

Attachment D

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NOTICE OF APPEAL
[Appeal from Decision on Application for
Administrative Interpretation of Use Permit]

**Authority for Administrative
Interpretation Application and
Authority for Appeal:**

Monterey County Ordinance Nos. 21.02.010, et seq.

**Date of Administrative
Interpretation Decision:**

March 9, 1999

Last Date to File Appeal:

March 19, 1999

1. **Identity of Appellant:** Château Julien Wine Estate/Coastal Cypress Corporation
8940 Carmel Valley Road
Carmel, CA 93923
(831) 624-2600
2. **Interest in Decision:** The Appellant is the Applicant.
3. **File/Use Permit Number:** 965157ZA
4. **Nature of Application:** Application for Administrative Interpretation of Use Permit No. 965157ZA pertaining to the use of the Chai building located on Château Julien Winery property.
5. **Nature and Bases of Appeal:** Appellant/Applicant is appealing the decision (interpretation) of the Planning Director on the grounds that:
 - (a) The findings are not supported by the evidence;
 - (b) The Planning Director failed to consider material evidence that was presented to him;
 - (c) The decision is not supported by the evidence; and,
 - (d) The decision is contrary to the law.

6. **Specific Grounds and Bases for the Appeal:**

**OBJECTIONS TO PLANNING
DIRECTOR'S FINDINGS OF FACT**

FINDING NO. 1:

Coastal Cypress Corporation (a.k.a. Château Julien) was granted a use Permit in 1982 for the construction and operation of a winery subject to numerous conditions. That Use Permit does not, however, extend to the adjoining parcel. At the time that use permit was applied for, considered, and approved, Coastal Cypress Corporation did not own, nor did they have control of the adjoining property to the west on which the Chai building now stands. There is, therefore, no basis to support your position that the original Use Permit for the winery extends to the Chai property.

OBJECTIONS:

This Finding consists of an incomplete and misleading statement of facts and an unsupported, incorrect legal conclusion.

DISCUSSION:

It is true that the Château Julien Winery was granted a Use Permit in 1982 [Permit No. ZA-50550] and that thereafter the Winery acquired the adjacent parcel to the west that is the subject of Use Permit No. 965157ZA. The following related material facts are also true but were not considered by the Planning Director: (a) The conduct of wine tasting and private functions (public assemblage events) are accessory uses of the Winery's premises under the 1982 Use Permit as was conclusively found and determined by the Judgment of the Monterey County Superior Court filed December 16, 1985; (b) the Chai building, parking lot and other improvements that are the subject of Use Permit No. 965157ZA expanded the Winery's operations and integrated them into one overall location; and, (c) the original parcel and the added parcel now constitute the location of the Winery at which its operations are conducted.

The Planning Director's conclusion that there exists no basis to support the position that the original Use Permit extends to the Chai property is unsupported by legal authority and refuted by the above undisputed facts. In fact, as set forth in *Rathkopf, The Law of Zoning and Planning*, Section 23.03, a use permit may give rise to an accessory use located on a different parcel especially where, as here, the County's definition of accessory use (Monterey County Code Section 21.06.1330) does not limit it to the same parcel. This conclusion is further compelled by the fact that the properties are adjacent and constitute one integrated winery operation.

FINDING NO. 2:

The Planning Commission, on April 30, 1997, at the conclusion of a de novo hearing on an appeal of a Use Permit previously approved by the Zoning Administrator, approved a Use Permit for the construction of a 8,350 sq. ft. wine storage building (the "Chai") and a Design Approval to remodel an existing single family dwelling. Neither the application nor the evidence presented at the appeal indicated that there was any intended public assembly accessory use purpose for the Chai or the dwelling. Condition #1 of that permit specifically states that "this permit allows for the use of a wine storage building, truck circulation area, and a 14 space parking area". Condition #1 further states that "any use or construction not in substantial conformance with the terms or conditions of this permit, is a violation of county regulations". The Use Permit approved by the Planning Commission did not provide for any other uses.

OBJECTIONS:

Applicant objects to the Finding that there was no indication of intended public assembly accessory use for the Chai building at the time Use Permit No. 965157ZA was granted, and the conclusion therein that the Use Permit did not provide for any uses other than that specifically set forth in Condition No. 1.

DISCUSSION:

Condition No. 1 of the Use Permit sets forth the primary uses of the Chai building. It does not state that the recited uses are exclusive or the only possible uses. To the contrary, both the County Government and its citizens are charged with knowledge of its ordinances, in particular, the fact that a use permit also allows accessory uses. Thus, whether under the original permit (since the Chai is part of the Winery operations) or under the Chai permit (issued for the primary purpose of wine processing), the accessory use of private functions should be deemed to have been contemplated and in fact authorized. Moreover, the subject was addressed at the April 9, 1997 Planning Commission hearing. For example, Commissioner Calcagno commented as follows:

"Basically, I think we're getting into an era, if we want to keep agriculture in this county and keep it healthy, the grape industry's going to be one -- one of the key factors in keeping that ground in agriculture and not putting it -- covering it over with houses.

There's no doubt, in marketing and merchandising any -- any agricultural product, when you can add value to it and you can market and merchandise it -- and there's only so many places you can do it. It so happens this happens to be a good place to do it. I think that is a good reason. However, I think

legally, from the perspective that it had an agricultural use to begin with and that it was agriculture, it is still agriculture. And, you can't just create a product, you've got to sell that product, too, to keep agriculture healthy. If we think we're just going to have farms in the county that just produce agricultural products, and there's not going to be -- no trucks and we're not going to convert it over into a product a person can consume, we're not going to produce it. That's just simple. We're going to have to go the whole avenue. Farming's getting to be more and more of that. We're going to have to go to the finished product and we're going to have to be able to market and merchandise it." [Transcript of Tape Recorded Proceedings, pages 92-93]

Commissioner Calcagno's statement further supports a finding that the use of the Chai for public assemblage marketing purposes is normal and customary winery usage necessary to market agricultural products and, therefore, accessory within the meaning of that term in the Zoning Code.

FINDING NO. 3:

The building permit which was subsequently approved as a modification to the building plans to provide restrooms, was applied for and issued as employee restrooms. At no point in the building permit application was it indicated that the restrooms were for any use other than for employees.

OBJECTIONS:

This finding is incomplete and the second sentence thereof incorrect.

DISCUSSION:

The restroom plans complied with all provisions of the Americans with Disabilities Act, a requirement for public assemblage use but not for employee use. In addition, as stated above, the County is charged with knowledge of the Winery's permitted accessory uses of its facilities, especially that which was confirmed by judicial decision.

FINDING NO. 4:

Since the Use Permit issued in 1982 for the winery does not extend to this property, the decision of the court cited in your application for administrative interpretation cannot be construed to extend to the Chai structure. At the time the court considered this matter in 1985, the property on which the Chai is located, was not owned nor under the control of Coastal Cypress Corporation and the court could not have had any reasonable belief or expectation that the issue and the permit before it would ever be extended to another property.

OBJECTIONS: This Finding is essentially the same as that set forth in Finding No. 1 and is objected to for each of the same reasons.

DISCUSSION: The Monterey County Superior Court 1995 Decision not only can but should be construed to extend to the Chai structure because (a) it is all part of one winery operation; (b) the Decision is binding on the County with respect to the determination that wine tasting and private functions constitute accessory uses under a winery permit generally; and, (c) accessory uses under a permit may extend to adjacent property, especially where, as here, the Zoning Code does not limit accessory uses to the same parcel. The question of whether the Court that rendered the 1995 Decision anticipated the extension of the Winery to adjacent property is irrelevant. Moreover, the Planning Director is not in a position to speculate as to whether such a situation was contemplated by the Judge. The reasoning of the Court's Decision, on its face, applies.

PROPOSED FINDINGS

Appellant/Applicant proposes the following Findings of Fact based upon evidence presented to and/or available to the Planning Director:

**PROPOSED
FINDING NO. 1:**

The Chai building, parking lot and other improvements that are the subject of Use Permit No. 965157ZA expanded the Winery's operations and integrated them into one overall location.

EVIDENCE:

Application and discussion in connection with processing Chai Use Permit; apparent from site inspection conducted by Planning Director and others.

**PROPOSED
FINDING NO. 2:**

The original parcel and the added parcel now constitute the location of the Winery at which its operations are conducted. The storage of wine barrels is an integral part of a winery's facilities and the wine making process.

EVIDENCE:

Application and discussion in connection with processing Chai Use Permit; apparent from site inspection conducted by Planning Director and others.

**PROPOSED
FINDING NO. 3:**

The conduct of accessory private functions at the Chai building does not have any noise impact on the properties to the west; in fact, the improvements that are the subject of Use Permit 965157ZA materially reduce the noise level emanating from all activities on the Winery's property.

EVIDENCE:

Appellant/Applicant provided the Planning Director with the report of Charles M. Salter, P.E., President of Charles M. Salter Associates, Inc., a well-qualified and respected acoustics consulting firm. Mr. Salter conducted acoustical measurements at various locations on the west side of the Chai building during a private function, including live music, that took place on February 6, 1999. That study confirms that there is no increased noise impact on neighboring properties by virtue of the activities conducted at the Chai building including those with live music. To the contrary, as Mr. Salter notes, the overall noise level has been lessened by reason of the berm, walls and trees on the west boundary of the Winery. The overall noise situation has, therefore, improved over that which existed prior to the construction of the Chai.

**PROPOSED
FINDING NO. 4:**

The conduct of accessory private functions at the Chai building does not result in any manner in any change of appearance or other visual impact from the west.

EVIDENCE:

The conduct of private functions within the Chai building does not involve any physical changes, temporary or otherwise. There are no Chai building openings located to the west. The building and the surrounding area are substantially hidden from view from the west by the berm, wall and trees that were all subject to Permit No. 965157ZA.

**PROPOSED
FINDING NO. 5:**

The Chai building meets all safety, health, fire and other requirements for the conduct of private (public assemblage) functions and has been granted an Occupancy Permit for the conduct thereof approved by the Building Department, Fire District and Planning Department.

EVIDENCE:

When it was brought to Appellant/Applicant's attention that the County had not reviewed the Chai building plans for public assemblage purposes, Appellant/Applicant immediately applied for an Occupancy Permit and complied with all requirements imposed

thereby. The Permit was thus approved by the County Building Department, the Mid-Valley Fire District and the County Planning Department on March 5, 1999.

**PROPOSED
FINDING NO. 6:**

Appellant/Applicant, in its Application for Administrative Interpretation, voluntarily agreed to limit the hours of private functions conducted at the Chai building such that they terminate no later than 10:00 p.m. with an additional hour to clean up, close down and secure the facilities.

EVIDENCE:

Application for Administrative Interpretation, page 2.

**PROPOSED
FINDING NO. 7:**

There does not exist any evidence of any adverse impact resulting from the conduct of private functions at the Chai building.

EVIDENCE:

See Proposed Finding and Evidence Nos. 3 and 4 with respect to the lack of any visual or noise impact. Appellant/Applicant is not aware of any adverse impacts, and none have been raised by the Planning Director or other parties in this proceeding.

**OBJECTIONS TO PLANNING
DIRECTOR'S CONCLUSIONS**

Appellant/Applicant objects to the conclusions drawn by the Planning Director. Although not separately numbered in the Planning Director's decision, the conclusions are numbered below for ease of reference.

CONCLUSION NO. 1: The Chai structure must be evaluated on the basis of its own independent Use Permit and not as an expansion of the allowable accessory uses of a separate Winery Use Permit.

OBJECTIONS:

This conclusion is contrary to the facts and the law.

DISCUSSION:

This conclusion is not based on any legal authority or the provisions of the County's accessory use definition. It ignores the practical reality that Use Permit 965157ZA, in effect, integrated the improvements on both parcels into one winery operation conducted at one location. It is further mistakenly premised upon the contention that the original winery permit does not allow for accessory uses on

adjacent property which, in fact, it does. The 1985 Court Decision, to which the County was a party, confirms that private (public assemblage) events conducted at a winery's facilities constitute an accessory use under a permit allowing winery operations. The fact that some such uses may be conducted on a contiguous parcel does not violate any provision of the Zoning Code.

CONCLUSION NO. 2:

Winery tours, wine tasting and private (public assemblage) events are not accessory uses under the Chai building Use Permit, No. 965157ZA.

OBJECTIONS:

This conclusion is contrary to the facts and law.

DISCUSSION:

The Planning Director refers to this permit as a "Winery Use Permit." It provides, in material part, that the Chai building be used for the "on site" storage of wine barrels, the storage and monitoring of which is an integral part of the wine making and winery operations. It was granted under the same (updated) agricultural use ordinance as that for which the initial winery permit was issued in 1982. The conduct of winery tours, wine tasting and private (public assemblage) events are exactly the type of activities customarily associated with wineries and clearly qualify as accessory uses under the County's definition thereof. In this case, such uses do not require any physical alterations nor do they carry with them any adverse impacts. As discussed below, the Planning Director did not consider the nature or type of activities or otherwise attempt to make any meaningful determination of their clear, unequivocal accessory character. In addition, although the Planning Director seeks to avoid consideration of the 1985 Court Decision to which the County is bound as a party, that decision clearly and unequivocally confirms that these types of activities are accessory to the operation of a winery. Specifically, as articulated by the Court:

"Such activities were never in question. An applicant for a use permit has a right to rely upon statutory provisions governing the exercise of rights under a permit. Here the winery was an allowable use together with accessory uses as defined in Monterey County's Zoning Ordinance 20.04.730." [1985 Decision, Monterey County Superior Court Case No. 82533, page 4, lines 10-14]

The Planning Director has acknowledged, impliedly, that winery tours, wine tasting and private (public assemblage) events are accessory Chai building uses. He goes on, however, to make the unwarranted assumption, contrary to known historical fact, that the Winery might

use the Chai building for public assemblage events 365 days out of the year. Based on that assumption, the Planning Director concludes that which are otherwise accessory uses would, under those circumstances, become primary. Therefore, according to the Planning Director, any use whatsoever of the Chai building for a winery tour, wine tasting or private event cannot be accessory. The Planning Director does not address the level of usage which, in his opinion, converts the accessory uses to primary. Appellant/Applicant respectfully disagrees with the Planning Director's reasoning which, as stated, is based on speculation. The determination of an accessory use depends upon the nature and character of the activities so long as they are secondary to the principal reason for the building's existence. Here, 200-300 or more barrels of wine are aged under controlled atmospheric conditions for wine making purposes 24 hours a day, 365 days a year. There should be no question but that this around the clock continuous wine making function constitutes the primary use of the Chai building. The facts as have been presented and the law confirm, unequivocally, that winery tours, wine tasting and private (public assemblage) events are accessory under both Winery Use Permits.

CONCLUSION NO. 3:

A separate use permit is required for the use of the Chai building for private (public assemblage) events.

DISCUSSION:

For the reasons discussed above, Appellant/Applicant respectfully maintains that both the original Winery Use Permit and the Chai building Use Permit each allow for the subject accessory uses and, therefore, no new permit is or should be required. Moreover, this process itself, and the public hearing that will ensue, should address and satisfy all of the needs and requirements that would otherwise arise out of a new use permit application. The issue has already been addressed by the Planning Director and will now be before the Planning Commission.

PROPOSED CONCLUSIONS

PROPOSED

CONCLUSION NO. 1:

The conduct of winery tours, wine tasting and private (public assemblage) events at the Chai building does not cause any meaningful adverse visual, noise or other negative impact to surrounding properties.

PROPOSED

CONCLUSION NO. 2: The Winery's 1992 Permit covers the Chai building for purposes of allowing accessory uses which include the Court-confirmed uses of winery tours, wine tasting and private (public assemblage) events.

PROPOSED

CONCLUSION NO. 3: The Winery Use Permit for the Chai building (No. 965157ZA) allows, as accessory uses, winery tours, wine tasting and private (public assemblage) events to be conducted at the Chai building.

PROPOSED

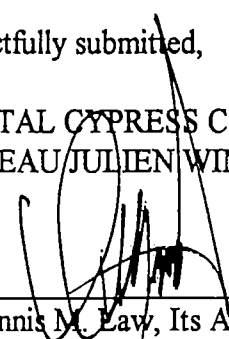
CONCLUSION NO. 4: The Château Julien Winery has acquired the vested right to conduct accessory activities at the Chai building including winery tours, wine tasting and conduct of private (public assemblage) events.

CONCLUSION

Although Appellant/Applicant believed that no further public review or decision was necessary, it voluntarily submitted its Application for Administrative Interpretation in the spirit of cooperation and to dispel any concerns and/or adverse notions arising out of the accessory uses being conducted at the Chai building. For the reasons presented above, Appellant/Applicant respectfully requests that the Planning Commission adopt Appellant/Applicant's Proposed Findings and Conclusions in lieu of those set forth by the Planning Director and, therefore, find that both the original Use Permit and the Chai building Winery Use Permit allow the Chai building to be the subject of the accessory uses of winery tours, wine tasting and private (public assemblage) events on condition that the noise level not exceed that allowed by County ordinances and the activities end no later than 10:00 p.m. with an additional hour to clean up, close and secure the premises.

Respectfully submitted,

COASTAL CYPRESS CORPORATION/
CHATEAU JULIEN WINE ESTATE

By: 
Dennis M. Law, Its Attorney

Dated: March 18, 1999

Copies: Original to Clerk of the Board of Supervisors
One Copy to Planning and Building Inspection Department