25,000 gallon per year capacity. At least 5,000 gallons of the custom production shall be processed from grapes grown in the immediate vicinity of the winery parcel. Allowed activities include crushing, fermenting, barrel aging and bottling. Prohibited activities include case goods storage, retail wine sales, office, wine tasting, or distribution/shipping.

*Proposed:* Remove *all* limitations of number of clients and custom crush wine produced. Allow additional activities for custom producers including *on-site retail wine sales, tours and tastings.*

**Cave.**

*Approved:* 16,970 square foot cave for wine production, 1,468 square foot tasting room.

*Proposed:* Increase to 21,865 sq.ft. for barrel storage, catering and food prep area and an additional tasting room. A proposed increase in size of 28.8%.

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Retail Sales, Tours and Tasting.

*Approved:* Maximum visitation of 8 guests per day, 5 days per week by appointment only from 10 am to 4 pm. 40 guests per week, 2,040 guests per year.

*Proposed:* Increase to 60 guests per day, expanded to 7 days per week from 10 am to 6 pm. 420 guests per week, 21,840 per year. A proposed increase of 650% per day, 950% per week and 970% per year.

Marketing Events.

*Approved:* Ten (10) annual special events with a maximum of 100 guests per year, Two (2) release events with a maximum of 60 guests per year, and two (2) wine auction events with a maximum of 50 guests per year, for a total of 320 marketing guests per year.

*Proposed:* Twelve (12) annual so-called Very Small Events of 28 guests per event; Three (3) so-called Small Events of 68 guests per event; Three (3) so-called Medium Events of 100 guests per event; and, one (1) so-called large event of 200 guests for a total of 1040 marketing event guests per year, a proposed increase of 225%.

Total allowed annual visitation is 2,360 per year. Originally proposed annual visitation was 22,880 per year, an increase of 870%.

Employees

*Approved:* 2 full-time and 1 part-time.

*Proposed:* Increase to 6 full-time employees and 6 part-time employees, increases of 200% and 500% respectively.

The Initial Modification Application also included a request to allow the on-site consumption of wines; the construction of a crush pad cover and a trellis shade structure; an increase in the width of portions of the existing roadway to accommodate the anticipated significant increase in traffic, the installation of traffic calming measures on the private portion of Kreuzer Lane; and a request for an Exception to the Napa County Road and Street Standards due to the narrow and dead-end nature of Kreuzer Lane.

In short, the Major Modification Application sought to create a significant retail and marketing use for the Caldwell Winery, at the end of a narrow dead-end hillside road in an Agricultural Watershed zone district.

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The Application included a purported Initial Traffic Study. But that Study curiously relied on a simplistic two-page calculation of traffic flow from a civil engineering firm, and not a traffic consultant. And the calculation did not rely on an actual traffic count. Moreover, the calculation did not appear to properly calculate the traffic impacts of an 870% increase in total wine tasting visitors per year, a 225% increase in special event guests, and an unlimited increase in Custom Crush Producers. Even the PM Peak trip calculation submitted by the Project Sponsor showed a 5-fold increase in traffic on a one-lane narrow dead-end road.

More curiously, the Initial Study improperly attempted to incorporate and rely on an August 24, 2017 traffic study by W-Trans for the Paul Hobbs-Nathan Coombs Winery Project at 2184 Imola Avenue. That traffic study analyzed a project *some half-mile and three intersections to the Southwest* for which there was effectively no projected increase in traffic near Kreuzer Lane, and so it never properly considered the impact of levels of service at Fourth Avenue and Kreuzer Lane.

In addition, the Paul Hobbs-Nathan Coombs Winery Project discussed in the W-Trans traffic study report was for a winery that would have an average of 15 visitors a weekday and 30 per weekend day, 34 daily trips during the weekdays and 43 new trips on Saturday. By contrast, this Project would generate more than twice the traffic to be generated by the Paul Hobbs-Nathan Coombs Winery Project, with five times more daily visitors. The Initial Study did not look at the cumulative impact of the two projects. And if that analysis had been performed, the Level of Service calculations would have been dramatically different. The Initial Study made no acknowledgement in that regard. In short, neither Caldwell or the Department properly analyzed the traffic impact.

After one continuance, the proposed Project was substantively heard by the Planning Commission on March 7, 2018. As appears in the transcript, all of the Commissioners expressed concern about the intensity of use. And there were concerns expressed by neighbors and Commission regarding the traffic impacts of the Project, and particularly the traffic at the blind intersection of Kreuzer Lane and Fourth Avenue. Contrary to the representations in the Caldwell Memorandum, it was the *Planning Commission* that directed a continuance of the hearing and that the Project Sponsor and Planning Department review and address traffic mitigation measures at the corner of Kreuzer Lane and Fourth Avenue. As stated at the end of the hearing by Commissioner Gallagher:

I am not really thinking that I am going to be that supportive of much without knowing that that the intersection is being handled. I think that is the other really big issue that I feel like I want to see something happen on 4<sup>th</sup> and Kreuzer before anything else in terms of not, like, may be constructed, but I want to know that there's going to be, you know, a stop sign. I feel concerned about that. But that needs to be on the table. And I understand that that is not the responsibility of the applicant.

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Commissioner Hanson noted as follows:

No, and I think that chair Cottrell, you said it the best. Is if we are going to continue this, we need to be very specific about what we expect when it comes back to us. And I think Commissioner Gallagher, one of those things is a plan in place. Not to get the intersection and the stop sign and the other traffic calming measures that have been discussed actually started, or, you know, the stakes in the ground, it's shovel ready, or whatever we want to call it. But also that we have a revised application of intensity on visitation so that they are kind of tied together, in a way, and I think that as Commissioner Basayne said, we're not looking to horse trade all the numbers today. I don't think that's fair. I think that this needs to have some deliberation from the applicant's side. We also need to work with Staff to figure out how long this stop sign and the intersection safety measures would take so that we have a better sense of that.

So, if we're going to put constraints around, those are the things that we want to see when it comes back to us. I am comfortable with that. But, you're right. we don't need to just continue it. We need to be continued with these expectations when it comes back.

With that direction, the matter was continued indefinitely.

Subsequently, at the direction of the Planning Department, a stop sign was installed on Fourth Avenue at the intersection of Kreuzer Lane. And on June 7, 2018, the Project Sponsor submitted a revised Application.

However, the *only* substantive difference in the revised Application was with respect to the proposed increase in daily and monthly visitors. Those visitors were now placed at 35 per day and 245 per week, still an increase of 337% and 512%, respectively from the existing Use Permit. Overall, the proposed Project still sought a 5.8 times increase in the annual number of visitors (from 2,360 to 13,780 annual visitors) a 512% increase.

The proposed Project proceeded to a hearing on October 17, 2018. Although there had been the above-mentioned "reduction" in the proposed daily and monthly visitors, the Kreuzer Lane Protection Committee and others argued that the proposed Project remained wholly outsized and inconsistent with the Napa County policies regarding incidental uses in an Agricultural Watershed Zoning District, and if approved, would mark a major departure from prior County Policy in this regard. It was also shown that the proposed Project well exceeded the existing infrastructure in the area.

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The Planning Commission agreed. As noted by Commissioner Gallagher:

I think it's really important that we remember that this is a request for an increase, and I think it's hard sometimes when you have so many different hearings and Staff Reports and adjustments that we start talking about, well, this is a decrease. This is a decrease. It's like it's a decrease from a proposal, which is, you know, is kind of like we get caught up in that, I think. Especially when you start out with really high numbers. But to go back, we're still actually looking at an increase, both in terms of daily visitation, and marketing.

...

But I think based upon the things that we said as a Commission at the last hearing, I don't really actually feel that there has been much change in this application. I still think that the marketing and visitation is high, especially when compared to other rural, remote, quote/unquote, wineries, and when you take out wineries, basically, that are on the Valley floor, I think those just really aren't fair comparisons. I still think that the marketing is too high, and I'm still uncomfortable with that part of it. So I don't really feel like we have gotten what we asked for in the previous hearing.

Commissioner Whitmer commented in pertinent part as follows:

I still have concerns about the numbers. In my way of thinking, this is a very residential driveway that still supports a number of homes off of it. I appreciate the signage and rumble strip to kind of attenuate some of the traffic issues, but the numbers of people adding to this, kind of, relatively small neighborhood still is troubling to me and still feels too high for this particular location to me.

And Chair Cottrell provided this summation in pertinent part:

I wanted to--going back to the comments that I was planning to make, just, I think I'm in agreement with my fellow Commissioners about a lot of the issues with this application. I really like this reminder of what we're looking at, which is an increase. It has come down from what we saw in March, but this is a constrained location. We have--we're in a high fire hazard severity zone. There are multiple exceptions to the Road & Street Standards. I do have a concern about the history of some out-of-compliance items. I'm happy to hear that much of that has been taken care of, and this piece about a compliance plan being built in, because I think that's an ongoing problem we have seen in general.

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...

So, but I still don't find that the visitation and marketing components of this application are adequately scaled due to the constraints on the property, the dead end road, the shared approaches, the exceptions to Road & Street Standards, and the high fire zone. And given that the request is, you know, in some places, two times the median or the average, again, those numbers are guidelines, but that request, even as it comes to us today, is high for me. So, that's my position.

As can be seen in the Hearing Transcript, at the request of the Project Sponsor, presumably unwilling to reduce the scale of the proposed Project in any meaningful way, the Planning Commission unanimously voted to disapprove the proposed Project.

#### Discussion

Pursuant to Napa County Code Section 2.68.060, the Planning Commission is the "decision-making body" for Buildings and Construction (Title 15) Subdivisions (Title 16) and Zoning (Title 17). And pursuant to Napa County Code Section 17.60.020 it is the Planning Commission that has the discretion to approve, conditionally approve or deny applications for use permits or their modification.

Here, the unanimous denial of the Use Modification by your Planning Commission was in no way an abuse of discretion, but was in fact the proper exercise of its discretion given the overwhelming evidence of the significant increases in use well in excess of what could be supported by the limited infrastructure on a narrow one-lane dead end hillside road in an Agricultural Watershed Zone. Contrary to the argument of the Project Sponsor, the Project was not in any way "repeatedly modified" consistent with direction provided by the Planning Commission. To the contrary, as appears above, several of the Commissioners specifically noted in the record that the Project had *not* been significantly modified in a manner that would make it acceptable in any form or fashion.

#### **1. The Project Is Inconsistent with the Napa General Plan**

To repeat the obvious, the Caldwell Vineyard Winery is situated on two parcels at the very end of Kreuzer Lane, which is at that point is a narrow one-lane dead-end private hillside road. The Winery is located in an Agricultural Watershed zone district (near Krueze Creek), which only allows limited winery and accessory uses subject to use permit control.

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Indeed, the definition of the Agricultural Watershed Zone in Napa County Code Section 18.20.010 is the guide:

The AW district classification is intended to be applied in those areas of the county where the *predominant use is agriculturally oriented*, where watershed areas, reservoirs and floodplain tributaries are located, *where development would adversely impact on all such uses*, and where the protection of agriculture, watersheds and floodplain tributaries from fire, pollution and erosion is essential to the general health, safety and welfare. (*Emphasis added*)

To that end, the County has adopted the Winery Definition Ordinance to protect agriculture and open space and to regulate winery development and expansion so as to avoid potential negative environmental effects.

The General Plan Agricultural Preservation and Land Use Goal AG/LU-1 guides the County to "preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County." General Plan Agricultural Preservation and Land Use Goal AG/LU-3 states the County should, "support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands." As relevant here, there is nothing in the Goal about preserving or promoting *retail* winery uses.

Similarly, Agricultural Preservation and Land Use Policy AG/LU 1 of the 2008 General Plan states "agriculture and related activities are the *primary* land uses in Napa County" and Land Use Policy AG-LU-2 states that: "'agriculture" is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and the related marketing, sales, and other *accessory* uses ... " The Caldwell Winery's General Plan land use designation is AWOS (Agriculture, Watershed and Open Space), which allows "agriculture, processing of agricultural products, and single-family dwellings." Again, there is absolutely *nothing* in the Policy statement with regard to the promotion of marketing or retail uses.

To repeat, unusual here is that the Caldwell Vineyard Winery is in an Agricultural Watershed zoning district. While wineries are allowed as conditional uses in such a district, marketing activities and other accessory uses are to remain strictly *incidental* to the main use. For good reason, because it is essential that there be protection to agriculture, watersheds and floodplain tributaries from fire, pollution and erosion risks, all of which are defined as essential to the general health, safety and welfare of the community.



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As noted by your Commission, as proposed, the expansion of the Caldwell Winery operations would be such that the marketing and retail component would begin to dwarf the actual production/farming component. Stated another way, if this Project had been approved as proposed, the marketing/visitation aspect of the Caldwell Winery would no longer function as an ancillary component, incidental and clearly subordinate to the main use. Instead, the marketing and retail aspect of the Winery would have become equal to or more dominant than its production component. Such would have been completely inconsistent with the Agricultural Watershed District definition and the environmental protections it provides.

Commissioner Gallagher perhaps said it best at the hearing on March 7, 2018:

Also, I just want to make a comment that we have heard today and we have heard in the past. Issues of making businesses viable, or making them successful. And I'm a little bit concerned that we would be implementing land use policy that is driven by any particular business model and while we, of course, want businesses in our County to be viable and successful, we can't be adjusting our land use regulations to assure the success of any particular operation. We really need to be focused on land use.

Retail activities in an Agricultural Watershed Zoning District are to be *incidental* to the main agricultural use. At no time has the Committee or area neighbors ever expressed opposition to the proposed increase in winery production. What has been objectionable from the outset, as properly recognized by your Commission, was the effort to dramatically increase the retail and marketing use of the Property in a manner inconsistent with the specifics of General Plan.

Even the Project Sponsor's reference to the General Plan in its memorandum submission here supports the position of your Planning Commission and the Kreuzer Lane Protection Committee. It is precisely the ongoing *relationship* between tourism, the making and marketing of wine, and the value of Napa County Agriculture that compels a different approach to retail winery use in an Agricultural Watershed Zoning District.

While Caldwell attempts to duplicitously argue that the daily and weekly visitation numbers were reduced from the original proposal, as your Planning Commission correctly noted, such was a concession without a difference - the original proposal sought an absurd near 11 times increase in daily and weekly visitors. As revised, the Proposal still asked for an outsized and preposterous 5.8 times the annual number of visitors (from 2,360 to 13,780 annual visitors), a 512% increase in annual tasting/touring visitors. There is nothing incidental about that potential increase, particularly in an Agricultural Watershed Zoning District.

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Perhaps more telling was the proposed increase in annual marketing events and visitors, which was not reduced from the original proposal. Currently, Caldwell is appropriately limited to thirteen smaller marketing events per year and a total of 270 guests, particularly sensible in the absence of an on-site building. As proposed, Caldwell sought an increase in annual marketing events from thirteen (13) to nineteen (19), an increase of 46%. Yet, at the same time, the number of annual marketing visitors was proposed to increase from 270 to 1,040, an increase of *2.3 times* or *270%* over the current approval. Overall, the increase in Annual Visitation would be *5.8 times* the current approval, an increase of *484%*. The number of full-time employees would grow from two to six, an increase of *200%*. There was nothing incidental about the proposed increase in marketing events or visitors in an Agricultural Watershed zoning district. The only and obvious conclusion to be drawn from the proposed Project is that it is being driven by an effort to increase the retail aspect of the Caldwell Vineyard.

No better evidence of the manner in which the proposal would deviate from the General Plan and County Policy is the Winery Comparison Analysis attached to the Planning Department's submission to the Planning Commission, and as Exhibit 2 to the Caldwell brief here. The so-called "By Appointment Wineries" in Napa County are those to which marketing and retail uses are to be incidental to agricultural use. There are asserted to twenty-one (21) such wineries in the 30,000 – 38,000 gallon production category. By our analysis, *not one of those comparison wineries is in an Agricultural Watershed zoning district*. Instead, all of the comparison wineries are in a less-environmentally sensitive Agricultural Preserve District, and most are on the valley floor near the main and large arterial routes of Highway 29 and Silverado Trail.

And even the numbers with regard to those so-called comparison "By Appointment Wineries" in the Agricultural Preserve District near major traffic arteries demonstrates an effort by the County to ensure that marketing and retail uses remain incidental to agricultural use. The chart shows that the average for approved daily/weekly visitors is 18/105. The average for annual approved visitors is 5,209, and for marketing visitors is 579. The average number of approved total annual visitors is 5,733.

In sharp contrast, the Caldwell application sought to eviscerate those protections, and proposed dramatic increases in all categories relative to the average for similar and larger size "By Appointment" wineries. Overall, the proposed Project would have been the *second largest* of the twenty-one comparison wineries list in terms of annual visitors, even though the winery has *no* building, its cave is one-third the size of the largest "By Appointment" Winery, and *none are in an Agricultural Watershed Zoning District*.

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Indeed, the Project application for 35 daily visitors was approximately *twice* the average for these comparable wineries, *two and one-half times* (2.5) higher for weekly visitors, and *two and one half times* (2.5) the annual average for annual visitors. It would have been nearly *twice the average* for approved marketing visitors, and at the requested 13,780 total for visitation, would be nearly *two and one-half times* the average. All to be in a more restrictive zoning District! How could that be consistent with the Napa County General Plan and stated Napa County Policy?

These numbers, as well as the fact that the Sponsor was requesting an approximately 484% increase in annual visitors against a 40% increase in wine production, demonstrated an intent on the part of the Project Sponsor to make the marketing/visitation aspect of the Caldwell Vineyard Winery no longer function an ancillary component, incidental and clearly subordinate to the main use, but instead an equal or primary use. This was clearly inconsistent with Napa's Agricultural Preservation and Land Use Policy. If the Project had been approved at those numbers, it would have sent a message throughout Napa County that the Planning Commission has a new approach and position with regard to Napa's Agricultural Preservation and Land Use Policy, and its General Plan, and approach and position which it clearly has not adopted. The Planning Commission was well within its discretion to reject the Application under those irrefutable numbers and facts.

Equally unavailing is the information presented in Exhibit 3 to the Appellant's Brief. First, such was not a part of the record below and cannot be considered. Second, the chart references larger capacity wineries (in most instances by at least 33%) located in non-residential areas, with only three in an Agricultural Watershed Zoning District. Third, none are "By-Appointment Wineries." Indeed, the Chart proves the point. The Planning Commission properly considered the unique location and access issues associated with this particular winery and properly determined that the proposed Project Modification was inappropriate. The Board of Supervisors should support its Planning Commission in this regard.

Stated another way, approval of the application in its current form would have been in violation of the General Plan and would not have properly balanced the rights of the individual winery owner with that of the community (i.e the immediate neighbors). Your Planning Commission was properly concerned that the proposed substantial increase in intensity would generate a level of noise, traffic, and activity in what is otherwise a quiet, rural agricultural area, and that the Project would diminish the quality of life for nearby residents and increase the presence of components that would not enhance the rural residential character but instead detract from it.

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**2. There was Substantial Evidence of Failure to Abide By Prior Conditions of Approval**

If the outsized nature of the proposed Project Modification was not enough, your Planning Commission heard considerable evidence and testimony to the effect that the Caldwell Winery has not complied with its existing Conditions of Approval, leading to significant questions as to whether it would ever abide by *any* restrictions related to increases in approved use.

*Condition No. 1. Scope: The permit shall be limited to: ...*

- *Utilization of a 16,970 square foot cave to serve as the winery, no outdoor winery activities are associated with this application.*

In fact, the evidence showed a variety of outdoor activities have been ongoing for extended periods, including Crush, bottling, and barrel making.

- *Retail sales and tours and tasting by appointment only. Maximum visitor total of eight persons per day not to exceed 40 per week.*

No signage indicating “by appointment only” was ever posted. And photographic evidence was provided to show that these numbers are regularly violated.

- *No tasks are authorized outside the caves.*

Evidence was presented that fruit crush, bottling and barrel making are performed outside the Cave.

*Condition No. 2. Tours and Tasting:*

*Tours and tasting and retail sales shall be by appointment only and are limited to members of the wine trade, persons who have a pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a pre-arranged basis. Tours and tasting shall complete by 4:00 PM. Retail sale of wines shall complete by 4:30 PM and shall be limited to only those fermented and bottled on-site by the winery operator. A log book (or similar record) shall be maintained which documents the number of visitors to the winery, and the dates of their visit. ...*

The evidence at the hearing showed that there are no signs indicating the winery’s “By-Appointment Only” status. Evidence was also presented to the effect that Caldwell regularly has tours that begin at 4:00 p.m. and finish at 6:00 p.m.

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Moreover, evidence was presented with regard to monitoring of visitors over a five-month period in 2017 which demonstrated a measurable difference between representations in the log book and actual visitors. In one week alone there were a documented seventy-five (75) visitors, well in excess of the approved forty (40).

*Condition No. 5. Signs:*

*...At least one sign placed and sized in a manner to inform the public must legibly include wording stating "Tours and Tasting By Appointment Only".*

No such sign has ever been installed.

*Condition No. 8. Landscaping/Parking:*

*...Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and off-site residences that can view the structures. Parking shall be limited to approved parking spaces only and shall not occur along access roads or in other locations except during harvest or approved marketing events. In no case shall parking impede emergency vehicle access or public roads. If any event is held which will exceed the available on-site parking, the applicant shall arrange for off-site parking and shuttle service to the winery.*

The directly adjacent neighbor Peter Menzel presented evidence the effect that a few trees were planted sporadically after the winery opened, but screening actually did not take place until a few months ago, and such is still sparse and inadequate. There remains an open view of the unapproved exterior crush operations, and the parking area is not screened. There have been documented instances of overflow guests parking on Kreuzer Lane and without a shuttle service.

*Condition No. 9. Outdoor Storage/Screening:*

*All outdoor storage of winery equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage is to exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.*

To the extent screening has recently been installed, it is inadequate.

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*Condition No. 12. Spoils:*

*All spoils generated by construction of the project facilities, including cave spoils, shall be disposed of per Public Works direction.*

Evidence was presented to the effect that cave tailings were dumped over the edge of the cave entrance creating a level area. However, they were not keyed and rain erosion sent caused spoils to enter Kreuze Creek. Some neighbors complained that spoils were dumped at the western edge of the vineyard property, with accompanying runoff onto their property.

*Condition No. 13. Wells:*

*...Water usage shall be minimized by use of best available control technology and best water management conservation practices.*

Concerns were expressed that the Caldwell well appears to be artesian and not properly sealed, allowing runoff in Kreuze Creek for a portion of the year.

Condition No. 14. Noise:

*...Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed winery buildings unless a special permit to that effect has been secured through the County.*

Mr. Peter Menzel presented evidence of years of complaints with regard to pump and fan noise. Only recently have efforts been made by Caldwell to address the issue, albeit without success to date. Evidence was presented of numerous instances of loud amplified music without permit or notice to the neighbors.

**3. Due to Impacts, The Proposed Project Would Require Environmental Review**

Due to the Planning Commission's concern with the General Plan, it did not need to address the issues of Environmental Review, which was a separate basis for denial of the Use Modification request.

The surprising and inconsistent recommendation of the Planning Department was a Negative Declaration with respect to a potential environmental impact of the proposed Use Modification. To the contrary, even a cursory or summary review of the Project demonstrates that in several important areas, proper environmental review would have been required. Alternately, a number

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of additional issues presented by the Project compelled the conclusion of the Planning Commission that it be denied in the absence of further study or reduction.

By itself, a review of comparison winery approvals discussed above suggests that this Project is a dramatic deviation from prior land use applications in this County, worthy of further study. And a simple calculation of the proposed increases to the prior approval of this Project compelled the same conclusion.

<u>Approvals</u>	<u>Current Permit</u>	<u>Proposed Permit</u>	<u>Proposed Increase</u>
Tasting/Touring Visitors	8/40 (day/week)	35/245	337%/512% Increase
Tasting/Marketing Visitors	2,496 (annual)	13,780	454% Increase
Event Visitors	270	1,040	285% Increase
Annual Events	13	19 (larger)	40% increase
Wine Production	25,000 gallons	35,000 gallons	40% increase
Cave Size	16,970 sq.ft. (actual)	21,865 sq.ft.	28.8% increase

Traffic

There are only 38 existing parking spaces. It is highly unlikely that the 38 existing parking spaces would be sufficient for the nine large events of more than 68 guests (four of which would have been more than 100 guests, instead of one). There was no explanation of how the vaguely-described valet parking solution would address special event concerns. At a minimum, there needed to be proper description of the large event operations.

Water

The Caldwell Vineyard consists of two separate parcels - a winery parcel and a vineyard parcel. The winery parcel is located in the Milliken-Sarco-Tulocay deficient groundwater basin. It is unclear how and in what manner the vineyard parcel would be used for the winery and/or to ensure that the well in the Milliken-Sarco-Tulocay groundwater deficient parcel would not be used beyond its current level, particularly since the water depth of the wells in the Milliken-Sarco-Tulocay area is increasing.

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Moreover, as the caves exist on both parcels, it was suggested that the entire winery should be considered part of the Milliken-Sarco-Tulocay deficient groundwater basin? There was a suggestion that a lot line adjustment was necessary to obtain a proper analysis here.

The current water analysis did not study the ability to serve the one annual 200-person special event.

There was no detail provided with regard to the water system in use at the site. For example, what is the age of the system? Is there water service to the sub-buildings?

The Water Availability Analysis reported minimal increases in water use. It was argued that further peer review would be necessary with respect to the assumptions and calculations.

#### Fire & Road Width

It is not clear how the Fire Department could have approved the Project given that there is no method for a turnaround near the wine caves. The road is simply not wide enough to accommodate a fire-fighting effort in that area. This was a concern noted by a number of the Planning Commissioners.

The Atlas Wildfire of 2017 was a wake-up call for many residents of Napa County, and especially those on rural wildland property such as the area where Caldwell Vineyard Winery and several adjacent residential properties are situated. The Napa County fire marshal's office gave its approval for the major modification before the October, 2017 wildfires. It was suggested that if the fire marshal re-inspected the Caldwell winery and surrounding location post-fire, the Project modification would not be approved by the Department.

Note that the neighboring parcel owners at 199 Kreuzer Lane have worked for decades to harden its fire defenses, including a circular driveway that doubles as a firebreak, around the structures within it. Cal Fire came in several times to advise parcel owners on best practices. The preventative measures worked well, assisted by U.S. Forest Service, and Cal Fire. There is still a danger, however: the highly flammable steep canyon separating the 199 Kreuzer Lane property from the Caldwell Vineyard Winery Cave complex. This is the most vulnerable border, and the threat extends to those properties west of the winery.

Wildfire danger caused by and at the Caldwell Vineyard was less of a concern when the Use Permit stipulated that all visitation activities occur within the winery cave, but residents have far greater concern now that an outside picnic area was requested. A single careless act by any one of the new, potential thousands of tasting and event guests who might have been permitted to eat and drink outside the cave area, could have sparked a wildfire.



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Additionally, parking and driving on unpaved areas - a potential fire hazard in fire season – was possible and dangerous because thoroughfares and parking areas below the cave portals are not fenced.

It should also be noted that since the 2017 fires, CalFire have increased their requirements to a twenty (20) foot side paved road, with one foot of shoulder in each side. There are several locations where Kreuzer Lane does not come close to these requirements.

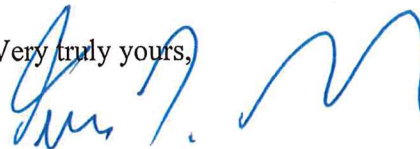
All in all, the significant environmental issues created by the proposed Major Use Modification would have required significant environmental review, even if the Project could get past the significant zoning issues that were compelling to the Commission.

#### Summary

The proposed Project was in violation of the General Plan and inconsistent with Napa's Land Use Policy. The Planning Commission properly and appropriately analyzed the issues and came to the inescapable and unanimous conclusion that the Project is inappropriate for the location. The Board of Supervisors should be pleased with the thoughtful and well-reasoned approach of its Planning Commission in this regard, and should affirm the decision to deny the Project Application.

Thank you for your consideration in this regard.

Very truly yours,



Denis F. Shanagher

DFS

Encl.

cc: Laura Anderson, Esq.

## EXHIBIT A

### KRUEZER LANE PROTECTION COMMITTEE

Stacie Everingham & Tony Monteiro	101 Kreuzer Lane
David & Susan Goodwill	109 Kreuzer Lane
Gary Miller	114 Kreuzer Lane
Fred and Shelby Bailey	120 Kreuzer Lane
Vince & Diane Siebern	132 Kreuzer Lane
Marie & John Bianco	138 Kreuzer Lane
Bob & Karen Martin	146 Kreuzer Lane
Bruce & Kathy Wilson	159 Kreuzer Lane
Marissa Carlisle & Lorenzo Mills	187 Kreuzer Lane
Peter Menzel & Faith D'Aluisio	199 Kreuzer Lane
Joe, Gianna, Matt and Frank Sabella	215 Kreuzer Lane
Dr. Bryant Toth and Jill Toth	230 Kreuzer Lane
Sandy Buckley	40 Kreuse Canyon Rd.
Bernie & Gayleen Horstkamp	1141 Fourth Ave