

Attachment B

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**APPLICATION FOR ADMINISTRATIVE
INTERPRETATION OF USE PERMIT**

[Monterey County Zoning Ordinance, Chapter 21.82.010, et seq.]

TO: Bill Phillips, Director of Building and Planning,
County of Monterey

FROM: Coastal Cypress Corporation
8940 Carmel Valley Road
Carmel, CA 93923
(831) 624-2600

USE PERMIT NO.: 965157ZA

SUBJECT: Application for Administrative Interpretation of
Accessory Uses

INTRODUCTION

Applicant, Coastal Cypress Corporation, was issued a Use Permit on April 19, 1982, No. ZA-50550, for the construction and operation of a winery in Carmel Valley on APN 169-151-22 which extends to adjacent parcel APN 169-161-001. On April 30, 1997, Applicant was granted a separate Use Permit for, among other things, the construction of a Chai building on APN 169-161-001 for the storing of aging wine in barrels, an integral activity for the processing of wine [Monterey Planning Commission Resolution No. 97028 (965157ZA)].

Subsequent to the granting of the Chai building permit, Applicant's private water well system received all appropriate approvals effective June 26, 1998 (Permit I.D. No. 270-2495). Thereafter, Applicant filed a supplemental application to add separate ADA approved men's and women's restroom facilities at the Chai building allowing for the conduct of public assemblage activities.

Applicant contends that public assemblage activities constitute accessory uses of the Winery's facilities under its original Use Permit in accordance with Monterey County Zoning Ordinance No. 20.04-730 and its successor, Title 21, No. 21.06-1330, both as a matter of law and as confirmed by the Decision of the Monterey County Superior Court filed December 16, 1985 (a copy of which is attached), and as recited by Zoning Administrator, Dale Ellis, on April 9, 1997 at the commencement of the Planning Commission hearing for the subject permit, No. 965157ZA (Transcript, pp 12-14); and, that such activities may therefore be conducted at the Chai building subject to compliance with all public safety requirements. Applicant is now informed, however, that questions have been raised regarding the conduct of such activities at the Chai building including the fact that such uses were not specifically addressed at the public hearings for the Chai building Use Permit. Although Applicant contends that no further public review or decision is necessary, it voluntarily submits this Application for Interpretation in the spirit of cooperation and to dispel any concerns and/or adverse notions that may exist arising out of this situation.

APPLICATION

Applicant, without waiving what it contends to be its vested rights, hereby seeks an interpretation from the Director of Building and Planning to confirm that the existing Chai building Use Permit allows, as an accessory use, the conduct of public assemblage activities therein as follows:

- A. The Chai building public assembly events are defined as those events taking place at the Chai building or for which the Chai building is the primary focus area for the assemblage (e.g., sit down dinners) for which:
 - (1) The total number of persons does not exceed 300;
 - (2) Such activities do not commence prior to 8:00 a.m. and terminate no later than 10:00 p.m. with an additional hour to clean up, close down and secure the facility; and,
 - (3) The noise level generated by such activities shall not exceed that permitted by the applicable County Ordinance.

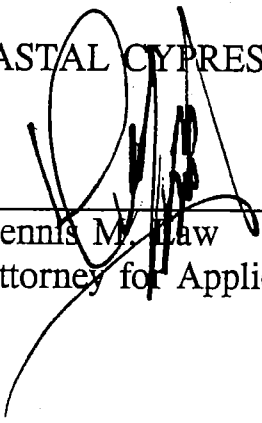
- B. The foregoing public assembly usage shall be subject to all fire and other code safety requirements applicable thereto.

- C. Such public assembly usage shall be subject to confirmation of the availability of water and the adequacy the sewage disposal facilities commensurate therewith.
- D. The foregoing shall have no effect on winery tours, wine tasting and other similar activities conducted at the winery premises for which the use of the Chai building is incidental.

COASTAL CYPRESS CORPORATION

Dated: February 2 1999

By: _____


Dennis M. Law
Attorney for Applicant



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Sherrill H. Robinson

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

GREAT AMERICAN WINERIES, INC.,)
a California corporation, dba)
CHATEAU JULIEN,)
Petitioner,)
vs.)
DALE ELLIS, Monterey County)
Zoning Administrator, the)
BOARD OF SUPERVISORS OF THE)
COUNTY OF MONTEREY and the)
COUNTY OF MONTEREY,)
Respondents.)

No. 82533

MEMORANDUM OPINION

The above entitled case was heard by the Court on December 5, 1985. DENNIS M. LAW, Esquire, of the law firm of LAW and COOK appearing on behalf of Petitioner; JOSE RAFAEL RAMOS, Senior Deputy County Counsel, appeared on behalf of Respondents.

All declarations and transcripts of hearings filed with the Court by stipulation were received in evidence. The case was argued and submitted for decision.

Petitioner files for a Writ of Mandate to set aside and invalidate Respondents' administrative decision modifying

1 Petitioner's use permit.

2 On August 19, 1982, Respondent, County, issued a use
3 permit to Petitioner, which contained fifteen (15) specific con-
4 ditions (Exhibit A, Petitioner's Br). All allegations of viola-
5 tions of the conditions have been resolved or withdrawn except
6 for condition 13. Condition 13 reads as follows: "That the
7 wine tasting operation be limited to 'by invitation only'".

8 Respondent also addressed in its modification hearing
9 activities not specifically limited in its original use permit
10 nor discussed at its hearing in connection with issuance of the
11 permit, namely: Charity events held at the winery, wedding recep-
12 tions, wine cooking classes, wine tasting classes and operation
13 of a gift shop.

14 From the briefs filed and arguments of counsel, the Court
15 perceives that Respondent is taking the position that those
16 activities are not specifically allowed in the permit and are
17 therefore prohibited or constitute a violation of Condition 13,
18 and therefore are not permitted activities.

19 The parties agree that the land use by Petitioner is an
20 allowable use pursuant to Title 20 Monterey County Code. At the
21 time the permit was issued, there existed a court order which
22 prevented the issuance of any permit otherwise allowable if such
23 use would increase the building intensity (ground cover) or
24 population density over the use then existing on the property.

25 A reading of the transcript of the hearing of August 19,
26 1982 (Exhibit C, Petitioner's BR), clearly sets forth the concern
27 of the zoning administrator and others present, namely traffic
28 on Carmel Valley Road.

1 After reciting the various concerns of local regulatory
2 agencies, the administrator heard testimony from members of the
3 general public. Mr. Greenwood stated most succinctly the position
4 of the community as:

5 1. disposal of local waste and "... the second "...
6 concern is with traffic." He also talked about the infinite
7 variety of "invitations" that might be issued by Petitioner. He
8 spoke of "public" and "private" wine tasting needs, as well as
9 a recommendation to define those needs.

10 He, Mr. Greenwood, then concluded "So we have those two
11 concerns". That is to say, liquid waste disposal, and future
12 increases of traffic. (Exhibit C, pages 7, 8, Petitioner's Br).
13 There appeared to be some surprise by those testifying at the
14 modification hearings by use of buses to transport tours. This
15 should not have been a surprise. Mr. Greenwood (Exhibit C page
16 8) observed that the proposed amenities such as a Great Hall, a
17 concourse with a fountain, etc., would attract tourists. Also at
18 page 9 of the same transcript, Mr. Brower talked of handling
19 "... tours". At no time did Mr. Brower speak of limiting his
20 wine marketing to restaurateurs and wholesalers.

21 Little if any of the testimony at the modification hear-
22 ings actually addressed itself to the issue of whether Petitioner
23 had increased the intensity of use, over what it represented to
24 Mr. Slimmon at the hearing on August 19, 1982 or as to what the
25 use had been before the winery.

26 In order to decide this case, one must first discover
27 what Petitioner had a right to do. Inferentially Respondents
28 argue that even though Petitioner had a right to engage in

1 activities that were accessory to its main business, the complain-
2 ed of activities were not accessory uses.

3 The zoning administrator apparently had in his mind some un-
4 communicated limitations to the use permit. (Exhibit 1,
5 Respondents' Br).

6 Respondent has endeavored to cast Petitioner in the role
7 of one who hid intended uses; almost attributed fraud. This is
8 on the theory that Petitioner did not detail all possible
9 activities of a winery at the August 19, 1992 hearing.

10 Such activities were never in question. An applicant for
11 a use permit has a right to rely upon statutory provisions govern-
12 ing the exercise of rights under a permit. Here the winery was
13 an allowable use together with accessory uses as defined in
14 Monterey County's Zoning Ordinance 20.04.730. An administrative
15 officer cannot modify such rules except by specific articulated
16 limitations for valid reasons. Certainly Mr. Slimmon could not
17 build into the permit his uncommunicated-unwritten interpretations.

18 If this approach is permitted, then a holder of a use
19 permit has no rights whatsoever under the permit.

20 Ironically, it appears that in one breath, Respondent
21 condemns Petitioner for not revealing all possible activities to
22 be anticipated even though not in issue, but believes that the
23 undisclosed intent of Mr. Slimmon should have the effect of
24 limiting the accessory uses under Title 20, Monterey County Code.

25 Petitioner produced evidence that all of its activities
26 are "accessory uses" within the meaning of Monterey County Zoning
27 Ordinance 20.04.730. Respondent could have produced evidence
28 to the contrary and then perhaps the fact finder could have

1 believed one side or the other or weighed the evidence. Respond-
2 ent chose not to produce such evidence. Therefore the evidence
3 that all the activities complained of are accessory uses stands
4 uncontroverted.

5 The evidence that the "intensity of use" stands at an
6 average of 50 trips per day, exactly as estimated at the August
7 19, 1982 hearing, was also uncontroverted. The County's own
8 study shows Petitioner's use of the property has halved the
9 traffic of its predecessor (Exhibit B: Exhibit D Pg. 26, 27
10 Petitioner's Br.).

11 That is to say, Mr. Zobel testified at the May 9th hearing
12 that when he operated the property they had 100 cars per day as
13 well as two truck and trailers to and from the feed store.
14 (Exhibit D, Pg. 27). The 18 wheelers surely are as noxious as
15 buses.

16 The parties have ably briefed and argued the two
17 standards of judicial review. The first is well defined as a
18 determination by the Court that there is or is not substantial
19 evidence to support the administrative decision or finding. The
20 other is that the Court may independently weigh the evidence and
21 come to its own conclusion where fundamental vested rights are
22 at issue.

23 The Court observes, but does not decide, that the rights
24 involved could rise to a fundamental vested right. Petitioner
25 in reliance upon the terms the use permit made substantial
26 investments as well as personally working at the business, etc.

27 The Court need not reach that point because under either
28 standard of review, the Petitioner should prevail. There was no

1 evidence at all that the activities of Petitioner were not
 2 accessory uses nor that the intensity of use had been increased
 3 over the use of its predecessor or as estimated on August 19,
 4 1982.

5 The writ shall issue. Counsel for Petitioner is directed
 6 to prepare the necessary order and writ.

7 DATED: December 10, 1985.

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W. J. Harpham
 W. J. HARPHAM, Judge Assigned.