Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Exempting From The California Environmental Quality Act For Purposes Of Denial, Upholding Appeals Of A Board Of Zoning Adjustments Approval, And Denying A Use Permit And Coastal Permit For A Large Residential Community Care Facility On Property Located At 16702 Highway 1, Bodega; APN 103-020-006.

Resolved, that the Board of Supervisors (the Board) of the County of Sonoma (the County) hereby finds and determines as follows:

1. Procedural History and Proposed Project

1.1 On August 2, 2012, Charles Litchfield for Bayside Bodega, LLC (Applicant), filed an application for a Use Permit with the Sonoma County Permit and Resource Management Department (PRMD) for a large residential community care facility on the site of an existing 21-room hotel and restaurant (the Application). PRMD designated this application as UPE12-0045. The Application requested a Use Permit to establish a 32-bed residential treatment facility for treatment of chronic pain disorders and chemical dependency, to be located in existing structures and involving no new exterior construction (the Proposed Project).

1.2 The Proposed Project is located on an approximately 36-acre parcel in the Coastal Zone at 16702 Highway 1 in Bodega, APN 103-020-006 (the Project Site), zoned LEA (Land Extensive Agriculture), B6-160 acre density/640 acre minimum, CC (Coastal Combining District), SR (Scenic Resource District), Supervisorial District No. 5.

1.3 PRMD staff were advised by staff of the California Coastal Commission that the Proposed Project did not require a Coastal Permit.

1.4 PRMD staff determined that the Proposed Project was categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301.
1.5 On November 21, 2013, the Board of Zoning Adjustments (BZA) held a publicly noticed hearing and, on a 5-0 vote, approved the Proposed Project.

1.6 On November 27, 2013, Jean Kapolchok filed a timely appeal of the decision with the Board of Supervisors on behalf of Al and Joe Bordessa (the Bordessa Appeal).

1.7 On August 19, 2014, the Project was scheduled for public hearing before the Board of Supervisors. However, prior to the hearing, staff determined that a Coastal Permit was required for the Project, in addition to a Use Permit. At that time, staff requested that the item be continued off calendar to allow the Applicant to apply for a Coastal Permit and allow for the required BZA hearing and decision on the Coastal Permit at a future noticed public hearing.

1.8 On August 25, 2014, the Applicant applied for a Coastal Permit (designated PLP14-0056), and submitted a revised project description on February 24, 2015.

1.9 The Applicant submitted a revised project description on February 24, 2015, and submitted correspondence on April 23 and July 15, 2015 modifying the Proposed Project to integrate agricultural therapy into the proposed residential care facility program.

1.10 The BZA held a duly noticed public hearing on the modified Use Permit and Coastal Permit applications on August 20, 2015. At the hearing, the BZA heard and received all relevant testimony and evidence presented orally or in writing regarding the Proposed Project. All interested persons were given an opportunity to hear and be heard. At the conclusion of the public testimony, the BZA closed the public hearing, deliberated on the Project, and voted 3-2 to approve the Proposed Project.

1.11 Eric Koenigshofer filed a timely appeal of the BZA’s decision on August 21, 2015. On August 25, 2015 Chris Mazzia filed a timely amendment to the previously filed Bordessa Appeal (collectively, the Appeals).

1.12 A public hearing before the Board of Supervisors on the Appeals was duly noticed for April 12, 2016. On that date, without opening the public hearing, the Board continued the public hearing on the Appeals to May 17, 2016.

1.13 The Board conducted a duly noticed public hearing on the Appeals and the Proposed Project on May 17, 2016. During the Board hearing, the Board heard and received all relevant oral and written testimony and evidence presented or filed regarding the Appeals and the Proposed Project. All interested persons were given the opportunity to hear and be heard. At the conclusion of public testimony, the Board closed the hearing, considered and discussed the Appeals and the Proposed Project, and on a 5-0 straw vote, voted to uphold the Appeals and deny the Proposed Project. The Board directed staff to return with a resolution reflecting the consideration and actions of the Board, and continued the item to June 14, 2016, for a final vote.

1.14 The Board’s decisions herein are based upon the testimony and evidence presented to the County orally or in writing prior to the close of the Board hearing. Pursuant to
the Sonoma County Board of Supervisors Rules of Procedures, staff reviewed all written and electronic communications received after the close of the hearing to determine whether to recommend to the Board that the hearing be reopened, for the limited purpose of receiving testimony and evidence on the new information.

1.15 The Board has had an opportunity to review this Resolution and the findings, determinations, and orders contained herein, and hereby finds and determines that they accurately set forth the intentions of the Board regarding the Proposed Project.

2. Local Coastal Program and Zoning Consistency.

2.1 The Board of Supervisors finds that the Proposed Project is inconsistent with priorities, goals, and policies of the Sonoma County Local Coastal Program (“LCP”) for the following reasons:

1. Development in the Coastal Zone, where the Project Site is located, is subject to a land use priority system established by the California Coastal Act and set forth in the LCP. Highest priority is given to preservation and protection of environmentally sensitive habitats, agricultural land, and timberland. Development that requires a site on or adjacent to the sea has the next highest priority. High priority is also given to public recreation and visitor-serving facilities on lands not needed for any of the higher priority uses. Private commercial and residential development is permitted only after all the higher priorities have been considered.

2. Under the LCP and the Coastal Act, the existing 21-room inn is a visitor-serving use that is a priority use. The proposed large residential community care facility is a commercial facility, which is given lowest priority. The Project would eliminate the existing visitor-serving facility and replace it with the lowest priority, private commercial use, inconsistent with the LCP.

3. The proposed addition of grazing and other agricultural uses to the site is not sufficient to justify the conversion of the existing inn to the lowest-priority use under the LCP, and the resulting loss of visitor-serving rooms. The Proposed Project would introduce 22 cattle, as well as 15 horses proposed as part of equine therapy, and would introduce other agricultural uses to the Project Site. The proposed agricultural uses would be incidental and ancillary to the proposed residential community care facility use and are insufficient to justify the conversion of a higher-priority use under the LCP and attendant loss of visitor-serving rooms.

4. By letter dated May 16, 2016, staff of the California Coastal Commission commented that the Proposed Project is inconsistent with LCP and the California Coastal Act. The Board concurs in the comments of Coastal Commission staff that the Proposed Project’s agricultural uses would be accessory to the residential community care facility use, and the Proposed Project is not compatible with the priority use designations in the LCP and Coastal Act.
5. Under the Coastal Zoning Ordinance, the Project Site’s zoning is LEA-CC. In that district, a large residential community care facility is permitted with a use permit, provided that the project is consistent with, among other things, Policy AR-4.1 of the Agricultural Resources Element of the General Plan. Under Policy AR-4.1, the primary use of any parcel within the agricultural land use categories shall be agricultural production and related processing, support services, and visitor serving uses. The Proposed Project is inconsistent with Policy AR-4.1, because the proposed residential community care facility use would be the primary use of the Project Site. As a result, the Proposed Project does not conform to the Coastal Zoning Ordinance.

6. The Proposed Project would impact the public’s ability to access coastal recreational assets, inconsistent with Coastal Act policies that protect the public’s ability to access coastal recreational assets. The Board concurs in the May 16 comments of Coastal Commission staff that the existing visitor-serving use is located adjacent to future public access to the Estero Americano, an important recreational asset for the area. Substantial investment of public funds and time have been invested in securing this future public access, and the Proposed Project would eliminate an important accessibility link between visitor-serving accommodations and future recreational assets.

2.2 The Board finds and determines that it cannot make the consistency findings necessary to approve the Coastal Permit. Under Sonoma County Code section 26C-346, a Coastal Permit shall only be approved upon finding that the project conforms with the plans, policies, requirements and standards of the LCP. Based on the Board’s above determination that the Proposed Project does not conform with the LCP, the Coastal Permit cannot be approved.

2.3 The Board of Supervisors finds and determines that it cannot make the consistency findings necessary to approve the requested Use Permit. Under Sonoma County Code section 26C-4, a use permit may not be granted for any use in any district in the Coastal Zone if said permit is inconsistent with the LCP or the Sonoma County General Plan. Based on the Board’s above determination that the Proposed Project does not conform with the LCP or the General Plan, the Use Permit cannot be approved.

3. General Plan Consistency.

3.1 The Board of Supervisors finds that the Proposed Project is inconsistent with the Sonoma County General Plan. The Project Site’s General Plan designation is LEA, Land Extensive Agriculture. Under the Agricultural Resources Element of the General Plan, Policy AR-4.1, the primary use of any parcel in the LEA designation shall be agricultural production and related processing, support services, and visitor serving uses. The Proposed Project would not be consistent with this General Plan policy because the primary use of the Project Site would be a residential community care facility, which is not agricultural production or processing, support service, or a visitor serving use. The General Plan characterizes visitor-serving uses as tourism-related, such as lodging and restaurants, and the Proposed Project does not qualify.
4. CEQA.

3.1 The Board finds that the Proposed Project is exempt from CEQA review pursuant to Public Resources Code section 21080(b)(5), which states that CEQA does not apply to projects that a public agency rejects or disapproves, as well as CEQA Guidelines section 15061(b)(4), which provides that a project is exempt from CEQA review if it is disapproved, and CEQA Guidelines section 15270(a), which provides that CEQA does not apply to projects that are rejected or disapproved.

5. Additional Findings.

5.1 The Board finds and determines that the Application and the Appeals were processed in accordance with law. When it was determined that the Proposed Project required a Coastal Permit, it was necessary to suspend appeal proceedings on the Use Permit until such time as the entire Project, and all its required approvals, could be heard and considered concurrently. Without a Coastal Permit, a Use Permit for the Proposed Project would have no force or effect. Suspension of the Bordessa Appeal was necessary to serve legitimate government interests, including avoidance of unnecessary or duplicative public hearings, and the promotion of governmental efficiency, economy, and fairness to all parties.

5.2 County staff received correspondence after the close of the Board’s public hearing on the Proposed Project, including a letter from Chris Mazzia dated June 3, 2016. Staff has investigated the claims made in this correspondence to determine whether reopening of the public hearing is warranted. Staff determined that the claims in the above-identified correspondence are incorrect, and do not warrant reopening of the public hearing. The Board concurs in the determination by staff.

Now, Therefore, based on the foregoing findings and determinations and the entire record of these proceedings, the Board of Supervisors hereby declares and orders as follows:

1. The foregoing findings are true and correct, are supported by substantial evidence in the record, and are adopted as set forth above.

2. The Proposed Project is exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(5) and Sections 15061(b)(4) and 15270(a) of the State CEQA Guidelines.

3. The Appeals are upheld.

4. The Proposed Project is denied.

5. References to specific statutes, ordinances, regulations, or documents in a finding or determination are not intended to identify those sources as the exclusive basis for the finding or determination.
6. The Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board of Supervisors, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

**Supervisors:**

Gorin: Rabbitt: Zane: Gore: Carrillo:

Ayes: Noes: Absent: Abstain:

**So Ordered.**