



A Tradition of Stewardship
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Agenda Date: 3/12/2019
Agenda Placement: 9B
Set Time: 9:30 AM PUBLIC HEARING
Estimated Report Time: 2 Hours
Continued From: February 26, 2019

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Wyntress Balcher, Planner II - 707 299-1351
SUBJECT: Caldwell Vineyard Winery Appeal Hearing

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Caldwell Vineyards Winery to a decision by the Napa County Planning Commission on October 17, 2018 to deny a modification (P17-00074-MOD) to the Caldwell Vineyards Winery Use Permit No.00318-UP to allow the following: 1) increase the winery production capacity from 25,000 gallons to 35,000 gallons per year; 2) increase the existing area of the winery caves; 3) increase the number of daily by-appointment visitation from eight to thirty-five; 4) increase the number of employees from two full-time and one part-time to six full-time and six part-time; 5) modify by-appointment tasting hours; 6) modify the Marketing Plan; 7) allow for on-site consumption of wines; 8) construct a trellis shade structure and crush pad cover; 9) increase the width of portions of the existing roadway; 10) install traffic calming measures on the private portion of Kreuzer Lane; and 11) an Exception to the Napa County Road and Street Standards. The project is located on a ±42.96 acre parcel at the terminus of Kreuzer Lane within an Agricultural Watershed (AW) Zoning District. (Assessor's Parcel Nos. 045-310-056 and 045-310-055) 270 Kreuzer Lane, Napa, CA.

ENVIRONMENTAL DETERMINATION: Revised Negative Declaration prepared and circulated but not adopted. According to the proposed Revised Negative Declaration, the proposed project would not have any potentially significant environmental impacts. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Public Resources Code Section 20180(b)(5) and State CEQA Guidelines Section 152870 provide that CEQA does not apply to projects that a public agency rejects or disapproves.

(CONTINUED FROM JANUARY 29 AND FEBRUARY 26, 2019)

EXECUTIVE SUMMARY

The matter before the Board involves the applicant's appeal of the Planning Commission's decision to deny (4:0 –

AYES: Cottrell, Hansen, Whitmer and Gallagher; ABSTAIN: Mazotti) Caldwell Vineyards, LLC's (the Applicant or Appellant) application for a use permit modification and Road and Street Standards (RSS) Exception for the Caldwell Vineyards Winery (the Winery, or Caldwell Winery, or the Project) to increase the winery production capacity from 25,000 gallons to 35,000 gallons per year; increase the existing area of the winery caves; increase the number of daily by-appointment visitation from eight to thirty-five; increase the number of employees; modify by-appointment tasting hours; increase the Marketing Plan from 13 to 19 marketing events; and other related improvements. The project is located on a ±42.96 acre parcel at the terminus of Kreuzer Lane; within the Agricultural Watershed (AW) zoning district at 270 Kreuzer Lane, Napa.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and invites Staff Report presentation.
2. Chair opens the public hearing and invites testimony from Appellant and Appellant's witnesses as previously disclosed on the witness list and in the order noted on the witness list attached as **Attachment B**.
3. Chair invites any other interested members of the public to testify regarding the appeal.
4. Chair then invites Appellant to have final rebuttal.
5. Chair closes the public hearing and invites disclosures from Board members.
6. A motion of intent is made and seconded to deny, uphold, and/or remand the appeal.
7. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the current workload, good cause exists for County Counsel's office to have up to ninety days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to return to the Board on April 23, 2019, at 9:05 a.m. with the proposed Resolution for the Board's consideration and adoption.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Revised Negative Declaration prepared and circulated but not adopted. According to the proposed Revised Negative Declaration, the proposed project would not have any potentially significant environmental impacts. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Public Resources Code Section 20180(b)(5) and State CEQA Guidelines Section 152870 provide that CEQA does not apply to projects that a public agency rejects or disapproves.

BACKGROUND AND DISCUSSION

All documents associated with the Caldwell Winery including, but not limited to, the application materials, Revised Negative Declaration, Planning Commission Staff Reports, comments and correspondence, transcripts of the Planning Commission meetings, and the appeal can be accessed at:
<https://www.countyofnapa.org/1064/Caldwell-Vineyards>.

The Caldwell Winery, was originally approved in December, 2004 (Use Permit No. 03318-UP), and authorized a 25,000 gallon per year winery utilizing a 16,970 square foot cave. Retail sales, tours and tasting were allowed by

appointment only, with a maximum of eight persons per day not to exceed 40 per week, and a marketing plan that included 13 marketing events.

On February 24, 2017, Applicant submitted an application for a major use permit modification (P17-00074-MOD) requesting 60 visitors per day with a weekly maximum of 420 and six additional events for a total of 19 marketing events; four additional full-time employees and five additional part-time employees over the existing approved two full-time and one part-time; and an exception to the County's RSS to allow a 680-foot section of the access road to have a varied roadway width between 14 to 20 feet where two (2) 10-foot traffic lanes with two foot shoulders is required. The Project area is located in a Moderate Fire Hazard Severity Zone at the end of a narrow dead-end road along a ¾ mile private road that serves five other parcels. Pursuant to California Public Resources Code Section 4209, a fire hazard zone is a rating reflecting the degree of severity of fire hazard that is expected to prevail in the zone. In this area, the County's GIS Map designates this area as Moderate, not High, meaning construction in any "severity zone" (moderate to very high) is required to be Wildland Urban Interface compliant.

The matter before the Board involves the Applicant's appeal of the Planning Commission's decision to deny the requested modification. The Planning Commission held three hearings on the Project. At each hearing the Commissioners and neighbors expressed concerns regarding traffic safety and the high level of visitation and marketing requested.

There are four other existing wineries located within one mile of the Project site. For comparison and context, these other wineries have permitted production levels between 2,000 and 60,000 gallons annually. The Caldwell Winery's proposed production of 35,000 gallons would be at the higher end for facilities within one mile of the Project site. The application proposes an increase in maximum number of visitors per day from eight to 35 and an increase from 13 to 19 total marketing events per year. The largest event would host up to 200 guests. The winery comparison tables in the Planning Commission Staff Report compare the proposed Caldwell Winery with other wineries that currently have an annual permitted production capacity of 30,000 to 35,000 gallons. (See Attachment J of Planning Commission October 17, 2018, Meeting Staff Report.) The Caldwell Winery proposed a larger sized visitation and marketing plan when compared to wineries with similar permitted production levels that have by-appointment only visitation.

Since it has been almost five months since Staff prepared the initial the Winery Comparison Chart for the Planning Commission, Staff reviewed the winery database and updated the Chart for the Board's reference. Two wineries (Davis Estates and Napa Custom Crush/The Caves at Soda Canyon) that were initially on the Chart have been removed because subsequent to the Commission's action on the Caldwell Winery, these two wineries were approved for production level increases that are greater than the 30,000 to 35,000 gallon per year comparison range for the Caldwell Winery. There was not a significant analytical visitation change with their removal: median daily visitors decreased by one visitor (18 to 17); average weekly visitation decreased by two (105 to 103); average annual visitation decreased by 103 (5209 to 5106); annual marketing visitors decreased by 27 (579-552); average number of marketing events increased by one (14 to 15); and the total annual visitation decreased by 133 (5,733 to 5,600). The updated by-appointment wineries comparison chart has been included as **Attachment C**.

Code Compliance:

There is a past history of various code compliance investigations initiated, however, all issues have been resolved as of 2016, and there are no current notice of violation code cases on file for the Winery.

Public Process:

Caldwell Vineyards, LLC submitted its Major Use Permit Major Modification application (P17-00074-MOD) on February 24, 2017, and revised it on June 7, 2018.

On April 27, 2017, a New Project Submittal Courtesy Notice (dated April 27, 2017) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list.

The application was determined to be complete on September 11, 2017.

On December 27, 2017, and January 5, 2018, the County mailed a Public Hearing Notice and Notice of Intent to Adopt a Negative Declaration for the Planning Commission hearings on January 17, 2018, and March 7, 2018, to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. (It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet.) The County also provided notice to those persons on the general CEQA document notification list. The Notice was published in the Napa Register on December 27, 2017, and January 5, 2018.

On January 17, 2018, the Commission held a public hearing to consider the project which is described in detail in the Staff Report for that meeting. The Commission opened the hearing and heard from Staff, the Applicant, and interested parties. Neighbors to the Project voiced concerns regarding traffic safety and visitation levels and requested the Commission continue the item to another date. The Commission continued the hearing to March 7, 2018.

On March 7, 2018, the Commission held a continued hearing and again heard neighbor concerns regarding traffic safety and visitation levels. The Commission ultimately continued the hearing to an unspecified date with direction that the Applicant reduce the intensity of visitation; install traffic calming measures on the private portion of Kreuzer Lane; and preserve certain trees discussed at the hearing located along the private portion of Kreuzer Lane. The Commission also requested confirmation of compliance with the original use permit conditions of approval and wanted to see some action taken to install safety measures at the intersection of Kreuzer Lane and Fourth Avenue.

Consistent with the Planning Commission's direction, on March 11, 2018, Staff conducted a field inspection to determine the status of the original conditions of approval. The Applicant contacted the Department of Public Works regarding a request for stop control for eastbound traffic, not as a part of the pending Project, but as a community request. The Board of Supervisors approved the installation of the stop sign, which the County subsequently installed.

On June 7, 2018, the Applicant proposed a revised Project with a reduction of the number of weekly visitors (from 60 to 35), acceptable traffic calming measures, and additional covering and screening of necessary outdoor production activities. No changes were proposed to the requested six additional marketing events for a total of 19 per year.

On October 4, 2018, the Public Hearing Notice and Notice of Intent to Adopt a Negative Declaration for the October 17, 2018, Planning Commission hearing was mailed to all property owners within 1,000 feet of the subject property, as well as any other persons who had requested notice, and Notice was also provided to those persons on the general CEQA document notification list. The Notice was also published in the Napa Valley Register. The revised Project was considered by the Commission on October 17, 2018.

Findings:

When reviewing the proposed Project, the Planning Commission based its decision on a series of Findings, as required under both County Code and State law. The Board of Supervisors must also consider all of the same Findings in reaching their decision. To uphold the Planning Commission's denial of the Project and denial of the Appeal, the Board must determine that the Project is not consistent with at least one (or more) of the Findings or

the County General Plan. Alternatively, to approve the Project, the Board must determine that the Project is consistent with each of the following Findings:

CEQA:

1. The Board of Supervisors has read and considered the Negative Declaration prior to taking action on said Negative Declaration and the proposed project.
2. The Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole that the project will have a significant effect on the environment.
5. There is no evidence, in considering the record as a whole that the proposed project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Use Permit:

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Exception to Road and Street Standards:

1. The exception will preserve unique features of the natural environment which includes, but is not limited to, steep slopes, heritage oak trees, or other trees of at least 6" dbh (diameter at breast height) and is found by the Board to be of significant importance, but does not include manmade environmental features such as vineyards, rock walls, ornaments lot decorative landscaping, fences or the like.
2. Grant of the exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Appeal:

On November 13, 2018, Applicant timely filed an appeal packet to the Planning Commission's decision to deny the Project. (Please see **Attachment A**.) Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, on January 29, 2019, the Chair opened and continued the hearing (with the consent of all parties) to February 26, 2019. On February 26, 2019, the hearing was continued at Appellant's request to March 12, 2019. No testimony was taken on January 29 or February 26,

2019.

Pre-Hearing Conference:

To clarify the County's procedural requirements and expectations regarding land use appeals, the County Counsel's office has initiated a voluntary program of pre-hearing conferences with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference is treated as an ordinary member of the public and allotted the usual three minutes of speaking time.

A pre-hearing conference was held on January 14, 2019, with Appellant's counsel, Chair Gregory and a member of the County Counsel's office. At that time, Appellant agreed to provide a list of its respective witnesses along with the subject matter of testimony and time estimates. The Chair informed the Appellant that it is allocated a maximum of 45 minutes for Appellant's presentation including rebuttal to be allocated at Appellant's discretion. A summary of the witness information by name, subject matter of testimony and time estimates that was provided by Appellant is attached as **Attachment B**.

Appellant also agreed to provide the Chair in advance of the hearing with any requests for "good cause" to either supplement the record with new information and/or to have the appeal heard de novo (e.g., a fresh hearing). On February 8, 2019, Appellant informed the County Counsel's office that Appellant has no additional information to augment the record but would be updating the Board on discussions that have transpired between the neighbors and Appellant.

At the pre-hearing conference, Appellant further agreed to provide any supplemental information not to exceed five pages that the Appellant wished to have considered by the Board in advance of the hearing. No supplemental information was provided by Appellant. All correspondence received by the Board as of March 1, 2019, including a letter from the Kreuzer Lane Protection Committee's counsel, Denis Shanagher dated February 26, 2019, is included as part of the correspondence in **Attachment D** to this report. It is also available at <https://www.countyofnapa.org/1064/Caldwell-Vineyards>.

Appeal Hearing Public Comments:

Public notices of this appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on January 18, 2019. The notice ran in the newspaper on January 18, 2019. On January 29, 2019, the Board opened the public hearing and continued the item to February 26, 2019, without taking testimony.

On February 26, 2019, the Board opened the public hearing and continued the item to March 12, 2019, without taking testimony.

The public comment period on this appeal will have run for 53 days by the time the hearing is held on March 12, 2019.

Stated Basis for Appeal:

The following outlines the basis of the appeal as contained in Appellant's Appeal dated November 13, 2018. (See **Attachment A**) For convenience, Staff has provided a summary below, but recommends the Board review the actual appeal for details.

Appeal Ground No. 1: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence. In particular, the Planning Commission denied the Project without any specifics of how the Project failed to comply with the General Plan and County Code. All evidence, Staff Reports and recommended

findings supported the conclusion that the Project complied with County policies and legal requirements.

Staff Response:

Appellant is correct that the Staff Report prepared for the Caldwell Winery recommended conditional approval. Based upon Staff's review of the submitted materials, Staff believed the Project could be found consistent with the Zoning Ordinance and applicable General Plan policies. Staff's recommendations are merely advisory, however. They are not binding and have no legal effect. (*Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 225, fn. 6 [recognizing that decisions of the Commission may be "different than those proposed by the staff in the staff recommendation"]; *Benson v. California Coastal Com.* (2006) 139 Cal.App.4th 348, 354 [staff recommendation not "binding" on Commission]). Furthermore, Staff's recommendations are based on information provided prior to the public hearing and without the benefit of public comment, Commissioner observations, or the applicant's presentation. It is not unprecedented for the Planning Commission to deny or modify a project despite a recommendation of support or a finding of consistency from Staff. Recent examples include the Oakville/Mt. Veeder Winery, which the Commission denied because it did not find special circumstances existed to support the requested variance; the Palmaz personal use heliport, which the Commission denied; Bouchaine Vineyards, in which the Commission reduced recommended visitation levels; and Reverie Winery, where the Commission imposed an estate grape requirement.

Appellant is incorrect that the Planning Commission's denial is not supported by substantial evidence. Based on its review of the Project, the Planning Commission unanimously found the proposed visitation levels were too high, especially given the Winery's remote location at the end of a narrow, dead end road with shared access, in a fire hazard zone. The Commission's basis for denial was clearly articulated and based on substantial evidence in the record.

The Commission held three hearings on the Project and at each hearing the Commissioners and neighbors expressed concern regarding traffic safety and the high level of visitation requested considering the Winery's unique location. The Project area is located in a Moderate Fire Hazard Severity Zone at the end of a narrow dead-end road along a $\frac{3}{4}$ mile private road that serves five other parcels. The Project does not propose to meet the access requirement of two (2) 10-foot traffic lanes with two-foot shoulders, but rather seeks an exception to the County's RSS to allow a 680-foot section of the access road to have a varied roadway width between 14 to 20 feet.

At the January 17, 2018, hearing, the Planning Commission heard and considered written and verbal comments from neighbors regarding the high level of increased visitation on the rural, dead-end road; whether the high level of visitation proposed renders the Winery a tourist destination rather than an agricultural use; and the poor turning visibility and need for a stop sign at the intersection of Fourth Avenue and Kreuzer Lane. Neighbors questioned the safety of thousands of visitors navigating through an unfamiliar semi-blind intersection and requested traffic calming measures on the private portion of Kreuzer Lane due to vehicles traveling at high rates of speed down the hill from the Winery. Public comment also questioned whether recycled water was available to serve the Winery given its close proximity to the Milliken Sarco Tulocay (MST) groundwater deficient basin.

On January 17, 2018, after considering all verbal and written testimony, the Commission continued the hearing to March 7, 2018, and requested that Staff investigate potential ways to improve or mitigate the traffic concerns, determine whether recycled water is available to serve the Project site, and to revisit visitation levels. The Commission further encouraged Appellant to communicate with the neighbors to see if the issues that were raised could be resolved.

Prior to the continued hearing on March 7, 2018, Appellant informed Staff that the Winery would not necessarily achieve 60 guests per day, 420 per week during its "slow time" of November to April; however, Appellant did not offer to reduce the level of proposed daily visitation.

At the March 7, 2018, continued hearing Staff suggested that the Commission may wish to consider a 50% reduction in visitation to 30 per day and 210 per week during the months of November to April. Appellant's counsel verbally informed the Commission on March 7, 2018, that the Caldwell's ". . . just request that the 60 max [daily visitors] be kept in place, but they would be willing to concede the 200-person event, so that would be something they would be willing to remove from the proposal." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 14:9-12.) Appellant also agreed to install traffic calming measures on the private lane leading to the Winery subject to approval by the Fire Marshal. Staff further informed the Commission that the MST recycled water pipeline is located over 5,000 feet from the Winery. Appellant's counsel advised the Commission that at a cost of approximately \$200,000 it would be financially infeasible to run a recycled pipeline to serve two toilets at the Winery. (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 12:1-15.) The Planning Commission again heard neighbor concerns regarding traffic safety, fire hazards, and the high level of requested visitation, as well as the Winery's lack of compliance with its original conditions of approval.

After considering all written and verbal testimony, the Commission specifically requested that Appellant return with a modified project to reduce the intensity of the visitation and marketing. The Commission agreed with the neighborhood's safety concerns regarding the intersection of Fourth Avenue and Kreuzer Lane, and requested that Appellant initiate improvements to the intersection and install traffic calming measures along the shared private access road. The Commissioners emphasized that they were uncomfortable considering the Project until the traffic safety issues had been addressed. Commissioner Hansen noted that the traffic improvements must have "actually started, or [be] shovel ready" before the Commission would consider acting on Appellant's revised project. (See Certified Planning Commission March 7, 2018 Hearing Transcript, pg. 56:4-6.) In addition, the Commission requested that Appellant protect the olive trees planted by one neighbor on the private portion of Kreuzer Lane along the property line of Mr. Robert Rude's residence (APN: 045-310-045). The Commission also requested Staff provide enhanced accountability for monitoring compliance with conditions of approval. The Commission continued the hearing to a date uncertain so that Staff and Appellant could address all the issues.

On June 7, 2018, Appellant submitted a revised Project "decreasing" its original visitation request. The revised Project requested an increase of the approved daily visitation from eight per day and 40 per week to 35 per day and 245 per week (the original proposal had requested 60 per day and 420 per week). Although Appellant's counsel had verbally informed the Commission during the hearing on March 7, 2018, that the Appellant would be willing to remove the 200-person marketing event, the revised Project did not include any changes to the original marketing proposal of six additional events for a total of 19 events per year. Appellant's revised Project also sought to recognize the Winery's need to use the outdoor crush pad area and to add a cover on the existing cave portal apron as required by the current stormwater discharge regulations; authorization to conduct crushing and related activities outside of the Winery at the location of the proposed crush pad; and installation of traffic calming measures (such as speed limit signs; speed bumps or rumble strips) on the private portion of Kreuzer Lane, between the Caldwell property and the public right-of-way, to help decrease the downhill speed of vehicles leaving the Winery.

On October 5, 2018, public notice was given of the continued public hearing on the Caldwell Winery before the Planning Commission to be held on October 17, 2018.

Staff prepared a revised Winery Comparison Chart for the October 17, 2018 Planning Commission meeting to reflect the revision to the proposed visitation. An error was noted in the chart and Staff verbally presented the correction to the approved visitation of eight daily visitors. The Winery Comparison Chart indicated that for 35 daily visitors, the total annual visitation would equal 12,740 persons. In comparison, by-appointment, similar 30,000 gallon per year wineries had an average total visitation of 5,209 and at the median, a total visitation of 5,200. The Commission noted that Caldwell Winery's visitation was 59% higher in comparison to wineries with the same or similar production capacity. The Commission also commented that Appellant's proposed "reduction" was still an increase and that the increase from eight to 35 visitors per day represents an increase of $\pm 337\%$ in visitation.

At the October 17, 2018, meeting the Commission reviewed the Staff Report and considered presentations and evidence from Appellant, Appellant's representatives, Staff, the public and neighbors. During deliberations, each of the Commissioners pointed out that the revised visitation levels were still too high for the area. Regarding the revised Project, Commissioner Gallagher pointed out "... I don't really 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, ..." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pages 58:25-19; 59:1.)

Commissioner Whitmer stated "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 it. I appreciate the signage and rumble strip to attenuate some of the traffic, but the number 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." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 60:1-7.)

Commissioner Hansen echoed the other Commissioners and explained "We use the information at our disposal and the comparison charts, but it really does come down to very site-specific evaluation and the intensity in this location on this site at this dead-end road, is still of concern to me as well." Commissioner Hansen further stated "I am concerned, however, with the large – still large number of about 10,000 annual, just visitors in their own cars and however that works." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 61:6-18.)

Chair Cottrell agreed with the other Commissioners and reiterated that "... I still don't find that the visitation and marketing components of this application are adequately scaled due to constraints on the property, the dead end road, the shared approaches, the exceptions to the Road and Street Standards and the high fire zone. (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 66:17-21.) Chair Cottrell further expressed concern "... that the request is, ...in some places, two times the median or average, again, those numbers are guidelines, but that request, even as it come to us today, is high for me." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 66:21-24.)

The Planning Commission thus unanimously found that the proposed visitation levels are too high, given the Winery's remote location at the end of a narrow, dead end road with shared access. Contrary to Appellant's assertions, the Commission's basis for denial was clearly articulated and based on substantial evidence in the record.

Appeal Ground No. 2: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence and that Appellant repeatedly revised the Project and took action directly in response to Planning Commission recommendations. These include paying for traffic studies supporting intersection improvements almost one mile away from the Winery; avoiding olive trees; meeting with neighbors; reducing visitation by 58% from the original application; installing traffic calming measures, and providing advance notice of marketing events to neighbors. Appellant contends that despite three hearings on the Project, all substantial evidence showed that the Project would not result in any significant impacts or exceed any County policy and no substantial evidence contradicted the proposed findings.

Staff Response:

The Commission held three hearings on the Project and at each of the hearings the Commissioners and neighbors expressed concern regarding the high level of visitation and traffic safety concerns. Appellant addressed some but not all of the Commissioners concerns. Appellant agreed to install traffic calming measures on the private portion of the shared road, to protect the olive trees, and provide advance notice of events to the neighbors. However Appellant's "reduction" in visitation from 60 to 35 visitors per day with 19 total marketing events still remained out of scale and inconsistent with similar sized wineries and at too high of a level to be

supported by the Commission at this particular location.

The following summarizes the other issues that the Commission requested Staff and Appellant address.

A) Traffic Studies/Intersection Improvements

In response to Commission and neighborhood requests, Appellant contacted the Department of Public Works regarding a request for stop control for eastbound traffic. Appellant's request was not part of the pending Project, but as a community request. In addition, Appellant prepared a traffic analysis with recommendations for improvements to the intersection to address the safety concerns raised by the residents. Staff review found that the addition of a stop sign, striping and warning signage would improve public safety, due to the unusual configuration of the intersection of Fourth Avenue and Kreuzer Lane, coupled with a sight distance concern for drivers on southbound Fourth Avenue turning left onto eastbound Kreuzer Lane. Furthermore, there is a drainage crossing approximately 500 feet west of the intersection and the road has an approximately 200-foot long dip or depression at the crossing that makes it difficult to see vehicles in the low part of the road from the intersection. The Department of Public Works presented the proposal to the Board of Supervisors on July 10, 2018, and recommended approval of the proposed signing and striping configuration at the intersection of Fourth Avenue and Kreuzer Lane. The Board approved the request, and the County installed the striping and signing on July 1, 2018. These intersection improvements were a benefit to both the neighbors and Appellant.

B) Avoidance of Olive Trees

The Project includes a request for an exception to the County RSS, to allow a reduction in commercial roadway width at two stretches of the road, STA 21+55 to 26+96 and STA 30+55 to STA 37+35. An exception to the RSS may be approved to preserve unique features of the natural environment which includes steep slopes, heritage oak trees, or other trees of at least 6" dbh and found by the decision-maker to be of significant importance, but does not include manmade environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like. The olive trees discussed at the hearing are not included as a part of the rationale supporting the exemption because they are ornamental or decorative and do not meet the definition of a "constraint" under the RSS. However, the olive trees would be protected as a result of the approval of the exception to the RSS. Appellant has also committed to protecting the olive trees along the neighbor's (Robert Rude) residence.

C) Neighbor Outreach and Notice of Marketing Events

On January 18, 2018, Staff received an email from Peter Menzel (APN: 045-310-056) requesting to be included in the list of neighbors to be notified by Appellant of any marketing events. Staff discussed this with the Appellant and Mr. Menzel's parcel was included in the Planning Commission's March 7, 2018, Revised Recommended Conditions of Approval.

On March 20, 2018, Appellant forwarded an email to the neighbors who had submitted comments regarding the Project, reaching out to continue discussions about the Project. The neighbor's attorney, Denis Shanagher, responded with a request that for purposes of clarity and consistency, all further discussions regarding the proposed Project be handled through Mr. Shanagher's office and not with individual owners. It should be noted that not all residents were represented by Mr. Shanagher.

The revised project was submitted on June 7, 2018, and was uploaded to the County website under the PBES Department Current Projects for the Caldwell Winery.

On October 9, 2018, Mr. Shanagher requested the Commission to continue the October 17, 2018, hearing until November because he was not provided a copy of the revised proposal or notice of the hearing, and because a continuance would allow time to review the revised Project and allow his clients to attend the hearing. Counsel for

Appellant, Mr. Adams, disputed Mr. Shanagher's comments and submitted a copy of an email thread between himself and Mr. Shanagher dated June 14, 2018, outlining the revised project that was also presented to the Commission at the October 17, 2018, hearing. The email further informed Mr. Shanagher about the request for improvements to the intersection of Fourth Avenue and Kreuzer Lane that Appellant made independently from the Winery's pending use permit modification.

The Commission acknowledged that some outreach had been made by Appellant to the neighbors but that communication between the parties appeared to still be an issue.

D) Traffic Calming Measures

During the January 17, 2018, Commission hearing, several of the residents living on the private portion of Kreuzer Lane stated that vehicles traveling from the Winery drive too fast and requested traffic calming measures, such as speed limits and speed bumps.

Traffic calming devices are typically not permitted on any private roadway surface unless approved by the Fire Marshal (2017 Napa County RSS Section 15). Staff contacted the Fire Marshal regarding the installation of such devices on the private road beyond the gate, and on February 13, 2018 the Fire Marshal recommended conditions regarding the installation of traffic calming devices that were incorporated into the recommended Conditions of Approval provided to the Commission. The Fire Marshal restated that traffic calming devices are prohibited unless specifically approved by the fire code official, and to approve any traffic calming measures, the applicant must submit a specific proposal, based on the CalTrans Uniform Traffic Control Devices Manual. Since no specific proposal had been designed/submitted at that time, Staff discussed all potential traffic calming concepts with the Fire Marshal and learned that speed bumps are generally not supported, given their hindrance to quick access by emergency vehicles. However, signs and other surface measures such as rumble-strips may be considered and were submitted as part of Appellant's revised Project, and thus, were incorporated into the Revised Recommended Conditions of Approval provided to the Commission.

The Commission noted that the Project has been revised to comply with the March 7, 2018 request and acknowledged the action regarding the Fourth Avenue and Kreuzer Lane intersection, but did not agree that the decreased visitation offered by Appellant was a significant change from the initial request nor appropriate for the Project site, considering the Winery's constrained location in a fire hazard zone, requested RSS exception, shared roadway approaches, and location on a dead end road.

Appeal Ground No. 3: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence and that despite three hearings on the Project and proposed further reductions in visitation and marketing along with additional conditions to address future compliance, Appellant was told by the Planning Commission and neighbors that a fourth hearing was needed to evaluate the proposed reduced proposal without providing a range of suggested visitation and marketing levels that the Commission might accept as appropriate.

Staff Response:

Appellant initially requested 60 visitors per day, with a weekly maximum of 420 visitors, and a total of 19 marketing events. After considering public comment on January 17 and March 7, 2018, the Commission expressed concern regarding the intensity of the requested visitation and asked Staff and Appellant to "come back with a significantly lower visitation number." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pgs. 53:24; 59:17.) The Project was continued to a date uncertain with direction to the Appellant to reduce the intensity of visitation among other items.

Appellant submitted a revised project "decreasing" the original visitation request. The revised Project sought to increase daily visitation from eight visitors per day to 35 visitors per day, reduced from the initial request of 60

visitors per day. The revised Project did not include any reduction in Appellant's request for 19 total marketing events. The revised proposal would result in an increase of 27 visitors per day or a 337.5% increase in daily visitation from the originally approved eight visitors per day. It would also result in a 46% increase in the number of marketing events per year. The total annual visitation would be 13,115 daily visitor and marketing guests.

During their deliberations at all three hearings, the Commissioners expressed concern about the intensity of visitation and asked for a reduction. At the final hearing on October 17, 2018, the Commissioners unanimously agreed that the revised visitation numbers were still too large for the Winery and not adequately scaled considering the constraints on the property, the shared roadway approaches, the proposed RSS exception, and the Winery's location in a fire hazard zone and on a dead end road. After the public hearing was closed on October 17, 2018, and while the Commissioners were discussing their concerns, Counsel for Appellant interjected that Appellant would be "willing to agree to a seasonal variation, ...take it down to 20 a day during the low season, with 35 during the high season, and we would remove two additional categories of marketing events..." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 64:20-24.)

The Commissioners were reluctant to engage in "horse trading" during the meeting regarding Appellant's newly-presented visitation and marketing numbers without Staff and the public having an opportunity to first evaluate the reduction. While the Commission was deliberating and discussing whether to request more analysis from Staff regarding the visitation and marketing changes, Counsel for Appellant again interjected that Appellant would not support another continuance and would "prefer a vote." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 68:11-12.) The Commission wanted time for Staff to assess the traffic and other components of the newly-presented revised project, but Appellant asked for a vote. The Commission ultimately voted to deny the request because the Winery sought a visitation plan that was out of scale and too intense for this remote location at the end of a narrow, dead end road, with shared access, in a fire hazard area.

Appeal Grounds No. 4: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence and that the Planning Commission failed to consider General Plan policies supporting the marketing of wine. Appellant contends that the General Plan Agricultural Preservation and Land Use Element recognizes the wine industry has changed since the Winery was originally approved in 2004, and that an increase in visitation is justified to allow the Winery to be economically viable into the future. Appellant cites to General Plan pages AG/LU-9 and 10 as support for its assertions.

Staff Response:

The pages cited by Appellant do not refer to General Plan policies but instead are the narrative that precedes the land use policies beginning on page AG/LU-12. The narrative Appellant relies on provides background and context for many of the General Plan policies and goals, but page I-4 of the General Plan specifically states that only those statements specifically listed as "Goals," "Policies," "Objectives" or "Action Items" are to be interpreted as statements of policy. Narrative descriptions and discussions that are not preceded by a Goal, Policy, Objective or Action Item designation are provided for information and background only. (See Napa County General Plan, Introduction, pg. I-4.)

Agricultural Preservation and Land Use (AG/LU) Element Policy AG/LU-2 guides the County to "preserve existing agricultural land uses and plan for agriculture as the primary land uses in Napa County." Policy AG/LU-1 defines "agriculture" as "the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses (emphasis added)." The Caldwell Winery is located in the Agricultural Watershed zoning district, which conditionally allows marketing, sales and other uses that are incidental, subordinate and accessory to the primary use of production and processing of grapes. (County Code Sections 18.20.030 (H) and (J).) These land use policies guide the Planning Commission when it reviews winery use permit applications and modifications to ensure that marketing and other accessory uses remain incidental and subordinate to the primary use of producing and processing grapes.

As further described above in Staff Response to Appeal Ground Nos. 1, 3 and 4, the Commission found based on substantial evidence that the requested level of visitation was too intense, out of scale and not subordinate to producing and processing grapes at the Winery.

Appeal Grounds No. 5: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence. The Winery's application is designed to allow for the processing and sale of estate fruit and the proposed visitation figures were calculated based on that increased estate production. Therefore, by definition, the visitation is accessory and incidental since it only provides for the production and sale of wine produced from estate vineyards and is comparable with other recently approved winery use permits. In the absence of significant environmental impacts, there is no General Plan policy basis, or even a correlation between, percentage increase and determination of appropriate "accessory" uses.

Staff Response:

The Planning Commission has broad discretion to evaluate a project's compliance with the County's land use policies including the General Plan and Zoning Ordinance, and to determine whether a proposed use is truly accessory and whether required use permit findings can be made. "Additionally, concern of neighbors is sufficient to constitute substantial evidence that a contemplated use is detrimental to the welfare of the community. Expert testimony on these issues is not necessary. It is appropriate and even necessary for the [planning commission] to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement and the opinions of neighbors may constitute substantial evidence of this issue." (*SP Star Enterprises, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 459, 460.)

The revised project proposes a 40% increase in production capacity (25,000 to 35,000 gallons), a 337% increase in daily visitation (eight per day to 35 per day) and a 46% increase in the number of marketing events. The Appellant proposed to prohibit tasting room visitors on days when marketing events were to occur, which would result in a total of 12,075 annual guests (both visitation and marketing). Appellant contends that the proposed visitation figures were calculated based on the increased estate production and that the proposed visitation is by definition accessory and incidental to the Winery. The Commission disagreed.

Commissioner Gallagher focused on the specific requirement that visitation must be subordinate and stated that "Wineries are limited on the number of visitors because marketing and visitation are incidental uses to the ag uses on the property. And the ag uses are growing of grapes and processing of grapes." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 51:14-17.) She further found that the visitation was not incidental and subordinate and explained "... I do think that the request for visitation is really high and certainly is not warranted, considering the level of production, even at the increased level." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 51:23-25.)

Commissioner Cottrell reiterated that "[the Commission's] job is to approve use permit terms that are consistent with the General Plan and the goal to preserve agriculture, not to ensure profitability. So I don't have a problem with the production increase, but I do have, really, concerns about the level of visitation being requested, because it's just so much higher than the other numbers as Commissioner Hansen was saying, that the sheet we use is a guide." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 53:6-13.)

Based upon the percentages of increase for production and for the proposed visitation, the Commission expressed concern that the increase in visitation far exceeds the increase in production. As further described in Staff Response to Appeal Ground Nos. 1, 3, 4, and 5, the Commission found that the visitations levels were still too high in comparison to the production level requested and therefore and not subordinate and accessory to the primary use of processing and producing grapes at the Winery.

Appeal Ground No. 6: Appellant asserts that the Planning Commission's denial of the Project was not supported

by substantial evidence. Appellant claims that the Winery Comparison Chart provided by Staff includes wineries of similar production with 50 visitors per day. Appellant's chart provides a broader view of wineries (30,000 to 50,000 gallon per year range) and clearly shows that the Project is appropriate and comparable with other similar wineries with more recent use permit modifications reflecting the need for direct-to-consumer (DTC) sales as recognized by the 2008 General Plan. There is no evidence that the visitation proposed would cause any significant impact, and as such there is no evidence that justified denying the Project.

Staff Response:

General Plan Action Item AG/LU-10.1 directed the preparation and maintenance of a data base of all wineries including their production capacity, marketing events and other characteristics that could influence analysis of cumulative effects or the winery's effect on neighbors. Consistent with this Action Item, Staff's standard practice since approximately September 2015 is to include a winery comparison analysis chart and summary in the tours, tasting and marketing analysis portion of the Staff Report. Prior to this formal request by the Commission (from 2012-2015), Staff provided a comparison listing of wineries with similar production levels but the Commission ultimately found that comparison failed to include enough relevant information to be of value and therefore required more data. This was reinforced by the Board of Supervisors in its final approval of the recommendations from the Agricultural Protection Advisory Committee (APAC) in March 2016, which included "Prepare guidelines to include comparison and locational criteria information in staff reports for consideration by decision-makers of winery use permits."

Staff prepared the Winery Comparison Chart for the Caldwell Winery to provide information regarding wineries with approved 30,000 to 35,000 gallon production capacity. These charts provide the Commission information and guidance regarding the features of other wineries that have been approved, which, in addition to the average and median levels of visitation and marketing, provide the building size, cave size, property acreage, and location, as well as a summary of the locational and operational criteria of the proposed project and existing wineries located within one mile of a project.

At the October 17, 2018 hearing, the Commission considered and discussed a winery comparison chart prepared and submitted by Appellant's counsel Mr. Adams. Appellant's counsel asserted that Appellant's chart provided a broader view of wineries (30,000 to 50,000 gallons per year of production) and clearly demonstrated that the Project is appropriate and comparable with other similar wineries with recently approved use permit modifications and visitation plans that need direct-to-consumer sales.

Appellant's winery comparison chart was submitted on October 12, 2018, after the preparation and release of the Staff Report, and was not analyzed by Staff in the report. In comparison to Staff's Winery Comparison Chart, Appellant's chart is based on limited sampling — eight of the nine wineries sampled have production capacities higher than the Caldwell Winery's request. In addition, Appellant's chart lacks detailed information regarding the sampled wineries, such as the building size or its location in the County. Moreover, the wineries included on Appellant's chart are located with direct access to an arterial County road and/or are located on the Valley Floor, unlike the Caldwell Winery. These wineries do not have similar locations and operational characteristics as the Caldwell Winery.

As Commissioner Hansen explained "We use the information at our disposal and the comparison charts, but it really does come down to very site-specific evaluation . . ." (See Certified Transcript of Planning Commission October 17, 2018, Meeting pg. 61:7-9). "I am also concerned about the intensity of use. One of the conversations around how we grow as a community in the right ways is about very site-specific conversations. And that's why to our winery comparison chart I'm also fond of saying that it is a tool for reference that we use, but it really should not, necessarily dictate a decision. It is something that we can refer to, and every site is different." (See Certified Transcript of Planning Commission March 7, 2018, Meeting, pg. 49:21-27.)

For the reasons articulated above, the Commission found that based on the unique and site-specific conditions of the Winery's location at end of a narrow, dead end road with shared access in a fire hazard area, the requested visitation levels were too intense and not incidental and subordinate to the Winery's primary use of processing and producing grapes.

Appeal Ground No. 7: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence and that traffic impacts are less than significant and will be unnoticeable to neighbors. The proposed 35 visitors a day would generate 25 to 27 trips or the equivalent of traffic generated from 2.5 residences. Appellant claims that utilizing estate fruit would reduce existing trips related to custom crush clients and this reduction is not included in the trip calculations.

Staff Response:

The Focused Traffic Analysis prepared for the Project (W-Trans February 26, 2018) evaluated the segment of road with the highest existing volume (Fourth Avenue west of Kreuzer Lane) to arrive at "worst-case" results and utilized a visitation level of 60 visitors per day. Under existing volumes without Project-generated traffic, Fourth Avenue west of Kreuzer Lane operates acceptably at Level of Service (LOS) C or better in all directions. With the addition of Project-generated traffic, the roadway would be expected to continue operating at acceptable LOS C or better. Since the General Plan states the County shall seek to maintain an arterial LOS D or better on all county roadways, the report concluded that the Project would not have a significant impact on traffic congestion.

Utilizing the Winery Traffic Information/Trip Generation Sheet (used by W-Trans in their report), the traffic generated by the existing winery was 15 daily trips (six PM peak hour trips on weekdays); and 14 weekend daily trips (eight PM peak hour trips on weekends). With the increase of visitation to 35 daily visitors, the Trip Generation Sheet estimated an increase of 42 additional daily trips (16 additional PM peak trips on weekdays) and an increase of 33 additional weekend daily trips (11 additional PM peak hour trips on weekends).

While the traffic may have been below the threshold triggering a CEQA impact for traffic congestion, the Commission found that the additional traffic would adversely affect the safety and welfare of the community and in particular the surrounding neighborhood. Commissioner Whitmer explained that "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." (See Certified Transcript of Planning Commission October 17, 2018, Meeting, pg. 60:3-7.)

The Commission did not agree that the decreased visitation had adequately been scaled down, and substantial evidence in the record of the Project's constrained location, supporting the Commission's denial. See also Staff response to Appeal Grounds Nos. 1, 3 and 4 incorporated here by reference.

Appeal Ground No. 8: Appellant asserts that the Planning Commission's denial of the Project was not supported by substantial evidence and that the Planning Commission deferred to residential uses over agriculture contrary to the County's Right to Farm policy that protects agriculture. Appellant contends that General Plan Policy AG/LU-2 defines "agriculture" to include the right to produce, market and sell wine. The Winery should not be penalized for conducting reasonable and legally allowed agricultural operations as defined in the County's General Plan, nor precluded from expanding those operations, because of misplaced complaints from adjacent residential property owners.

Staff Response:

The "Right to Farm", as noted in the General Plan and by Appellant, refers to the concept that the conduct of agricultural operations takes precedence over the need to prevent reasonable agricultural operations from negatively affecting nearby non-agricultural users. Although the General Plan emphasizes the importance of

agriculture, the expansion of wineries and their accessory uses are conditional uses to be reviewed on a case-by-case basis to determine whether accessory uses are incidental and subordinate to wine production and to analyze the cumulative effects or winery's impact on neighbors. See Staff Response to Appeal Grounds Nos. 1 and 3 through 7, above incorporated here by reference.

Board Considerations and Staff Recommendation:

The following options are provided for the Board's consideration regarding possible action on the appeal:

- I Deny the appeal in its entirety and uphold the Planning Commission's denial of the use permit modification. If the appeal is denied, the applicant can resubmit this Project or a modified project within one year of the date of the Board's final decision.
- I Uphold one or more grounds of the appeal and reverse the Planning Commission's decision, thereby approving the Use Permit Modification.
- I Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the appeal and/or other public comments received to date substantively challenges or requires modification of the decision reached by the Planning Commission regarding this matter. As a result, Staff recommends that the Board deny the appeal in its entirety and uphold the Planning Commission's denial of the Project.

Alternatively, should the Board find based on the evidence herein that the visitation levels are accessory, incidental and are appropriately scaled for the constraints of this "unique" location; then the Board may reverse the Planning Commission's decision and direct staff to prepare the Resolution of Findings and Decision on Appeal to approve the project as proposed by the Appellant or as modified by the Board.

SUPPORTING DOCUMENTS

- A . Appeal Packet
- B . Appellant's Witness List
- C . Winery Comparison Chart
- D . Public Correspondence
- E . Additional Public Correspondence

CEO Recommendation: Approve

Reviewed By: Leigh Sharp