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**Prepared September 27, 2012 (for October 10, 2012 hearing)**

# W9b

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, Deputy Director  
Susan Craig, Supervising Coastal Planner

**Subject: Santa Cruz County Amendment Number 1-12 Part 1 (Nonconforming Uses and Structures).** Proposed major amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and California Coastal Commission action at the Commission's October 10, 2012 meeting in Oceanside.

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## SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County is proposing to amend its Local Coastal Program (LCP) to modify the way that the LCP addresses legal nonconforming uses and structures. The changes proposed replace the LCP's existing nonconforming provisions, but they do not alter the basic LCP intent that allows repair and maintenance of nonconforming structures, but requires additions and major remodels to be conforming. The amendment continues the County's shift to a "whole structure" approach when considering redevelopment that looks to changes to major structural elements (i.e., foundation or floor, exterior wall, and roof framing) instead of just exterior wall changes to determine the necessary type of review and requirements for any particular project. With respect to nonconforming uses, the changes proposed provide a clearer set of rules that provide enhanced specificity on the process for allowing such uses or requiring that they be made conforming. The County's objective with the amendment is to clarify and update the somewhat uneven current nonconforming provisions, while still ensuring that nonconforming uses and structures do not inappropriately impact public health, safety, welfare, and the environment.

Overall, the proposed amendment provides refinement and clarity to the LCP's approach to nonconforming uses and structures, and should serve to effectively address potential issues better than the LCP's existing nonconforming provisions. The amendment recognizes the prevalence of legally established nonconforming uses and structures in the County, and provides a workable framework for their maintenance and continuation, as well as a process for bringing them into conformance when major changes or improvements take place.

Staff notes that the new nonconforming regulations themselves are focused on zoning district development standards (for setbacks from property lines, floor area ratio, number of stories, etc.) and do not address the question of development that is nonconforming in terms of blufftop and shoreline setbacks, and provides only limited guidance for other resource related standards (e.g., nonconformities related to development near rivers, streams, wetlands, riparian corridors, etc.). On the latter, the new regulations do require that additions and/or alterations of more than 50%

of an existing structure that is located within a riparian corridor be conditioned to require greater conformance to the required riparian setback (or be required to eliminate the nonconformity entirely if feasible), and also require that riparian resources be protected and enhanced as a condition of approval. Thus, such resources are offered somewhat better protection with the proposed amendment text than is currently the case. In addition, the existing LCP provisions related to such resource areas are not changing (e.g., including LCP Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection)), and provide significant protection for and direction on what is allowable near such resource areas. Thus, the amendment will better protect these resources, albeit slightly, as compared to the existing LCP. The County is also in the preliminary stages of conceptualizing updates to these LCP resource sections, and that effort will provide an appropriate vehicle for refining the LCP's approach to such scenarios as appropriate.

Similarly with respect to blufftop and shoreline hazard questions, the existing LCP continues to provide appropriate guidance on this topic, and these sections are not being changed with the amendment. Specifically, development associated with structures in geologic hazard areas, such as with structures that do not meet current coastal bluff setback requirements, is also subject to the provisions of LCP Chapters 13.20 (Coastal Zone Regulations) and 16.10 (Geologic Hazards). Where geologic issues may be present (including at the immediate shoreline interface, blufftop projects, floodzone projects, mapped hazard areas, etc.), those provisions require that a CDP be obtained, and that a geologic study be carried out to ensure that such development meets the LCP's existing 100-year/25-foot minimum setback requirements. Thus, for blufftop development associated with non-conforming structures, for example, the existing LCP requires that any such development meet minimum setback requirements. These provisions are not changing with the new nonconforming ordinance that is now proposed for nonconforming structures that do not meet zoning district development standards, and thus the LCP will continue to address these kinds of blufftop development situations in the way it currently does. In addition, the County has been working on a Climate Action Strategy, as well as on updates to LCP Chapters 13.10, 13.20, 16.10 and the General Plan/LCP Safety Element. That ongoing effort includes refinement of policies and standards with respect to development/redevelopment along coastal bluffs, and that effort is considering changing circumstances such as sea level rise and adaptation strategies, as well as the Commission's statewide approach to these issues. Staff continues to coordinate with County staff on the development of LCP refinements related to these topics, and believes both that those efforts will come to fruition in the near term and that they provide the appropriate juncture for Commission consideration of potential LCP improvements that can be more holistically framed in terms of the overall LCP and its interrelated sections.

Staff recommends that the Commission find the proposed amendment consistent with and adequate to carry out the policies of the Coastal Act and the LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 4 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on July 9, 2012. The proposed amendment affects both the LCP's Land Use Plan (LUP) and Implementation Plan (IP), and the original 90-day action deadline was October 7, 2012. On September 12, 2012, the Commission extended the action deadline by one year to October 7, 2013. Thus, the Commission has until October 7, 2013 to take a final action on this LCP amendment.

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### **EXHIBITS**

- Exhibit 1: Proposed LUP Amendment
- Exhibit 2: Proposed IP Amendment
- Exhibit 3: Existing IP Chapter to be Deleted

## I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment as submitted. The Commission needs to make two motions, one on the LUP amendment and a second on the IP amendmens, in order to act on this recommendation.

### A. Certify the LUP Amendment As Submitted

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in the certification of the LUP amendment as submitted and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

***Motion:** I move that the Commission **certify** Land Use Plan Amendment SCO-1-12 Part 1 as submitted by Santa Cruz County, and I recommend a yes vote.*

***Resolution:** The Commission hereby certifies Land Use Plan Amendment 1-12 Part 1 as submitted by the Santa Cruz County and adopts the findings set forth below on the grounds that the amendment conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.*

### B. Certify the IP Amendment As Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in certification of the IP amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission reject Implementation Plan Amendment Number SCO-1-12 Part 1 as submitted by Santa Cruz County, and I recommend a no vote.*

***Resolution:** The Commission hereby certifies Implementation Plan Amendment Number SCO-1-12 Part 1 as submitted by Santa Cruz County and adopts the findings set forth below on the grounds that the amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Implementation Plan Amendment may have on the environment.*

## II. FINDINGS AND DECLARATIONS

### A. DESCRIPTION OF PROPOSED LCP AMENDMENT

The proposed LUP portion of the amendment would add a policy to govern nonconforming uses and structures, would add background information pertaining to nonconforming uses and structures, would amend the LUP's definition of "Development Activity", and would add administrative guidelines for evaluating the extent of modifications to existing structures (e.g., for triggering compliance for nonconformities). The proposed IP portion of the amendment would amend regulations in LCP Chapter 13.10 that govern nonconforming uses and structures. Specifically, the proposed amendment would replace the existing provisions of Sections 13.10.260, 13.10.261, and 13.10.262, and delete existing Section 13.10.265 (provisions of which would instead be found in the replacement sections). The proposed amendment would apply to all nonconforming uses and structures in the County. The purpose of the proposed amendment is to recognize the prevalence of legal nonconforming structures and uses (which have generally resulted from changes over time to zoning development standards), to allow existing legal nonconforming uses and structures to continue and to be maintained and improved, while requiring discretionary review for more extensive modifications and redevelopment as a means to allow for potential impacts to be addressed.

Specifically, the proposed amendment would:

- Define a "nonconforming use" as a legally established use that does not conform to the current use standards or density standards of the zoning district and/or the land use designation.
- Define a "nonconforming structure" as a structure that was lawfully constructed but does not conform to the standards of the zoning district with respect to lot coverage, yard setbacks, height, number of stories, distance between structures, or floor area ratio.
- Describe the permits required to modify a nonconforming structure, a structure containing an existing nonconforming use, or to modify an existing nonconforming use.
- Allow for repairs and improvements to all nonconforming structures and to structures accommodating a nonconforming use.
- Take a "whole structure" approach to evaluating and measuring changes to a structure. Defines "Reconstruction" as "modification or replacement of 65% or more of the major structural components to an existing structure within any consecutive 5-year period." Defines "Major Structural Components" as the foundation, floor framing, exterior wall framing, and roof framing of a structure, and excludes interior walls and other elements.
- Add administrative procedures for measuring alterations to major structural components.
- Apply one set of regulations to nonconforming uses in all zoning districts, replacing different sets of regulations for different types of residential and non-residential uses.

## SCO-1-12 Part 1 (Nonconforming Uses and Structures)

- Provide a discretionary review process in place of the current variance requirement to consider reconstruction of nonconforming structures or structures accommodating a nonconforming use.
- Simplify the review process for repairs or reconstruction of a nonconforming structure following a catastrophic event.

The proposed amendment also includes general requirements for nonconforming uses and structures (most of which were retained from the existing regulations that are proposed for deletion) including that: 1) the burden of proof in establishing legal status is on the owner; 2) compliance with other provisions of the IP (which includes the Chapter 13.20 coastal zone regulations) is required; and 3) no legal structure shall be deemed nonconforming due to lack of parking. The proposed amendment also allows for exceptions for work necessary to comply with accessibility requirements, and exceptions for designated historic resources. The County's objective with the amendment is to clarify and update the somewhat uneven current nonconforming provisions, while still ensuring that nonconforming uses and structures do not inappropriately impact public health, safety, welfare, and the environment.

Please see Exhibit 1 for the proposed LUP amendment text, Exhibit 2 for the proposed IP amendment text, and Exhibit 3 for the existing nonconforming IP regulations that are proposed to be replaced/deleted.

## **B. CONSISTENCY ANALYSIS**

### **Standard of Review**

The proposed amendment affects both the LUP and IP components of the Santa Cruz County LCP. The standard of review for LUP amendments is that they must be consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP.

### **LUP Consistency Analysis**

Coastal Act Section 30250(a) provides for new development in areas with adequate public services that are able to accommodate new development, and states:

*New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The proposed amendment adds informational language to the LUP (see page 1 of Exhibit 1) that

describes the situation in the County with respect to the existence of a large number of legal nonconforming structures and uses and how these structures and uses came to be nonconforming (i.e., zoning regulation additions and changes over time). The proposed background information also describes the ways in which existing nonconforming structures and uses contribute to the community, and the importance of allowing these legal nonconforming structures and uses to be appropriately maintained. This proposed language is informational only and does not contain directive policy language.

Proposed Land Use Element Policy 2.1.17 (see page 1 of Exhibit 1) describes the general parameters for the maintenance of legal nonconforming uses and structures, the specific details of which are addressed in the proposed IP amendment below. The County is proposing this policy because the existing LUP does not provide an overall policy for nonconforming structures and uses. The proposed policy adds language to the LUP that describes the phenomenon of legal nonconforming structures and uses and how to address them. For nonconforming structures, this policy would allow reconstruction after a catastrophic event, and require discretionary review for voluntary reconstruction. For nonconforming uses, this policy would require discretionary review for expansion, changes, or intensification of legal nonconforming uses to address potential impacts to public health, safety, welfare, and the environment.

The proposed modifications to the LUP's definition of "Development Activity" (see pages 2-3 of Exhibit 1) are being made to reflect the certified definition of Development/Development Activities in Chapter 16.10 of the IP. It should be noted that the certified LUP also contains a definition of "Development" that exactly matches the definition of "Development" as contained in the Coastal Act. The County acknowledges that, in the coastal zone, any question as to what constitutes development for the purposes of coastal permitting requirements is resolved using the Chapter 13.20 definition of "Development" as opposed to the more narrow definition of "Development Activity".<sup>1</sup>

The proposed amendment adds "Administrative Guidelines for Evaluating the Extent of Modification to Existing Structures" (see pages 4-5 of Exhibit 1) to Appendix A of the LUP. The proposed IP amendment (see below) requires calculating the extent of modifications to the "major structural components" of existing nonconforming structures to determine permit requirements or other reviews required for specific projects. The Administrative Guidelines will be used to determine the extent to which major structural components will be altered, and to determine whether a project would be considered "reconstruction" or reach other thresholds established in specific code provisions for discretionary review and/or bringing the development into conformity.

The proposed LUP amendment provides for the continuation and upgrading of nonconforming structures and uses on existing developed sites in areas where there have historically been and continue to be adequate public services present to serve these structures and uses. The proposed amendment does not provide for land divisions and does not provide for an increase in the density of development that might result in the need for additional public services, but instead

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<sup>1</sup> The Santa Cruz County LCP includes multiple examples, such as this one, where the parameters of Chapter 13.20 for coastal permits and the language of other LCP sections raise some question as to which applies and which trumps the other if there are conflicts between policies. This is a known issue with this LCP, and County and Commission staffs have long been in dialogue on potential fixes.

provides for the upgrading or redevelopment of existing developed sites. In short, the changes proposed do not alter the basic LCP intent that allows repair and maintenance of nonconforming structures, but requires additions and major remodels to be conforming. The amendment continues the County's shift to a "whole structure" approach when considering redevelopment that looks to changes to major structural elements (i.e., foundation or floor, exterior wall, and roof framing) instead of just exterior wall changes to determine the necessary type of review and requirements for any particular project. With respect to nonconforming uses, the changes proposed provide a clearer set of rules that provide enhanced specificity on the process for allowing such uses or requiring that they be made conforming.

Overall, the proposed LUP amendment adds a description and better clarity to the LUP, recognizing the prevalence of legally established nonconforming uses and structures in the County, and providing a workable framework for their maintenance and continuation, as well as a process for bringing them into conformance when major changes or improvements take place. For these reasons, the proposed LUP amendment is consistent with Coastal Act Chapter 3.

### **IP Amendment Consistency Analysis**

The Santa Cruz County LUP, as amended above, includes policy language that supports the continuation and maintenance of legal nonconforming structures and uses, and that requires that new development be located in areas with adequate public services and where it will not have significant adverse impacts on coastal resources. The LUP also includes policies that protect sensitive habitat areas (such as riparian corridors) and that require blufftop development to be set back adequately to provide a stable building site over the 100-year lifetime of the structure. Selected applicable LUP policies include:

***LUP Policy 2.1.4 – Siting of New Development.** Locate new residential, commercial, or industrial development within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.*

***LUP Objective 5.2 – Riparian Corridors and Wetlands.** To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.*

***LUP Policy 5.2.1 – Designation of Riparian Corridors and Wetlands.** Designate and define the following areas as Riparian Corridors: (a) 50' from the top of a distinct channel or physical evidence of high water mark of perennial stream; (b) 30' from the top of a distinct channel or physical evidence of high water mark of an intermittent stream as designated on the General Plan maps and through field inspection of undesignated intermittent and ephemeral streams; (c) 100' of the high water mark of a lake, wetland, estuary, lagoon, or natural body of standing water; (d) The landward limit of a riparian woodland plant community; (e) Wooded arroyos within urban areas.*

***LUP Policy 5.2.2 – Riparian Corridor and Wetland Protection Ordinance.*** Implement the protection of Riparian Corridors and Wetlands through the Riparian Corridor and Wetland Protection ordinance to ensure no net loss of riparian corridors and riparian wetlands. The ordinance identifies and defines riparian corridors and wetlands, determines the uses which are allowed in and adjacent to these habitats, and specifies required buffer setbacks and performance standards for land in and adjacent to these areas. Any amendments to this ordinance shall require a finding that riparian corridors and wetlands shall be afforded equal or greater protection by the amended language.

***LUP Policy 5.2.3 – Activities Within Riparian Corridors and Wetlands.*** Development activities, land alteration and vegetation disturbance within riparian corridors and wetlands and required buffers shall be prohibited unless an exception is granted per the Riparian Corridor and Wetlands Protection ordinance...

***LUP Policy 5.2.4 – Riparian Corridor Buffer Setback.*** Require a buffer setback from riparian corridors in addition to the specified distances found in the definition of riparian corridor. This setback shall be identified in the Riparian Corridor and Wetlands Protection ordinance and established based on stream characteristics, vegetation and slope. Allow reductions to the buffer setback only upon approval of a riparian exception. Require a 10 foot separation from the edge of the riparian corridor buffer to any structure.

***LUP Policy 5.2.5 – Setbacks From Wetlands.*** Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.

***LUP Policy 6.2.12 – Setbacks from Coastal Bluffs.*** All development activities, including those which are cantilevered, and non-habitable structures for which a building permit is required, shall be set back a minimum of 25 feet from the top edge of a bluff. A setback greater than 25 feet may be required based on conditions on and adjoining the site. The setback shall be sufficient to provide a stable building site over the 100-year lifetime of the structure, as determined through geologic and/or soil engineering reports. The determination of the minimum 100-year setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed shoreline or coastal bluff protection measures.

***LUP Policy 6.2.13 – Improvements to Existing Structures.*** Improvements to existing structures located within the 25-foot minimum foot setback shall not encroach closer to the top of the bluff. All building additions, including second story and cantilevered additions, shall comply with the 25-foot setback.

The County's existing regulations (see Exhibit 3) regarding nonconforming uses and structures are based upon the premise that existing legal nonconforming uses and structures are often harmful to public health, safety, welfare, and the environment, including coastal resources in the coastal zone. Accordingly, the current regulations limit modifications to nonconforming uses and structures. The proposed regulations (see Exhibit 2) take a similar approach that recognizes the

prevalence of legally established nonconforming uses and structures, the neighborhood benefit of well-maintained buildings, the need to preserve and improve existing housing stock and commercial buildings, and the value of keeping demolition debris out of the landfill and conserving the use of resources. The proposed regulations, however, provide significantly more detail and direction on how to understand existing nonconformities, including providing a workable framework for their maintenance and continuation, as well as a process for bringing them into conformance when major changes or improvements take place.

Many buildings became nonconforming because of changes over time to zoning district development standards. For example, a legal building in full compliance with zoning standards at the time it was constructed becomes nonconforming because, for instance, a side yard setback zoning standard is changed from 5 feet to 8 feet and the building does not meet the new standard. The proposed regulations would allow existing legal nonconforming uses and structures to continue and be maintained and improved, while requiring discretionary review for extensive modifications to allow for potential impacts to be addressed. The definition of nonconforming use is revised and a uniform set of regulations is provided for nonconforming uses in all zoning districts. The County believes this new approach will encourage maintenance and facilitate improvements to nonconforming uses and structures, allowing for repairs and improvements to nonconforming structures and to structures accommodating a nonconforming use, and requiring discretionary review in place of the current variance requirement for considering extensive modifications or reconstruction. There is no change to existing regulations regarding increasing the size or degree of a nonconforming structure, such as extending the length of a nonconforming wall or adding an over-height addition, which would still require variance approval.

The County indicates that the proposed amendment is designed to make it easier to repair and maintain nonconforming structures by using a “whole structure” approach that looks to changes to major structural elements (i.e., foundation or floor, exterior wall, and roof framing) instead of exterior walls to determine the necessary level of review<sup>2</sup> and requirements for a particular project. The proposed amendment lays out specific permitting requirements depending on the type of proposed modification to a structure accommodating a nonconforming use, a change to a nonconforming use, or changes to nonconforming structures. Some of these proposed modifications/changes require a Level 4 permit approval, which is an administrative approval that does not include a public hearing. However, the proposed amendment includes language<sup>3</sup> that states that the permit requirements of the nonconforming ordinance are in addition to all other reviews and permits required by the Santa Cruz County Code, including the requirements of IP Chapter 13.20 (i.e., the Coastal Zone Regulations). Thus, if a CDP is required pursuant to IP Chapter 13.20, then a permit to modify a nonconforming use or structure will be processed pursuant to the coastal development permitting process, including with respect to hearing requirements, noticing, appeal procedures, and required CDP findings.

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<sup>2</sup> Santa Cruz County has application, processing, and review requirements for any permit application, approval, or policy amendment. These requirements vary with the complexity of the project involved and the amount and type of public participation required. There are two basic types of permits and approvals: administrative permits and approvals and public hearing permits and approvals. Approval levels 1 through 4 are considered administrative and projects that fall into use approval levels 1 through 4 are considered principally permitted unless the use charts specify that they are not. Use approval levels 5 through 7 require a public hearing. Projects that require a use approval of level 5 through level 7 are considered a conditional use and may be appealed to the Commission on that basis.

<sup>3</sup> See Section 13.10.260(c)(2) on page 2 of Exhibit 2 and Section 13.10.262(a) on page 7 of Exhibit 2.

The proposed IP amendments will also provide greater flexibility for commercial nonconforming uses. Expansion of an existing commercial use throughout an existing structure or a change of an existing nonconforming use to another nonconforming use, either without any intensification of the use, would be considered with an administrative discretionary review (Level 4), as long as there was no intensification of the use. Intensification of an existing nonconforming use (residential or commercial) would require a discretionary approval (e.g., a CDP in the coastal zone (see page 5 of Exhibit 2)).

The proposed amendment is intended to encourage retention of existing structures, and is not anticipated to result in the construction of new structures or additional residential units beyond levels that would occur if the proposed changes were not adopted. By modernizing the regulatory framework and review process to provide more reasonable and clear regulations, obtaining a permit will become more straightforward, and greater levels of permitted (rather than illegal unpermitted) construction will lead to improved structural safety and greater environmental protection. Additionally, the proposed amendment is intended to promote sustainable building practices by facilitating the retention and improvement of existing buildings.

Overall, the proposed IP amendment provides refinement and clarity to the LCP's approach to nonconforming uses and structures, and should serve to effectively address potential issues better than the LCP's existing nonconforming IP provisions. The amendment recognizes the prevalence of legally established nonconforming uses and structures in the County, and provides a workable framework for their maintenance and continuation, as well as a process for bringing them into conformance when major changes or improvements take place.

That said, it is noted that the new nonconforming regulations are focused on zoning district development standards (for setbacks from property lines, floor area ratio, number of stories, etc.) and do not address the question of development that is nonconforming in terms of blufftop and shoreline setbacks, and provides only limited guidance for other resource related standards (e.g., nonconformities related to development near rivers, streams, wetlands, riparian corridors, etc.). On the latter, the new regulations do require that additions and/or alteration of more than 50% of an existing nonconforming structure that is located within a riparian corridor be conditioned to require greater conformance to the required riparian setback, or be required to eliminate the nonconformity entirely if feasible, and also require that riparian resources be protected and enhanced as a condition of development. Thus, such resources are offered somewhat better protection with the proposed amendment text. In addition, the existing LCP sections related to such resource areas are not changing (e.g., LCP Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection)), and provide significant protection for and direction on what is allowable near such resource areas. Thus, the amendment will better protect these resources, albeit slightly, as compared to the existing LCP. The County is also in the preliminary stages of conceptualizing updates to these LCP resource sections, and that effort will provide an appropriate vehicle for refining the LCP's approach to such scenarios as appropriate.

Similarly with respect to blufftop and shoreline hazard questions, the existing LCP continues to provide guidance on this topic, and these sections are not being changed with the amendment. Specifically, development associated with structures in geologic hazard areas, such as with structures that do not meet current coastal bluff setback requirements, is also subject to the

provisions of LUP Policy 6.2.12 and LCP Chapters 13.20 (Coastal Zone Regulations) and 16.10 (Geologic Hazards). Where geologic issues may be present (including at the immediate shoreline interface, blufftop projects, floodzone projects, mapped hazard areas, etc.), those provisions require that a CDP be obtained, and that a geologic study be carried out to ensure that such development meets the LCP's existing 100-year/25-foot minimum setback requirements. Thus, for blufftop development associated with non-conforming structures, for example, the existing LCP requires that any such development meet minimum setback requirements. Minor additions and improvements to such structures may not increase the size or degree of any existing nonconformity and must comply with the current policies and standards of the LCP. These provisions are not changing with the new nonconforming ordinance that is now proposed for nonconforming structures that do not meet zoning district development standards, and thus the LCP will continue to address these kinds of blufftop development situations in the way it currently does. In addition, the County has been working on a Climate Action Strategy, as well as on updates to LCP Chapters 13.10, 13.20, 16.10 and the General Plan/LCP Safety Element.<sup>4</sup> That ongoing effort includes refinement of policies and standards with respect to development/redevelopment along coastal bluffs, and that effort is considering changing circumstances such as sea level rise and adaptation strategies, as well as the Commission's statewide approach to these issues. County and Commission staffs are continuing to coordinate on the development of LCP refinements related to these topics, and it is expected that those efforts will come to fruition in the near term and provide the appropriate juncture for Commission consideration of potential LCP improvements that can be more holistically framed in terms of the overall LCP and its interrelated sections.

The proposed IP amendment enhances the IP's framework for addressing nonconforming uses and structures, recognizing the prevalence of legally established nonconforming uses and structures in the County, and providing a workable framework for their maintenance and continuation, as well as a process for bringing them into conformance when major changes or improvements take place. Coastal resources are better protected through the amended LCP as compared to the existing LCP. For these reasons, the proposed IP amendment is consistent with the certified LUP, including as modified above.

### **C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

Santa Cruz County adopted a Negative Declaration for the proposed LCP amendment and in doing so found that the amendment would not have significant adverse environmental impacts.

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<sup>4</sup> The County has received a Disaster Recovery Initiative Grant from the State Department of Housing and Community Development to help with such updates. All grant activities (including LCP amendments) are required to be completed by March 31, 2014

This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

## **PROPOSED AMENDMENTS TO THE SANTA CRUZ COUNTY LOCAL COASTAL PROGRAM LAND USE PLAN**

Amend the “Land Use and Development Framework” Section, under the subheading “General Land Use Policies Planning Framework”, of the Land Use Element (Chapter 2) of the Santa Cruz County LCP Land Use Plan, inserting the following paragraph on page 2-3 between the paragraph beginning with “In addition to directing where growth will occur in the County,” and the paragraph beginning with “In 1990, voters adopted an environmental ordinance known as Measure C...”:

Although Santa Cruz County was formed in 1850, the first Zoning Ordinance was not adopted until the late 1950’s, and it has been amended frequently since that time. Consequently, there are legally established uses that do not conform with uses currently allowed by the zone district or General Plan land use designation, and many legally built structures that do not conform to current site standards for the zone district. Although nonconforming, these legal uses and structures often contribute to the community, providing housing, architectural character, a sense of history, and contributing to economic vitality. Allowing legal nonconforming uses and structures to be appropriately maintained and improved contributes to the upkeep and appearance of residential and commercial areas; supports existing businesses and housing; and reduces the pressure to develop outside the Urban Services Line by encouraging the continued use of previously developed sites and existing buildings. Policies in the Housing Element, Land Use Element, as well as regulations the Zoning Ordinance, support the continuation, maintenance, and improvement of existing, legal, nonconforming structures and uses within defined parameters.

Add Policy 2.1.17 under Objective 2.1 of the Land Use Element (Chapter 2) of the Santa Cruz LCP Land Use Plan, to read as follows:

### (LCP) 2.1.17 Nonconforming Uses and Structures

a) Nonconforming Uses: Allow existing legal nonconforming uses in use for three or more of the previous five years to continue, and require discretionary review to reestablish a nonconforming use that has lapsed. Require discretionary review for expansion, changes, or intensification of legal nonconforming uses with appropriate conditions to address potential impacts to public health, safety and welfare. Provide a process whereby the Board of Supervisors may terminate any nonconforming use that is significantly detrimental to public health, safety, welfare or the environment. For a structure accommodating a nonconforming use, encourage maintenance, repairs, and improvements. Require appropriate discretionary review for reconstruction, subject to appropriate findings and conditions to ensure that the proposed project will not be detrimental to public health, safety or welfare.

b) Nonconforming Structures: Encourage legal nonconforming structures to be maintained and improved. Allow reconstruction after a catastrophic event, and require discretionary review for voluntary reconstruction. Require an increased level of review for modifications to nonconforming structures with a greater potential to impact public health, safety or welfare.

Amend the definition of “Development Activity” in the LCP Land Use Plan’s Glossary, as follows:

**Development Activity  
(LCP)**

(LCP) Any project that includes activity in any of the following categories is considered to be development activity:

1) The construction or placement of any habitable structure, including a manufactured home and including a non-residential structure occupied by property owners, employees and/or the public;

~~(2) Any repair reconstruction, alteration, addition, or improvement of a habitable structure that modifies or replaces more than 50% of the total length of the exterior walls, exclusive of interior and exterior wall coverings and the replacing of windows or doors without altering their openings. This allows a total modification or replacement of up to fifty (50) percent, measured as described above, whether the work is done at one time or as the sum of multiple projects during the life of the structure~~ Modification, reconstruction or replacement of 65 (sixty-five) percent of the major structural components -- consisting of the foundation, floor framing, exterior wall framing, and roof framing -- of an existing habitable structure within any consecutive five-year period, or modification, reconstruction or replacement of 50 (fifty) percent of the major structural components of an existing critical structure or facility, or structure located within a riparian corridor or sensitive habitat, within any consecutive five-year period, whether the work is done at one time or as the sum of multiple projects. For the purpose of this section, the following are not considered major structural components: exterior siding; non-structural door and window replacement; roofing material; decks; chimneys; and interior elements including but not limited to interior walls and sheetrock, insulation, kitchen and bathroom fixtures, mechanical, electrical and plumbing fixtures. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors;

(3) ~~The addition of habitable space-square footage to any structure, where the addition increases the habitable space-square footage by more than fifty (50) percent or 500 square feet, whichever is greater, over the existing habitable space, within a consecutive five-year period measured in square feet. This allows a total increase of up to fifty (50) percent of the original habitable space of a structure, whether the additions are constructed at one time or as the sum of multiple additions during the life of the structure~~ over a consecutive five-year period;

(4) An addition of any size to a structure that is located on a coastal bluff, dune, or in the coastal hazard area, that extends the structure in a seaward direction;

(5) ~~Installation of a new foundation for a habitable structure;~~

(6) ~~The repair, replacement, or upgrade of more than 50% of an existing foundation of a~~

~~habitable structure, or an addition to an existing foundation that is more than 50% of the original foundation area. This allows repair, upgrading or addition of up to 50%, measured as described above, whether the work is performed at one time or as the sum of multiple projects during the life of the structure;~~

(75) A division of land or the creation of one or more new building sites, except where a land division is accomplished by the acquisition of such land by a public agency for public recreational use;

(86) Any change of use from a non-habitable structure to a habitable structure, according to the definition of “habitable” found in Section 16.10.040, or a change of use from any non-critical structure to a critical structure;

~~(9) Any alteration of any structure posted “Unsafe to Occupy” due to geologic hazards;~~

(7) Any repair, alteration, reconstruction, replacement or addition affecting any structure that meets either of the following criteria:

1. Posted “Limited Entry” or “Unsafe to Occupy” due to geologic hazards, or
2. Located on a site associated with slope stability concerns, such as sites affected by existing or potential debris flows;

~~(108) Grading activities of any scale in the 100-year flood plain or the coastal hazard area, and any grading activity which requires a permit (pursuant to Chapter 16.20);~~

~~(119) Construction of roads, utilities, or other facilities;~~

~~(1210) Retaining walls which require a building permit, retaining walls that function as a part of a landslide repair whether or not they require a building permit, sea walls, rip-rap erosion protection or retaining structures, and gabion baskets;~~

~~(1311) Installation of a septic system;~~

~~(1412) Any human made change to developed or undeveloped real estate in the Special Flood Hazard Area, any human made change to developed or undeveloped real estate, including but not limited to buildings or other structures, mining, dredging, filling grading, paving, excavation, drilling operations, or storage of equipment or materials. This is in addition to any activity listed in items 1-1311;~~

~~(1513) Any other project that is defined as development under Section 13.20.040, and that will increase the number of people exposed to geologic hazards, or that is located within a mapped geologic hazard area, or that may create or exacerbate an existing geologic hazard, shall be determined by the Planning Director to constitute development for the purposes of geologic review.~~

Amend Appendix A of the Land Use Plan to add the following:

**ADMINISTRATIVE GUIDELINES FOR EVALUATING  
THE EXTENT OF MODIFICATION TO EXISTING STRUCTURES**

**Application of Guidelines:**

Several County Code sections require calculating the extent of modifications to the “major structural components” of existing structures, to determine permit requirements or other reviews required for specific projects. The Administrative Guidelines provided below shall be used to determine the extent to which major structural components have been altered, and to determine whether a project would be considered “reconstruction” or reach other thresholds established in specific code provisions for discretionary review. The following code sections establish permit or approval requirements based on the extent of modification to major structural components:

- Section 13.10.700-R: Definition for “Reconstruction” in the Zoning Ordinance
- Section 13.10.260(c)1: “Modifications to a structure accommodating a nonconforming use”
- Section 13.10.262: “Nonconforming Structures”
- Section 16.10.040(s): Definition of “Development/ Development Activities” in the Geologic Hazards Ordinance.

**Administrative Guidelines:**

Santa Cruz County Code Section 13.10.700-M defines “Major Structural Components” as follows:

Major Structural Components. The foundation, floor framing, exterior wall framing and roof framing of a structure. Exterior siding, doors, window glazing, roofing materials, decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements are not considered major structural components. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors.

The guidelines below establish how each of four “major structural components” shall be weighted according to its relative significance in a typical residential or commercial structure. The weighted value for each component is:

Roof framing: 15%,  
Exterior wall framing: 65%,  
Floor framing: 10%,  
Foundation: 10%.

1. The following calculations shall be used to evaluate the major structural components:

(a) Roof framing:

The total area of the roof is the area of the two-dimensional polygons(s) shown on a plan

view of the structure's existing roof. Calculate modifications to the roof as a percentage of the total roof area. Multiply that figure by 15%.

(b) Exterior walls:

The total length of the existing exterior walls is the perimeter of first story exterior walls plus the perimeter of upper story exterior walls added together. Any length of wall that, during the course of construction, is detached from both the floor or foundation structure below and the roof or story above, will also be considered modified. Calculate modifications to the exterior walls as a percentage of the total length of existing exterior walls. Multiply that figure by 65%.

(c) Floor framing:

The total existing floor area is obtained by adding together the habitable and nonhabitable areas on the first story plus the habitable and nonhabitable areas of any upper stories. Calculate modifications to floor framing as a percentage of total floor area. Multiply that figure by 10%.

(d) Foundation:

Calculate the portion of the foundation proposed to be modified as a percentage of existing foundation elements. Multiply that figure by 10%.

2. The total extent of work is equal to the sum of the products obtained in steps (a) through (d).

## **Proposed Implementation Plan Amendments: Nonconforming Structures and Nonconforming Uses**

Section 13.10.260, “Nonconforming uses and structures – general provisions,” is hereby added to the Santa Cruz County Code to read as follows:

### **13.10.260 Nonconforming uses and structures – general provisions**

(a) Purpose:

To establish regulations for nonconforming structures and uses that recognize the prevalence of legally established nonconforming uses and structures, the neighborhood benefit of well-maintained buildings, and the need to preserve and improve existing housing stock and commercial space. To allow legal nonconforming uses and structures to continue to exist, and to be improved, within appropriate parameters that address potential impacts to public health, safety and welfare. To establish a threshold for when changes to existing nonconforming uses and structures are subject to discretionary review, and establish findings for approval of discretionary permits to protect public health, safety, welfare and the environment. To establish provisions whereby nonconforming uses that are determined to be detrimental to public health, safety or welfare may be terminated by the Board of Supervisors.

(b) Definitions. The following words and phrases, whenever used in this Section, or Sections 13.10.261 or 13.10.262, shall have the following meanings:

1. Intensification of Use, Non-Residential: Any change or expansion of a non-residential use which will result in both a greater than 10% increase in parking need and more than two spaces or which is determined by the Planning Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation, shall be an “intensification of use” for the purposes of this Chapter.

2. Intensification of Use, Residential: Any change to a residential use which will result in an increase of its number of bedrooms, as defined in Section 13.10.700(B), shall be an “intensification of use” for the purposes of this Chapter.

3. Major Structural Components: The foundation, floor framing, exterior wall framing and roof framing of a structure. Exterior siding, doors, window glazing, roofing materials, decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements are not considered major structural components. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors.

4. Nonconforming Structure: A structure that was lawfully erected prior to the adoption, revision or amendment of this Chapter but that does not conform with standards for lot coverage, setbacks, height, number of stories, distance between structures, or floor area ratio currently prescribed in the regulations for the zoning district in which the structure is located.

5. Nonconforming Use: A use of structure or land that was legally established and maintained prior to the adoption, revision or amendment of this Chapter, but does not conform to the current use standards, and density standards where applicable, of both the zone district and/ or the General Plan/Local Coastal Program land use designation in which the use is located. A nonconforming structure is not a nonconforming use. A legally established use shall not be deemed nonconforming due to the lack of a use permit.

6. Reconstruction: Modification or replacement of 65% or more of the major structural components (see 13.10.260(b)3) of an existing structure within any consecutive five-year period. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors.

(c) General Requirements.

1. Determination of Nonconforming Status. The property owner shall have the burden of proof in establishing the legal status of any nonconforming use or structure, in accordance with any administrative procedures that may be established by the Planning Director.

2. Compliance with Other Provisions of the County Code. The permits required in sections 13.10.260, 13.10.261, and 13.10.262 of this chapter are in addition to all other reviews and permits required by the Santa Cruz County Code, including requirements in Chapters 13.11, 13.20, 18.10 and in Title 16. Approvals issued pursuant to sections 13.10.260, 13.10.261, and 13.10.262 do not alter or supersede the permit and review requirements of other provisions of the Santa Cruz County Code. Work performed on a nonconforming structure or a structure accommodating a nonconforming use shall be pursuant to a building permit as required by Chapter 12.10, and shall meet the requirements of these Nonconforming Structures and Uses Regulations (sections 13.10.260, 13.10.261, and 13.10.262) unless a waiver or exception is granted as provided in these regulations. Except as provided by 13.10.262(a)4, "Reconstruction or replacement of a nonconforming structure after a catastrophic event," or as specifically authorized by other provisions of the Santa Cruz County Code, relocation of a nonconforming structure that does not result in a conforming structure shall require either variance approval or minor exception in accordance with Section 13.10.230 or Section 13.10.235.

3. Regulations in effect at the time of construction. Nothing contained in this Section shall be deemed to require any change in the plans, construction, or designated use of any structure upon which actual construction or operation was or will be lawfully initiated in accordance with applicable regulations in effect at the time when a planning or building permit was approved.

4. Nonconforming Parking. In accordance with the limitations of Section 13.10.575, no legal existing use of land or structure shall be deemed to be a nonconforming use solely because of the lack of off-street parking or loading facilities.

5. Exception for compliance with accessibility requirements. Work performed solely to comply with the American with Disabilities Act or with Chapter 11 of the State Building Code shall be excluded from calculations of reconstruction or alteration for the purposes of Sections 13.10.260, 13.10.261 and 13.10.262.

6. Exception for properties that have been designated as historic resources pursuant to County Code Chapter 16.42, or for corrective work on dangerous building elements. Work performed solely to comply with federal standards for rehabilitation of historic properties or with Chapter 16.42 of the County Code, or solely to comply with a notice or requirement of the County Building Official to correct dangerous building elements, shall be excluded from calculations of reconstruction or structural alteration for the purposes of Sections 13.10.260, 13.10.261 and 13.10.262.

7. Other regulations pertaining to nonconformity.

The following code sections establish additional regulations for nonconforming uses or structures:

i. Nonconforming signs. See Section 13.10.588.

- ii. Nonconforming Greenhouses. See Section 13.10.636(c).
- iii. Nonconforming Farm Worker Housing. See Section 13.10.631.
- iv. Nonconforming Recycling Collection Facilities. See Section 13.10.658(b).
- v. “M-1” Zone District Uses Not in Compliance with Section 13.10.345(a). Uses in the “M-1” Light Industrial zone district which are not in compliance with the provisions of Section 13.10.345(a)(1-6) are considered nonconforming uses subject to Sections 13.10.345(a)(7) and 13.10.345(a)(8).
- vi. Lands designated with a “P” Combining District. Modification or expansion of uses on lands designated with a “P” Agricultural Preservation Combining District shall be processed as set forth in Section 13.10.473.
- vii. Expansion of Organized Camps with Nonconforming Densities. See Section 13.10.353(b)3.

Section 13.10.261, “Nonconforming Uses” is hereby added to the Santa Cruz County Code to read as follows:

**13.10.261 Nonconforming Uses**

(a) Applicability. This section applies to nonconforming uses in all zone districts.

(b) General requirements.

1. Continuation of Nonconforming Uses and Nonconforming Rights. The lawful use of land existing on the effective date of the adoption, revision or amendment of the zoning designation or of the zoning regulations that affect a property may be continued, even if the use no longer conforms to the regulations specified by Chapter 13.10 for the district in which the land is located. A nonconforming use that is not in use for at least three (3) out of the past five (5) years loses its status as a legal nonconforming use, and use of the land or site must conform to current uses allowed by the zone district. If cessation of use is caused involuntarily by fire or other catastrophic event, nonconforming rights are retained for three (3) years after the event, by which time a building permit must be obtained and exercised to repair or reconstruct the nonconforming use in order to retain nonconforming rights. If nonconforming rights are lost due to failure of the use to be continued in three of the past five years or due to the failure to obtain and exercise a building permit within three years after a catastrophic event, and a conforming use has not been subsequently established at the site, the property owner may apply for a conditional use permit (Level 5) to reinstate the legal nonconforming use. The conditional use permit for reinstatement shall be subject to the findings required in subsection 13.10.261(f) below, as well as to all applicable requirements of the Santa Cruz County Code, and consistent with applicable General Plan and Local Coastal Program policies.

2. Termination of Use. The Board of Supervisors may order a nonconforming use to be terminated, upon recommendation of the Planning Commission, if such a use represents a threat to public health, safety, welfare, or the environment, or has been determined to be a public nuisance. The Planning Commission shall conduct a public hearing 15 or more days after written notice to the operator of the nonconforming use and the property owner. If the operator and/or property owner has

not made a substantial investment in furtherance of the use, or if the investment can be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a minimum of one year after the date of the Order. If the operator and/or property owner has made a substantial investment in furtherance of the use, or if the investment cannot be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a longer reasonable amount of time. Nonconforming uses that are determined to be an imminent threat to public health or safety may be terminated immediately, pursuant to Chapter 1.14 of this Code. In making a recommendation or determination, the Planning Commission and the Board of Supervisors shall consider:

- (i) The total cost of land and improvements;
- (ii) The length of time the use has existed;
- (iii) Adaptability of the land and improvements to a currently permitted use;
- (iv) The cost of moving and reestablishing the use elsewhere;
- (vi) Compatibility with the existing land use patterns and densities of the surrounding neighborhood;
- (vii) The degree of threat to public health, safety or welfare; and
- (viii) Other relevant factors.

Failure to comply with a Board of Supervisors Order to terminate a nonconforming use shall constitute a violation of this Chapter and shall constitute a determination that the use is a public nuisance subject to abatement in accordance with Chapter 1.14 of the Code.

3. Dwelling groups: Conforming unit. Where two or more residential dwelling units exist on a parcel of land as nonconforming units because the zoning of the property no longer allows more than one primary dwelling unit, one of the units shall be deemed as conforming to the zone district. The owner may choose, one time only, which unit shall be considered as conforming. Accordingly, that unit may be repaired, structurally altered, enlarged, or reconstructed in accordance with the site and structural dimensions of the zone district in which the parcel is located. The other unit(s) shall be considered nonconforming and subject to the requirements of this Section.

(c) Changes to nonconforming uses: Permits required.

1. Modifications to a structure accommodating an existing nonconforming use.

The following types of modifications may be allowed to a structure that accommodates a nonconforming use, subject to obtaining the required permit and to the required findings noted in section (f) below.

<b><u>Modifications to a structure accommodating a nonconforming use</u></b>	<b><u>Permit Required</u></b>
<u>Repairs and improvements to an existing structure, altering up to 65% of the major structural components</u>	<u>Permitted upon issuance of a building permit and any approvals that may be required by other sections of the County Code and General Plan/ Local Coastal Program.</u>
<u>Reconstruction (as defined in 13.10.260(b) 6) of an existing structure</u>	<u>Conditional Use Permit (Level 5 Approval)</u> <u>(See subsections 13.10.261(e) and (f))</u>
<u>Conforming additions not exceeding 50% of the square footage of the existing building, limited to once within a 5-year period</u>	<u>Administrative Use Permit (Level 4 Approval)</u> <u>(See subsections 13.10.261(d) and (f))</u>
<u>Conforming additions exceeding 50% of the square footage of the existing building, limited to once within a 5-year period</u>	<u>Conditional Use Permit (Level 5 Approval)</u> <u>(See subsections 13.10.261(e) and (f))</u>
<u>Reconstruction (as defined in 13.10.260(b)6) of a structure accommodating a nonconforming use after a catastrophic event.</u>	<u>Administrative Use Permit (Level 4 Approval)</u> <u>(See subsections 13.10.261(d) and (f))</u>

2. Modifications to an existing nonconforming use

The following changes related to an existing legal nonconforming use may be allowed, subject to obtaining the required permit and to the required findings noted in section 13.10.261(f) below.

<b><u>Type of Change to a Nonconforming Use</u></b>	<b><u>Permits Required</u></b>
<u>Expansion of an existing nonconforming use throughout an existing structure, with no intensification of the use</u>	<u>Administrative Use Permit (Level 4 Approval)</u> <u>(See subsections 13.10.261(d) and (f))</u>
<u>Intensification of an existing nonconforming use as defined in 13.10.260(b)(2) for residential uses and 13.10.260(b)(1) for non-residential uses</u>	<u>Conditional Use Permit (Level 5 Approval)</u> <u>(See subsections 13.10.261(e) and (f))</u>
<u>Change of an existing nonconforming use to another nonconforming use with no intensification</u>	<u>Administrative Use Permit (Level 4 Approval)</u> <u>(See subsections 13.10.261(d) and (f))</u>

(d) Procedures for Administrative Use Permit

1. Procedures for an Administrative Use Permit shall be in accordance with those established for Level 4 Approvals in Chapter 18.10. In addition, the findings in subsection 13.10.261(f) below shall be required for approval of an administrative use permit.

(e) Procedures for a Conditional Use Permit.

1. Procedures for a Conditional Use Permit shall be in accordance with those established for Level 5 Approvals in Chapter 18.10, including the requirement for a public hearing. In addition, the findings in 13.10.261(f) below shall be required for approval of a conditional use permit.

(f) Findings. Approval of an Administrative or Conditional Use Permit pursuant to subsections 13.10.261 (d) and (e) above is subject to the following findings:

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be in substantial conformance with County ordinances.

3. That the proposed use will not overload utilities, and will not generate more than an acceptable level of traffic on streets in the vicinity.

4. That the proposed project, as it may be conditioned, will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

5. That additional parking requirements created by the project can be met in accordance with Section 13.10.551.

6. That the proposed project will not significantly impair economic development goals or key land use goals of the General Plan.

7. For a change of a use to a different nonconforming use of a site, conformance with uses currently allowed for the zone district is not feasible due to conditions on the site and surrounding land uses, or due to economic conditions.

8. For a nonconforming commercial, industrial or residential use on a site adjacent to residential property, the proposed modification to the nonconforming use, or the proposed reestablishment of a legal nonconforming use pursuant to subsection 13.10.261(b)1, does not unreasonably infringe on adequate light, air, solar access, privacy or the quiet enjoyment of adjacent residences, and does not create excessive noise, vibration, illumination, glare, odors, dust, dirt, smoke or hazards such as noxious fumes to a level that substantially exceeds that of the existing or former legal nonconforming use of the site.

Section 13.10.262, "Nonconforming structures," is hereby added to the Santa Cruz County Code to read as follows:

**13.10.262 Nonconforming structures**

(a) Changes to Nonconforming Structures: Permits required.

The requirements of this section are in addition to and do not supersede requirements or permit approvals required in other sections of the Santa Cruz County Code, including but not limited to Title 12, Title 13, Title 16 and Title 18.

1. Structural Alterations. Except as noted in subsection (4) below, structural alterations to an existing nonconforming structure within a consecutive five-year period that do not constitute reconstruction as defined by Section 13.10.260(b)(6) are permitted upon issuance of a building permit and any approvals or permits that may be required by other sections of the County Code .

2. Conforming Additions. Conforming additions that do not increase the nonconforming dimensions of the structure are permitted upon issuance of a building permit and any approvals that are required by other sections of the County Code. Nonconforming additions are not permitted unless a variance or minor exception is granted in accordance with Section 13.10.230 or Section 13.10.235.

3. Reconstruction. Reconstruction of a nonconforming structure requires an Administrative Site Development Permit (see 13.10.262 (b)). Except as provided by 13.10.262(a)6 and 7 below, or as specifically authorized by other provisions of the Santa Cruz County Code, any relocation of a nonconforming structure shall require approval of a variance or minor exception in accordance with Section 13.10.230 or Section 13.10.235.

4. Structural alteration or reconstruction of a nonconforming structure located over a property line, within a riparian corridor, within five (5) feet of a vehicular right-of-way or within five (5) feet of a planned vehicular right-of-way improvement.

Altering more than 50% of the major structural components (up to and including reconstruction) within any consecutive 5-year period requires an Administrative Site Development Permit. The purpose of this review is to provide adequate opportunity to address potential impacts to the environment or public health, safety or welfare. For nonconforming structures located within five (5) feet of a vehicular right-of-way or within five (5) feet of a planned vehicular right-of-way improvement, the Planning Director may waive the requirement for an Administrative Site Development Permit for altering more than 50% of the major structural components if he or she determines that the proposed project will not adversely affect the environment or public health, safety or general welfare. If the requirement is waived, then the requirement for an Administrative Site Development Permit for reconstruction as specified in 13.10.262(a)3 shall apply. Nothing in this ordinance is intended to allow encroachment without necessary legal authorization, either by easement, quiet title action or other legal means.

5. Exceptions. Exceptions to the requirements of subsections 13.10.262(a) 1 through 4 are as follows:

(i) Exception for structures designated as historic resources:

Modifications to a nonconforming structure which has been designated as a historic resource pursuant to County Code Chapter 16.42 are permitted upon issuance of only those building

permits and/or development permits that are required by other Sections of the County Code, including Chapter 16.42, if one or more of the following criteria are met:

A. The proposed alteration, reconstruction or addition conforms to the Secretary of the Interior's Standards for Rehabilitation of Historic Properties, and does not increase the nonconforming dimensions of the structure; or

B. The proposed alteration, reconstruction or addition does not conform to the lot coverage, yard setback, floor area ratio or height regulations of the Zoning district in which it occurs, but is within the structural outline of the structure and does not expand the perimeter foundation line of the structure. The structural outline of a structure shall include that space which is enclosed by the structural posts, columns, beams, trusses and girders of the structure; or

C. The proposed modifications are required to provide access for persons with disabilities to the structure.

(ii) Exception for corrective work on dangerous building elements:

Work performed to comply with a notice or requirement of the County Building Official to correct dangerous building elements shall not count towards overall limits on reconstruction in Section 13.10.262(a)3.

6. Reconstruction of a nonconforming structure after a catastrophic event.

Except as noted in subsection 7 below, reconstruction of a legal nonconforming structure after a catastrophic event is allowed upon issuance of a building permit and any approvals that may be required by other sections of the County Code if the reconstructed structure does not increase the nonconforming dimensions of the structure and is located in substantially the same location as the current/prior structure. New locations on the site may be considered without the need for an Administrative Site Development Permit, if the Planning Director finds that the new location results in greater conformance with code requirements. Relocation that does not result in greater conformance with code requirements requires variance approval in accordance with Section 13.10.230 or Minor Exception pursuant to 13.10.235. (Note: Additional permits may be required for reconstruction after a catastrophic event by other provisions of the Santa Cruz County Code, including Title 16 and Chapter 13.20.)

7. Structural alteration and reconstruction after a catastrophic event, for a nonconforming structure located over a property line, within a riparian corridor, within five (5) feet of a vehicular right-of-way or within five (5) feet of a planned vehicular right-of-way improvement.

Structural alteration after a catastrophic event, altering less than 65% of the major structural components, is allowed upon issuance of a building permit and permits that may be required by other sections of the County Code.

Reconstruction after a catastrophic event requires an Administrative Site Development Permit. The purpose of this review is to provide adequate opportunity to address potential impacts to the natural environment or public health, safety or welfare. New locations on the site may be considered as part of the Administrative Site Development Permit, if it is determined that the new location results in greater conformance with code requirements. Relocation that does not result in greater conformance with code requirements shall require approval of a variance or minor exception in accordance with Section 13.10.230 or Section 13.10.235.

For nonconforming structures located within five (5) feet of a vehicular right-of-way or within five (5) feet of a planned vehicular right-of-way improvement, the Planning Director may waive the requirement for an Administrative Site Development Permit for reconstruction if he or she determines that the proposed project will not adversely affect the natural environment or public health, safety or general welfare. If the requirement is waived, then reconstruction shall conform to the requirements noted in 13.10.262(a)6 above.

(Note: Additional permits may be required for reconstruction after a catastrophic event by other provisions of the Santa Cruz County Code, including Title 16 and Chapter 13.20. Nothing in this ordinance is intended to allow encroachment without necessary legal authorization, either by easement, quiet title action or other legal means.)

(b) Procedures for a Nonconforming Structure Administrative Site Development Permit.

Procedures for an Administrative Site Development Permit as required pursuant to Section 13.10.262 shall be in accordance with those established for Level 4 Approvals in Chapter 18.10, subject to the additional findings in subsection (c) below.

(c) Findings. The following findings apply to Site Development Permits for nonconforming structures as required under Section 13.10.262(a):

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be in substantial conformance with County ordinances and the purpose of the zone district in which the site is located.

3. That the proposed structure and use is in substantial conformance with the County General Plan and with any Specific Plan which has been adopted for the area.

4. That the proposed use will not overload utilities, and will not generate more than the acceptable level of traffic on the streets in the vicinity.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

6. Any additional parking requirements created by the project can be met in accordance with Section 13.10.551.

7. The proposed project will not significantly impair economic development goals or key land use goals of the General Plan.

8. For nonconforming commercial, industrial or residential structures adjacent to residential property, the nonconforming structure does not unreasonably infringe on adequate light, air, solar access, privacy or the quiet enjoyment of adjacent residences.

9. For nonconforming structures over a property line, within a riparian corridor, or within 5 feet of an existing or planned right-of-way, the proposed project has been conditioned to require greater conformance to current site development standards, or has been required to eliminate the nonconformity where feasible, considering economic factors and site conditions including size, shape, topography, existing development or improvements, and environmental constraints.

10. For projects within a riparian corridor, a condition of approval of the site development permit has been imposed to require riparian protection, preservation and/or enhancement on the site, as reasonably related to the project and in accordance with General Plan policy 5.2.2.

Subdivision (a) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(a) It shall be unlawful for any person to establish, cause or permit a new use of land, or expand, intensify or continue an existing use of land, or construct, enlarge or move a building for a use of land located in the "CA" Commercial Agriculture Zone District, in the "A" Agriculture Zone District, or in the "AP" Agricultural Preserve Zone District unless that use is either (1) listed in Section 13.10.312 of this Chapter as a permitted use in the agricultural zone district in which the land is located; or (2) is listed in such section as a discretionary use in the agriculture zone district in which the land is located and a Development Permit has been obtained and is in effect which authorizes that discretionary use; or (3) is a legal non-conforming use or structure in conformance with Sections 13.10.260, 13.10.261 and 13.10.262~~5~~.

Subdivision (b) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(b) It shall be unlawful for any person to establish, cause or permit a new use of land, or intensify or continue an existing use of land, or construct, enlarge or move a building for a use of land located in the "RA" Residential Agricultural Zone District, in the "RR" Rural Residential Zone District, in the "R-1" Single-Family Residential Zone District, in the "RB" Ocean Beach Residential Zone District, or in the "RM" Multi-Family Residential Zone District unless that use is either (1) listed in Section 13.10.322 of this Chapter as a permitted use in the residential zone district in which the land is located; or (2) is listed in such section as a discretionary use in the residential zone district in which the land is located and a Development Permit has been obtained and is in effect which authorizes that discretionary use; or (3) is a legal non-conforming use or structure in conformance with Sections 13.10.260, 13.10.261 and 13.10.262~~5~~.

Subdivision (c) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(c) It shall be unlawful for any person to establish, cause or permit a new use of land, or expand or intensify an existing use of land, or construct, enlarge, or move a building for a use of land located in the "PA" Professional Administrative Office Zone District, in the "VA" Visitor Accommodations Zone

District, in the "C-1" Neighborhood Commercial Zone District, in the "CT" Tourist Commercial Zone District, in the "C-2" Community Commercial Zone District, or in the "C-4" Commercial Services Zone District unless that use is either (1) listed in Section 13.10.332 of this Chapter as a permitted use in the commercial zone district in which the land is located and a Development Permit has been obtained and is in effect which authorizes that discretionary use; or (2) is a legal non-conforming use or structure in conformance with 13.10.260, 13.10.261 and 13.10.262~~5~~.

Subdivision (d) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(d) It shall be unlawful for any person to establish, cause or permit a new use of land, or expand, intensify or continue an existing use of land, or construct, enlarge or move a building for a use of land located in the "M-1" Light Industrial Zone District, in the "M-2" Heavy Industrial Zone District, or in the "M-3" Mineral Extraction Industrial Zone District unless that use is either (1) listed in Section 13.10.342 of this Chapter as a permitted use in the industrial zone district in which the land is located; or (2) is listed in such section as a discretionary use in the industrial zone district in which the land is located and a Development Permit has been obtained and is in effect which authorizes that discretionary use; or (3) is a legal non-conforming use or structure in conformance with Sections 13.10.260, 13.10.261 and 13.10.262~~5~~.

Subdivision (e) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(e) It shall be unlawful for any person to establish, cause or permit a new use of land, or expand, intensify or continue an existing use of land, or construct, enlarge or move a building for a use of land located in the "PR" Parks, Recreation and Open Space Zone District unless that use is either (1) listed in Section 13.10.352 of this Chapter as a permitted use in the Parks, Recreation and Open Space Zone District in which the land is located; or (2) is listed in such section as a discretionary use in the Parks, Recreation and Open Space Zone District in which the land is located and a Development Permit has been obtained and is in effect which authorizes that discretionary use; or (3) is a legal non-conforming use or structure in conformance with Sections 13.10.260, 13.10.261 and 13.10.262~~5~~.

Subdivision (f) of Section 13.10.275, "Violations of zoning use regulations," of the Santa Cruz County Code, is hereby amended, to read as follows:

(f) It shall be unlawful for any person to establish, cause or permit a new use of land, or expand, intensify or continue an existing use of land, or construct, enlarge or move a building for a use of land located in the "PF" Public and Community Facilities Zone District unless that use is either (1) listed in Section 13.10.362 of this Chapter as a permitted use in the Public and Community Facilities Zone District in which the land is located; or (2) is listed in such section as a discretionary use in the Public



dwelling units and accessory structures which are inconsistent with the General Plan, subject to Sections 13.10.260 and 13.10.261, Nonconforming uses.”

~~Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are inconsistent with the General Plan, subject to Sections 13.10.260 and 13.10.261, Nonconforming uses~~      ~~BP- 6 BP- 6 BP- 6 BP- 6 BP- 6 BP- 6~~

Subdivision (b), “Allowed Uses,” of Section 13.10.342, “Uses in industrial districts” of the Santa Cruz County Code, is hereby amended by deleting the category, “Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are consistent with the General Plan, subject to Sections 13.10.260 and 13.10.261, Nonconforming uses.”

~~Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are consistent with the General Plan, subject to Sections 13.10.260 and 13.10.261 Nonconforming Uses.~~      ~~BP- 6 BP- 6 BP- 6~~

Subdivision (b), “Allowed Uses,” of Section 13.10.342, “Uses in industrial districts” of the Santa Cruz County Code, is hereby amended by deleting the category, “Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are inconsistent with the General Plan, subject to Sections 13.10.260 and 13.10.261, Nonconforming uses.”

~~Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are inconsistent with the General Plan, subject to Sections 13.10.260 and 13.10.261 Nonconforming Uses~~      ~~BP- 6 BP- 6 BP- 6~~

Subdivision (b)3 of Section 13.10.353, “Development standards in the Parks, Recreation and Open Space “PR” District,” of the Santa Cruz County Code, is hereby amended, to read as follows:

3. Expansion of Organized Camps with Nonconforming Densities. For expansion of existing camps with use permits and nonconforming density, the densities of new facilities shall be calculated independent of existing nonconforming densities and shall be based solely on the number of matrix units the new land acquisition merits. Where the new land acquisition is contiguous with the parcel containing the nonconforming use, the facilities resulting from the matrix units for the land acquisition may, at the discretion of the Planning Commission and the Board of Supervisors, be located anywhere on the applicant’s holdings. These provisions shall not be construed to prevent the Board of Supervisors from abating nonconforming uses or structures pursuant to Sections 13.10.260, 13.10.261 and ~~13.10.262~~ of the Zoning Ordinance where such facilities are found to create a public health hazard or a public nuisance or to be environmentally degrading.

The first paragraph of Subdivision (b) of Section 13.10.658, "Recycling facilities," of the Santa Cruz County Code, is hereby amended, to read as follows:

- (b) The following recycling collection facilities, which were in existence on July 23, 1987, are legal non-conforming uses in the zone district in which they are located and are subject to Sections 13.10.260, 13.10.261 and 13.10.262~~5~~ of the Santa Cruz County Code, provided that all such collection facilities are associated with a legal conforming use and can demonstrate permission from the property owner to occupy the site.

The definition for "Intensification of Use, Commercial" in Section 13.10.700-I of the Santa Cruz County Code is hereby amended to read as follows:

Intensification of Use, Commercial/Non-residential. Any change or expansion of ~~commercial~~ a non-residential use which will result in both a greater than 10% increase in parking need and more than two spaces, or traffic generation from the prior use, or which is determined by the Planning Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation shall be an "intensification of use" for purposes of this chapter.

Section 13.10.700-M of the Santa Cruz County Code is hereby amended by adding the definition for "Major Structural Components" after the definition for "M-3," to read as follows:

Major Structural Components. The foundation, floor framing, exterior wall framing and roof framing of a structure. Exterior siding, doors, window glazing, roofing materials, decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements are not considered major structural components. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors.

The definition for "Nonconforming Structure" in Section 13.10.700-N of the Santa Cruz County Code is hereby amended to read as follows:

~~"Non-conforming structure" means a~~ Nonconforming structure. A structure which that was lawfully erected prior to adoption, revision or amendment of this chapter but which, under this chapter, that does not conform with standards ~~of~~ for lot coverage, ~~yard spaces~~ setbacks, height of structures, number of stories, ~~or~~ distances between structures, or floor area ratio currently prescribed in the regulations for the zoning district in which the structure is located.

The definition for “Non-conforming Use” in Section 13.10.700-N of the Santa Cruz County Code is hereby amended to read as follows:

~~“Non-conforming use” means the Nonconforming use. A use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of this chapter, but does not conform to the current use standards, and density standards where applicable, of both the zone district and/or the General Plan/Local Coastal Program land use designation in which the use is located. A nonconforming structure is not a nonconforming use. A legally established use shall not be deemed nonconforming due to the lack of a use permit. conforms to the present General Plan/Local Coastal Program land use designation, and:~~

- ~~1. Has not lost its nonconforming status due to cessation of use, as outlined in Sections 13.10.260, 13.10.261 or 13.10.262; and~~
- ~~2. No longer conforms to the present use, density, or development standards of the zone district in which it is located; or~~
- ~~3. Does not have a valid Development Permit as required by the present terms of this chapter. (See also Section 13.10.700 S definition of Significantly Nonconforming Use)~~

The definition for “Ordinary Maintenance and Repair in Kind” in Section 13.10.700-O of the Santa Cruz County Code is hereby deleted.

~~“Ordinary maintenance and repair in kind” means any work, whether structural or nonstructural, that is done to a structure in kind to preserve its current condition or restore to its original condition. Structural repairs in kind may not exceed the aggregate of 10 percent of the exterior walls, roof, or foundation within any one-year period. Structural repairs in kind that result in greater than the aggregate of 10 percent of the exterior walls, roof, or foundation being repaired within any one-year period shall be deemed a structural alteration. The replacement of the interior or exterior wall coverings or the replacement of the windows or doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant’s expense to certify that portions of the structure which the plans show as proposed not be structurally repaired are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.~~

The definition for “Reconstruction” in Section 13.10.700-R of the Santa Cruz County Code is hereby amended to read as follows:

~~Reconstruction. The rebuilding of a structure or portion(s) of a structure. A structural alteration or repair that involves greater than 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant’s expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired or altered are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.~~ Modification or replacement of 65% or more of the major structural components (see 13.10.700-M) of an existing structure within any consecutive five-year period. The extent of alterations to major structural components will be calculated in accordance with administrative guidelines adopted by resolution of the Board of Supervisors.

The definition for “Significantly Nonconforming Use” in Section 13.10.700-S of the Santa Cruz County Code is hereby deleted.

~~“Significantly nonconforming use” means the use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of Chapter 13.10 or 13.11 SCCC, does not conform to the present General Plan/Local Coastal Program land use designation, and has not lost its nonconforming status due to cessation of use as outlined in SCCC 13.10.260, 13.10.261, or 13.10.262.~~

The definition for “Structural Alteration” in Section 13.10.700-S of the Santa Cruz County Code is hereby deleted:

~~Structural Alteration. Any change, whether in kind or not, in the supporting members of a building, such as the foundation, bearing walls, columns, beams, girders, floor, ceiling or roof joists, and roof rafters or structural repairs in kind greater than 10% but less than 50.1% of the exterior walls. Roofs and foundation may be replaced. No physical expansion shall be permitted unless expressly authorized in Sections 13.10.261 or 13.10.262. Structural alterations that result in greater than 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction. The replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant’s expense to certify that portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction.~~

**Current Regulations for Nonconforming Uses and Structures:  
Proposed to be Deleted and Replaced by New Regulations shown in Exhibit 2**

**13.10.260 Nonconforming uses—Provisions that apply to all uses.**

The following provisions apply to all categories of nonconforming uses.

(a) Purpose and Intent:

1. ~~Significantly nonconforming uses are detrimental to the orderly development of the County, to the general welfare, and to the implementation of the General Plan/Local Coastal Program. It is the intent of this Chapter that significantly nonconforming uses be rapidly eliminated through restrictions on repairs, alterations, expansion, reconstruction, change and intensification of use, cessation of use, and termination of use in conformance with the policies of the General Plan/LCP.~~

2. ~~Nonconforming uses that are not significantly nonconforming may be detrimental to the orderly development of the County and the general welfare based on the degree of nonconformity. It is the intent of this Chapter to regulate the repair, alteration, expansion, reconstruction, change and intensification of use, cessation of use, and termination of use in conformance with the policies of the General Plan/LCP.~~

3. ~~Nonconforming uses that can become conforming to the regulations of this Chapter are encouraged to do so.~~

(b) Definitions. In addition to the definitions set forth in Section [13.10.700\(A\)](#) through [13.10.700\(Z\)](#), the following words and phrases, whenever used in this Section, or Sections [13.10.261](#) or [13.10.262](#), shall have the following meanings:

1. ~~Development Standards: Standards that regulate the development of uses, including but not limited to signage, useable open space and the design regulations found in Chapter 13.11. For the purposes of the Section, site and structural dimensions are not considered development standards.~~

2. ~~Imminent Threat: A situation that poses an impending threat to life or property as determined by the Planning Director, Building Official and/or the County Geologist.~~

3. ~~Intensification of Use, Residential: Any change to a residential use which will result in an increase of its number of bedrooms, as defined in Section [13.10.700\(B\)](#), shall be an "intensification of use" for purposes of this Chapter.~~

4. ~~Nonconforming Use: The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of Chapters 13.10 or 13.11, conforms to the present General Plan/Local Coastal Program land use designation, and:~~

(i) Has not lost its nonconforming status due to cessation of use, as outlined in Sections [13.10.260](#), [13.10.261](#), or [13.10.262](#); and

(ii) No longer conforms to the present use, density, or development standards of the zone district in which it is located; or

(iii) Does not have a valid Development Permit as required by the present terms of this Chapter.

5. ~~Ordinary Maintenance and Repair in Kind: Any work, whether structural or non-structural, that is done to a structure in kind to preserve its current condition or restore to its original condition. Structural repairs in kind may not exceed the aggregate of ten (10) percent of the exterior walls, roof, or foundation within any one year period. Structural repairs in kind that result in greater than the aggregate of ten (10) percent of the exterior walls, roof, or foundation being repaired within any one year period shall be deemed a structural alteration. The replacement of the interior or exterior wall coverings or the replacement of the windows or doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.~~

6. ~~Reconstruction: The rebuilding of a structure or portion(s) of a structure. A structural alteration or repair that involves greater than fifty (50) percent of the exterior walls being altered within any five year period shall be deemed a reconstruction. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired or altered are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction.~~

7. ~~Significantly Nonconforming Use: The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of Chapters 13.10 or 13.11, does not conform to the present General Plan/Local Coastal Program land use designation, and has not lost its nonconforming status due to cessation of use as outlined in Sections [13.10.260](#), [13.10.261](#), or [13.10.262](#).~~

8. ~~Structural Alteration: Any change in the supporting members of a building, such as the foundation, bearing walls, columns, beams, girders, floor, ceiling or roof joists, and roof rafters or structural repairs in kind greater than ten (10) percent but less than 50.1% of the exterior walls. Roofs and foundations may be replaced. No physical expansion shall be permitted unless expressly authorized in Sections [13.10.261](#) or [13.10.262](#). Structural alterations or repairs that result in greater than fifty (50) percent of the exterior walls being altered within any five year period shall be deemed a~~

reconstruction. The replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction.

~~(c) — General Requirements.~~

~~1. — Determination of Nonconforming Status. The property owner shall have the burden of proof in establishing the nonconforming use status of any land or structure. The Planning Director may charge a fee, as stated in the Uniform Fee Schedule, for the review of submitted documents which shall be based upon a reasonable estimate of the cost to the County for verifying the claim.~~

~~2. — Continuation of Nonconforming Rights. The lawful use of land existing on the effective date of the adoption or change of zoning designation or of the zoning regulations may be continued, even if the use no longer conforms to the regulations specified by Chapter 13.10 for the district in which the land is located and Chapter 13.11, provided that the use shall not be intensified or expanded to occupy a greater area than that occupied by the use at the time of adoption or change in zoning designation or zoning regulations.~~

~~Exceptions:~~

~~(i) — The nonconforming use of a structure may be changed to a use of the same or less intense nature, provided that in each case a Level V Development Permit, or lower level Development Permit as provided in Section [13.10.261](#), is obtained.~~

~~(ii) — The nonconforming use of a portion of a building may be extended throughout the building, provided that in each case a Level V Development Permit, or lower level Development Permit as provided in Section [13.10.261](#), is obtained.~~

~~3. — Loss of Nonconforming Status. Loss of nonconforming status due to cessation of use shall be as provided in Sections [13.10.261](#) and [13.10.262](#).~~

~~4. — Reconstruction of Structures Containing Nonconforming Uses Damaged by the Loma Prieta Earthquake. Notwithstanding any other provision of this Section, any building or structure damaged or destroyed as a result of the earthquake of October 17, 1989 and/or associated aftershocks may be repaired or reconstructed, provided the structure:~~

~~(i) — Will be sited in the same location on the affected property as the destroyed structure, and that location is determined to be located away from potentially hazardous areas, as required by Chapter 16.10 of this Code;~~

~~(ii) Will be for the same use as the damaged or destroyed structure; and~~

~~(iii) Will not exceed the floor area, height, or bulk of the damaged or destroyed structure by more than 10%.~~

~~5. Preexisting Parcels. A parcel that does not meet the current minimum site area, width, or frontage as required by the regulations of the zone district in which the parcel is located, or does not conform due to public dedication of right of way in accordance with Section 13.10.323(d)3, shall be deemed conforming and may be developed if:~~

~~(i) The parcel was legally created; and~~

~~(ii) The parcel has not been combined or merged pursuant to Sections [14.01.110](#) and [14.01.111](#).~~

~~6. Nonconforming Parking. In accordance with the limitations of Section [13.10.575](#), no legal existing use of land or structure shall be deemed to be a nonconforming use solely because of the lack of offstreet parking or loading facilities.~~

~~7. Compliance with the American with Disabilities Act or Chapter 11 of the State Building Code. Nothing in this Section, or Sections [13.10.261](#) and [13.10.262](#), shall preclude structural work performed for the sole purpose of coming into compliance with the Americans with Disabilities Act (ADA) or Chapter 11 of the State Building Code found in Volume II of Title 24 of the California Code of Regulations.~~

~~8. Compliance with Other Sections of the County Code. All development allowed by this Section, or Sections [13.10.261](#) and [13.10.262](#), shall be in conformance with all other requirements of the County Code, unless exceptions, as provided in those Sections, are granted.~~

~~9. Statement of Acknowledgment Required. Any Building or Development Permit issued for repair, structural alteration, expansion, change or intensification of use, or reconstruction shall include a condition requiring recordation of a Statement of Acknowledgment of Nonconforming or Significantly Nonconforming Use Status.~~

~~10. Termination of Use. The Board of Supervisors may order a nonconforming use to be terminated, upon recommendation of the Planning Commission. The Planning Commission shall conduct a public hearing after 15 days written notice to the nonconforming user. If the nonconforming user has not made a substantial investment in furtherance of the use, or if the investment can be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a minimum of one year after the date of the Order. If the nonconforming user has made a substantial investment in furtherance of the use, or if the investment cannot be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a longer reasonable amount of time. Nonconforming uses~~

that are determined to be an imminent threat to public health or safety may be terminated immediately, pursuant to Chapter 1.14 of this Code. In making its recommendation, the Planning Commission shall consider:

- (i) ~~The total cost of land and improvements;~~
- (ii) ~~The length of time the use has existed;~~
- (iii) ~~Adaptability of the land and improvements to a currently permitted use;~~
- (iv) ~~The cost of moving and reestablishing the use elsewhere;~~
- (v) ~~Whether the use is significantly nonconforming;~~
- (vi) ~~Compatibility with the existing land use patterns and densities of the surrounding neighborhood;~~
- (vii) ~~The possible threat to public health, safety or welfare; and~~
- (viii) ~~Any other relevant factors.~~

~~Failure to comply with a Board of Supervisors' Order to terminate a nonconforming use shall constitute a violation of the Chapter and is a public nuisance subject to abatement in accordance with Chapter 1.14 of the Code.~~

~~11. Termination as a Result of Public Agency Acquisition or Eminent Domain. Notwithstanding any other provisions of this section, whenever a nonconforming use of land or buildings outside of the California Coastal Zone is terminated by reason of an acquisition of the property or portion thereof by a public agency by eminent domain or an acquisition under threat of the use of eminent domain, the nonconforming use may be relocated to another location on the property or to an adjacent parcel, including a parcel which is near or close to the subject parcel, provided that:~~

- (i) ~~Any structure reconstructed and/or relocated for the nonconforming use will not exceed the floor area, height, or bulk of the replaced structure;~~
- (ii) ~~The use will remain the same;~~
- (iii) ~~A Level V approval is obtained based on a finding that the relocated use and any structure for the use will not be detrimental to the health, safety, or welfare of persons residing or working in the vicinity or the general public, nor be materially injurious to properties or improvements in the vicinity, and that any relocated or reconstructed structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood. (Ord. 560, 7/14/58; 740, 12/11/61; 1704, 4/25/72; 2047,~~

8/20/74; 2452, 6/21/77; 2787, 10/2/79; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83; 3593, 11/6/85; 4217, 10/20/92; 4411, 4/16/96; 4467, 8/12/97; Ord. 4525, 12/8/98)

**13.10.261 Residential nonconforming uses.**

**(a) Single-Family Dwelling Regulations.**

1. A dwelling located on a parcel whose general plan designation prohibits primary residential use and is not part of a permitted mixed use development shall be deemed significantly nonconforming and limited to the improvements and restrictions provided in Section [13.10.261](#) Table 1.

2. A dwelling located on a parcel with Commercial or Industrial zoning and a Residential general plan designation shall be deemed nonconforming and subject to the restrictions provided in Section [13.10.261](#) Table 1.

3. In determining the percentage of damage for the purposes of repair or reconstruction after fire, other catastrophic event, or the public enemy, the following method shall be used:

The percentage of damage or destruction of the total length of the exterior walls (exclusive of the foundation or roof) that occurred and the percentage of the exterior walls (exclusive of the foundation or roof) that will be required to be moved, replaced or altered in any way to restore the structure, except that the replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be counted in this calculation. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans shows as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

**(b) Accessory Structure Regulations.** The following regulations shall apply to both habitable and non-habitable accessory structures as defined in Sections 13.10.700-H and 13.10.700-N:

1. An accessory structure located on a parcel whose general plan designation prohibits primary residential use and is not part of a permitted mixed use development shall be deemed significantly nonconforming and limited to the improvements and restrictions provided in Section [13.10.261](#) Table 2.

2. An accessory structure located on a parcel with Commercial or Industrial zoning and a Residential general plan designation shall be deemed nonconforming and subject to the restrictions as provided in Section [13.10.261](#) Table 2.

~~3.—An accessory structure that does not meet the use standards of Section [13.10.611](#) shall be deemed nonconforming and subject to the restrictions provided in Section [13.10.261](#) Table 2.~~

~~Exception: An accessory structure that is a nonconforming use solely because of the existence of a toilet and/or waste drain lines larger than 1 1/2 inches in size may be repaired, structurally altered, or reconstructed with no physical expansion upon issuance of a building permit.~~

~~4.—In determining the percentage of damage for the purposes of repair or reconstruction after fire, other catastrophic event, or the public enemy, the method outlined in Section [13.10.261\(a\)3](#) shall be used.~~

~~(c)—Nonstructural Uses and Home Occupations Regulations.~~

~~1.—Nonstructural uses and home occupations shall not be expanded.~~

~~2.—Loss of nonconforming status occurs after a continuous six month cessation of use.~~

~~(d)—Dwelling Groups Regulations.~~

~~1.—Where two or more residential dwelling units exist on a parcel of land as nonconforming units because the zoning of the property no longer allows more than one dwelling unit, one of the units shall be deemed as conforming to the zone district. The owner may choose, one time only, which unit shall be considered as conforming. Accordingly, that unit may be repaired, structurally altered, enlarged, or reconstructed in accordance with the site and structural dimensions of the zone district in which the parcel is located. The other nonconforming units(s) shall be subject to the requirements of this Section.~~

~~2.—Dwelling groups located on a parcel whose general plan designation prohibits primary residential use and are not part of a permitted mixed use shall be deemed a significantly nonconforming use and limited to the improvements and restrictions provided in Section [13.10.261](#) Table 3.~~

~~3.—All other nonconforming dwelling groups shall be subject to the restrictions as provided in Section [13.10.261](#) Table 3.~~

~~Exception: The foundation and/or roof line of dwelling units that are not significantly nonconforming may be physically expanded provided that the cubic habitable space of the structure(s) is not increased, the structural alterations are in accordance with the height and other applicable restrictions of this Chapter, and a Level IV Use Approval is obtained.~~

~~4.—Except as provided in subsection (e) of this Section regarding reconstruction of dwelling groups after catastrophe, an application to reconstruct a nonconforming dwelling unit or units shall be denied if the Approving Body makes one or more of the following findings:~~

~~(i) That the reconstruction, restoration or rebuilding will be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvements in the neighborhood; or~~

~~(ii) That the existing nonconforming use of the building or structure would be more appropriately moved to a zone in which the use is permitted.~~

~~5. Factors that the Approving Body shall take into consideration in making the findings referred to in subsection 4(i) or 4(ii) of this subsection include, but are not limited to, the following:~~

~~(i) Compatibility with the existing land use patterns and densities of the surrounding neighborhood;~~

~~(ii) The availability of off and on street parking, both on the subject property and in the surrounding neighborhood; and~~

~~(iii) The adequacy of light, air and privacy on both the subject property and adjacent properties.~~

~~6. An application to reconstruct, restore or rebuild a nonconforming dwelling unit or units that has been denied pursuant to subsection 4. of the subsection may be resubmitted and approved if it is revised, including but not limited to reducing the size and/or number of units, such that the basis for making the findings for denial no longer apply.~~

~~(e) Reconstruction of Dwelling Groups after Catastrophe.~~

~~1. Notwithstanding any other provisions of the County Code (including, but not limited to subsections (g) and (h) of Section 13.10.265), whenever a multifamily dwelling is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy, the multifamily dwelling may be reconstructed, restored, or rebuilt as a nonconforming use in accordance with this subsection (e) and with a Level V or VI approval in accordance with this subsection and Section [13.10.261](#) Table 3.~~

~~2. For purposes of this subsection, for dwelling groups that are significantly nonconforming, the term "multifamily dwelling" means a structure designed for human habitation that is divided into two or more independent living quarters. For dwelling groups that are nonconforming, the term "multifamily dwelling" means a structure designed for human habitation that is divided into two or more independent living quarters or a structure designed for human habitation located on site with other dwellings.~~

~~3. In determining the percentage of damage for the purposes of repair or reconstruction after fire, other catastrophic event, or the public enemy, the following method shall be used:~~

The percentage of damage or destruction of the total length of the exterior walls (exclusive of the foundation or roof) that occurred and the percentage of the exterior walls (exclusive of the foundation or roof) that will be required to be moved, replaced or altered in any way to restore the structure, except that the replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be counted in this calculation. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans shows as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

4.—Any reconstruction, restoration, or rebuilding undertaken pursuant to this subsection shall conform to all of the following:

(i) —The California Building Standards Code as that code is in effect at the time of the reconstruction, restoration, or rebuilding;

(ii) —Any more restrictive County building standards authorized pursuant to Sections [13869.7](#), [17958.7](#), [18941.5](#) of the Health and Safety Code and any successor provisions, as those standards are in effect at the time of reconstruction, restoration, or rebuilding.

(iii) —The State Historical Building Code Part 2.7 (commencing with Section 18950 and any successor provisions) of Division 13 of the Health and Safety Code) for work on qualified historical buildings or structures;

(iv) —The County Zoning Ordinance, so long as the predamage size and number of dwelling units are not exceeded;

(v) —State Architectural regulations and standards or County Code Chapter 13.11, so long as the predamage size and number of dwelling units are not exceeded; and

(vi) —A building permit which shall be obtained within two years after the date of the damage or destruction and construction diligently pursued.

5.—An application made pursuant to this subsection shall be denied if the Approving Body makes one or more of the following findings:

~~(i) That the reconstruction, restoration or rebuilding will be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvement in the neighborhood; or~~

~~(ii) That the existing nonconforming use of the building or structure would be more appropriately moved to a zone district in which the use is permitted; or~~

~~(iii) That the building is located in an industrial zone district.~~

6. Factors that the Approving Body shall take into consideration in making the findings referred to in subsection 5(i) or 5(ii) of this subsection include, but are not limited to, the following:

~~(i) Whether the multifamily residential use, as defined in subsection (e)2 of this subsection, is significantly nonconforming;~~

~~(ii) Compatibility with the existing land use patterns and densities of the surrounding neighborhood;~~

~~(iii) The availability of off and on-street parking, both on the subject property and in the surrounding neighborhood; and~~

~~(iv) The adequacy of light, air and privacy on both the subject property and adjacent properties.~~

7. An application to reconstruct, restore or rebuild a multifamily dwelling to its predamaged size and number of dwelling units that has been denied pursuant to subsection 5. of this subsection may be resubmitted and approved if it is revised, including but not limited to reducing the size and/or number of units, such that the basis for making the findings for denial no longer apply.

8. This subsection shall not apply if, prior to the damage or destruction, the multifamily dwelling use had lost its nonconforming status due to cessation of use as shown in Section [13.10.261](#) Table 3. (Ord. 4525, 12/8/98). Note: Tables referenced in text are located on the next pages.

**Section [13.10.261](#) TABLE 1**

**RESIDENTIAL NONCONFORMING USE: SINGLE-FAMILY DWELLING**

<b>TYPE OF ALTERATION</b>	<b>SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site</b>	<b>NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation</b>
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Ordinary maintenance and repair in-kind or structural alteration for imminent threat	Yes	Yes
Structural alteration	No	Yes, maximum of 50% of exterior walls within 5 year period
Extend use throughout building	Yes, with Level V no intensification	Yes, with Level III
Physical Expansion	No	Yes, with Level III, 500 square feet expansion one time only
Reconstruction	No	Yes, with Level III, 500 square feet expansion one time only
Reconstruction up to 75% after disaster	Yes, with Level V no intensification	Yes, may expand 500 square feet one time only with Level III
Reconstruction 75% or greater after disaster	No	Yes, with Level III, 500 square feet expansion one time only
Loss of nonconforming status due to cessation of use	12 continuous months**	No restriction

\*\*— unless cessation caused involuntarily by fire, other catastrophic event, or the public enemy, in which case a building permit must be obtained within 2 years and construction diligently pursued

**Section 13.10.261 TABLE 2  
RESIDENTIAL NONCONFORMING USE: ACCESSORY STRUCTURE**

<b>TYPE OF ALTERATION</b>	<b>SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on-site</b>	<b>NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure does not meet use restrictions</b>	<b>NONCONFORMING: Structure meets zoning and General Plan designations but does not meet use restrictions or does not have required Development Permit</b>	<b>NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure meets use restrictions</b>
Ordinary maintenance and repair in-kind or structural alteration	Yes	Yes	Yes	Yes

for imminent threat				
Structural alteration	No	Yes, with Level III, maximum of 50% of exterior walls within a 5 year period	Yes, with Level III, maximum of 50% of exterior walls within a 5 year period	Yes, with Level III
Extend use throughout building	Yes, with Level V	Yes, with Level IV	Yes, with Level IV	Yes, with Level III
Physical expansion	No	No	No	Yes, with Level III
Reconstruction	No	No	No	Yes, with Level III
Reconstruction up to 75% after disaster	Yes, with Level V; no intensification	Yes, with Level IV; no intensification	Yes, with Level IV; no intensification	Yes, with Level III
Reconstruction 75% or greater after disaster	No	No	No	Yes, with Level III
Loss of nonconforming status due to cessation of use	12 continuous months**	12 continuous months**	12 continuous months**	No restriction

\*\*—unless cessation caused involuntarily by fire, other catastrophic event, or the public enemy, in which case a building permit must be obtained within 2 years and construction diligently pursued

**Section 13.10.261 TABLE 3  
RESIDENTIAL NONCONFORMING USE: DWELLING GROUPS**

<b>TYPE OF ALTERATION</b>	<b>SIGNIFICANTLY NONCONFORMING: Parcel has General Plan designation that prohibits primary residential use and dwelling group is not part of a legal mixed-use</b>	<b>NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built before Development Permit requirements, does not meet zone-district use, density, and/or</b>	<b>NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built with Development Permit, does not meet zone-district use, density, and/or standards</b>	<b>NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built before Development Permit requirement, does meet zone-district use, density, and</b>
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		<b>standards</b>		<b>standards</b>
Ordinary maintenance and repair in-kind or structural alteration for imminent threat	Yes	Yes	Yes	Yes
Structural alteration	No	Yes, maximum of 50% of exterior walls within a 5 year period	Yes, maximum of 50% of exterior walls within a 5 year period	Yes, maximum of 50% of exterior walls within a 5 year period
Extend use throughout building	Yes, with Level V, no intensification	Yes, with Level IV, no intensification	Yes, amend Development Permit (per Section 18.10.134), no intensification	Yes, with Level III; Level V if intensifies
Physical expansion	No	No	No	No
Reconstruction without expansion	No	Yes 1-4 units: Level V 5+ units: Level VI no intensification	Yes, if work commenced within 12 months no intensification	Yes, with Level V
Reconstruction up to 100% after disaster: multifamily attached only, with no expansion*	Yes 1-4 units: Level V 5+ units: Level VI, no intensification	Yes 1-4 units: Level V 5+ units: Level VI no intensification	Yes no intensification	Yes, with Level V
Reconstruction up to 75% or greater after disaster: detached units, with no expansion	Yes no intensification	Yes no intensification	Yes no intensification	Yes Level V if intensifies
Reconstruction 75% or greater after disaster: detached units, with no expansion	No	Yes 1-4 units: Level V 5+ units: Level VI no intensification	Yes no intensification	Yes, with Level V
Loss of	12 continuous	12 continuous	12 continuous months**	12 continuous

nonconforming status due to cessation of use	months**	months**		months**
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\*—except for properties zoned M-1, M-2, M-3

\*\*—unless cessation caused involuntarily by fire, other catastrophic event, or the public enemy, in which case a building permit must be obtained within 2 years and construction diligently pursued

(Ord. 4836 § 8, 10/3/06)

**13.10.262 Nonresidential nonconforming uses.**

(a)—~~Allowed Changes to Nonresidential Uses. Only ordinary maintenance and repair in kind not involving structural repairs may be made to a nonresidential nonconforming use, except as provided in 13.10.262(b) below.~~

(b)—~~Reconstruction of Involuntarily Damaged or Destroyed Nonresidential Uses. If any building or structure which does not conform to the use of the district in which it is located is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy to the extent that the reconstruction or repair of the structure will require more than 75% of the total length of the exterior walls (exclusive of the foundation or roof) to be moved, replaced or altered in any way, except that the replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be counted in this calculation, the land and structure shall be subject to all regulations specified by this Chapter for the district in which such land and structures are located. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.~~

(c)—~~Loss of Nonconforming Status. If the nonconforming use of land or buildings ceases for a continuous period of six months, then without further action by the County, the building or land shall be subject to all of the regulations of this Chapter for the district in which said land is located.~~

(d)—~~Nonconforming Greenhouses. Regulations regarding the replacement of nonconforming greenhouses are found in Section [13.10.636\(c\)](#).~~

(e)—~~Nonconforming Farm Worker Housing. Regulations regarding repair and replacement of nonconforming farm worker housing are found in Section [13.10.631\(c\)](#).~~

(f) ~~Nonconforming Recycling Collection Facilities. Regulations regarding nonconforming recycling collection facilities are found in Section [13.10.658\(b\)](#).~~

(g) ~~“M-1” Zone District Uses Not in Compliance with Section [13.10.345\(a\)](#). Uses in the “M-1” zone district which are not in compliance with the provisions of Section 13.10.345(a)1 through 6 are subject to Sections 13.10.345(a)7 and 8.~~

(h) ~~Lands designated with a “P” Combining District. Modification or expansion of uses on lands designated with a “P” Combining District shall be processed as set forth in Section [13.10.473](#).~~

(i) ~~Expansion of Organized Camps with Nonconforming Densities. Expansion of organized camps with nonconforming densities shall be processed as set forth in Section 13.10.353(b)3. (Ord. 4525, 12/8/98)~~

### **13.10.265 Nonconforming structures.**

(a) ~~The lawful use of a structure existing on the effective date of a change of zoning or of the zoning regulations may be continued even if such a structure and/or use does not conform to the change in zoning or change of the zoning regulations specified for the district in which such structure is located.~~

(b) ~~The structural enlargement, extension, reconstruction, or alteration which conforms to the site development standards of the district in which the structure is located may be made to a nonconforming structure upon issuance of only those building permits and/or development permits required by other Sections of the County Code if the property’s use is made to conform to the uses allowed in the district and provided that the structure is not significantly nonconforming as defined in this Section, and further provided that where the floor area of an addition exceeds 800 square feet net, a Level IV Use Approval shall be required.~~

(c) ~~When the use of the nonconforming structure conforms to uses allowed in the district in which the structure is located, but the enlargement, extension, reconstruction, or structural alteration of said building involves a variation from height, building site area, lot width, lot coverage, floor area ratio, or side, front, or rear yard requirements for the district, a Variance Approval shall be required in accordance with the provisions of Section [13.10.230](#), with the exception that, where the dedication requirements of Section [15.10.050](#) cause an existing structure to become nonconforming, a Variance Approval is not required provided that the front yard is not reduced to less than 10 feet and the street side yard to not less than 6 feet. In addition, no Variance Approval shall be required for any structural alterations which conform to Subsection (e) of this Section.~~

(d) ~~The structural enlargement, extension, reconstruction or alteration of a non-conforming structure which has been designated as a historic resource pursuant to County Code Chapter 16.42 is permitted upon issuance on only those building permits and/or development permits required by other Sections of the County Code regardless of any other provisions of this Chapter to the contrary, if one or more of the following criteria are met:~~

- ~~1. The structural enlargement, extension, reconstruction or alteration conforms to the site development regulations of the Zoning district in which it occurs;~~

~~2.—The structural enlargement, extension, reconstruction or alteration does not conform to the setback or height regulations of the Zoning district in which it occurs, but is within the structural outline of the structure and does not expand the perimeter foundation line of the structure. The structural outline of a structure shall include that space which is enclosed by the structural posts, columns, beams, trusses and girders of the structure; or~~

~~3.—The structural enlargement, extension, reconstruction or alteration is required to provide access for persons with disabilities to the structure.~~

~~(e)—Ordinary maintenance and repairs and other structural alterations, including foundation repair/replacement, may be made to the nonconforming portions of a structure which is not significantly nonconforming as defined in this Section provided that:~~

~~1.—The building permit(s) and/or development permits required by other Sections of the County Code are obtained for any structural alterations, including foundation repair/replacement;~~

~~2.—There is no increase in the nonconforming dimensions of the structure; and,~~

~~3.—Within any five-year period, no more than fifty (50) percent of the total length of the exterior walls within the nonconforming portions of the structure, exclusive of the foundation, shall be moved replaced or altered in any way. The replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be included in this calculation. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction.~~

~~Where structural alterations to the nonconforming portions of a structure do not comply with the provisions of this subsection, a Variance Approval shall be required.~~

~~(f)—Nothing contained in this Section shall be deemed to require any change in the plans, construction, or designated use of any structure upon which actual construction was lawfully begun in accordance with all applicable regulations in effect at the time when construction commenced. Actual construction is hereby defined as: The placing of construction materials in their permanent position and fastening them in a permanent manner, the work of excavating a basement, or the demolition or removal of an existing structure begun preparatory to rebuilding, provided that in all cases actual construction work shall be diligently continued until the building or structure involved has been completed.~~

~~(g)—If any building or structure which does not conform to the site and structural dimension regulations of the district in which it is located is damaged or destroyed by fire, other catastrophic event, or public enemy to the extent that the reconstruction or repair of the structure will require more than seventy-five (75) percent of the total length of the exterior walls (exclusive of the foundation or roof) to be moved, replaced or altered in any~~

way, except that the replacement or alteration of the interior or exterior wall coverings, windows and doors without altering their openings will not be counted in this calculation, the land and structure shall be subject to all regulations specified by this chapter for the district in which such land and structures are located. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professionals(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

(h) ~~Notwithstanding the provisions of subsection (g) above, any building or structure damaged or destroyed as a result of the earthquake of October 17, 1989 and/or associated aftershocks may be repaired or reconstructed, provided the structure:~~

- ~~1. Will be sited in the same location on the affected property as the destroyed structure, and that location is determined to be located away from potentially hazardous areas, as required by Chapter 16.10 of this Code;~~
- ~~2. Will be for the same use as the damaged or destroyed structure; and~~
- ~~3. Will not exceed the floor area, height, or bulk of the damaged or destroyed structure by more than ten (10) percent.~~

(i) ~~Regulations which apply to nonconforming signs are found in Section 13.10.588 of this Code. Regulations regarding the replacement of nonconforming greenhouses are found in Section [13.10.636\(c\)](#) of this Code.~~

(j) ~~Except as provided under subsections (d), (g) and (h) of this section, no structural enlargement, extension, reconstruction or structural alteration shall be made to any significantly nonconforming structure unless a variance for improvements not allowed by 13.10.265(e), and a Level V Use Approval is obtained, in addition to all other approvals required pursuant to the County Code. In addition to any other findings which are required, the following findings shall be made for any approval granted pursuant to this subsection:~~

- ~~1. That the existing structure and the conditions under which it would be operated and maintained is not detrimental to the health, safety or welfare of persons residing or working in the vicinity or the general public, or be materially injurious to properties or improvements in the vicinity.~~
- ~~2. That the retention of the existing structure will not impede the achievement of the goals and objectives of the County General Plan, or of any Specific Plan which has been adopted for the area.~~

~~3.—That the retention of the existing structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood.~~

~~4.—That the proposed project will not increase the nonconforming dimensions of the structure unless a Variance Approval is obtained.~~

~~(k)—For the purposes of this section, a structure is significantly nonconforming if it is any of the following:~~

~~1.—Located within five feet of a vehicular right-of-way;~~

~~2.—Located across a property line;~~

~~3.—Located within five feet of another structure on a separate parcel;~~

~~4.—Located within five feet of a planned future public right-of-way improvement (i.e. an adopted plan line); or,~~

~~5.—Exceeds the allowable height limit by more than 5 feet. (Ord. 2788, 10/2/79; 3266, 6/22/82; 3186, 1/12/82; 3344; 3746, 4/22/86; 11/23/82; 3432, 8/23/83; 3927, 6/28/88; 4024, 10/24/89; 4160, 12/10/91; 4368, 5/23/95; 4525, 12/8/98; 4642, 11/6/2001; Ord. 4771 § 3, 4/12/05; Ord. 4836 §§ 9, 10, 10/3/06)~~