

ORDINANCE _____

ORDINANCE AMENDING SECTIONS 13.10.260, 13.10.265,
13.10.332, 13.10.342, 13.10.510, 13.10.658 AND 13.10.700 AND ADDING
SECTIONS 13.10.261 AND 13.10.262 TO THE COUNTY CODE
RELATING TO NONCONFORMING USES

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 13.10.260 is hereby amended to read as follows:

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 this 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 13.10.700-5 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

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

(ii) 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 10% 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% 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 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction.

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 roofjoists, and roof rafters or structural repairs in kind greater than 10% 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 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.

(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 this Code.

1.1 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.

SECTION II

Chapter 13 IO of the County Code is hereby amended by adding Section 13.10.261 to read as follows:

13.10.26 I 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% 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 unit(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 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.

SECTION 13.10.261 TABLE 1		
RESIDENTIAL NONCONFORMING USE: SINGLE FAMILY DWELLING		
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation
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				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure does not meet use restrictions	NONCONFORMING: Structure meets zoning and General Plan designations but does not meet use restrictions or does not have required Development Permit	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure meets use restrictions
Ordinary maintenance and repair in kind or structural alteration for imminent threat	Yes	Yes	Yes	Yes
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

<p>Loss of nonconforming status due to cessation of use</p>	<p>12 continuous months**</p>	<p>12 continuous months**</p>	<p>12 continuous months**</p>	<p>No restriction</p>
<p>** 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</p>				

SECTION 13.10.261 TABLE 3				
RESIDENTIAL NONCONFORMING USE: DWELLING GROUPS				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has General Plan designation that prohibits primary residential use and dwelling group is not part of a legal mixed use	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 standards	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	NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built before Development Permit requirement, does meet zone district use, density, and standards
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 intensifier
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-J units: Level V 5+ units: Level VI, no intensification	Yes 1-J units: Level V 5+ units: Level VI no intensification	Yes no intensification	Yes, with Level V

Reconstruction up to 75% 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-J units: Level V 5+ units: Level VI no intensification	Yes no intensification	Yes, with Level V
Loss of nonconforming status due to cessation of use	12 continuous months**	12 continuous months**	12 continuous months**	12 continuous months**
* 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				

SECTION III

Chapter 13.10 of the County Code is hereby amended to add Section 13.10.262 to read as follows:

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 13.10.63 1 (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.

SECTION IV

Section 13.10.265(g) is hereby amended to read as follows:

(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 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, 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 on a reasonable estimate of the cost to the County for making such determination.

SECTION V

The last sentence of the “Commercial Change of Use” category of Section 13.10.332(b) of the County Code is hereby amended to read as follows:

(For legal, nonconforming uses,
see Sections 13.10.260 and ,262
for additional requirements)

SECTION VI

The second use specified in the "Residential Use" category of Section 13.10.332(b) of the County Code is hereby amended to read as follows:

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

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Repair, alteration, expansion,
or reconstruction of dwelling
units and accessory structures
which are inconsistent
with the General Plan, subject
to Sections 13. IO.260
and 13.10.261

Nonconforming Uses

BP-6 BP-6 BP-6 BP-6 BP-6 BP-6

SECTION VII

The "Residential Use" category of Section 13.10.342(b) of the County Code is hereby amended to read as follows:

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 B P - 6

Repair, alteration, expansion,
or reconstruction of dwelling
units and accessory structures

which are inconsistent
with the General Plan, subject
to Section 13.10.26 1
Nonconforming Uses

BP-6

BP-6

BP-6

SECTION VIII

Subsection (h) of Section 13.10.5 10 of the County Code is hereby repealed.

SECTION IX

Section 13.10.658(b) of the 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 nonconforming uses in the zone district in which they are located and are subject to Section 13.10.260, 13.10.262, and 13.10.265 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:

- (i) Mobile buy-back or drop off multi-material recycling collection in one location for less than eight (8) hours in any seven (7) day period;
- (ii) Stationary drop off of newspapers utilizing placement of an unattended covered or closeable drop box or bin;
- (iii) Stationary drop off of household goods or clothes for resale or recycle through a charitable organization such as the Salvation Army or Goodwill Industries.

SECTION X

Section 13.10.700-I of the County Code is hereby amended by changing the definition of Intensification of Use to read:

Intensification of Use, Commercial. Any change of commercial use which will result in a 10% increase in parking need 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 noise, smoke, glare, odors, water use, and/or sewage generation shall be an "intensification of use" for purposes of this Chapter.

SECTION XI

Section 13.10.700-I of the County Code is hereby amended by adding the definition of **Intensification of Use, Residential** to read:

Intensification of Use, Residential. Any change to a residential use which results 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.

SECTION XII

Section 13.10.700-N of the County Code is hereby amended to change the definition of **Nonconforming Use** to read:

Nonconforming Use. The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of this Chapter, 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 13.10.700-S definition of Significantly Nonconforming Use)

SECTION XIII

Section 13.10.700-O of the County Code is hereby amended by adding the definition of **Ordinary Maintenance and Repair In Kind** to read:

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 10% 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% 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.

SECTION XIV

Section 13.10.700-R of the County Code is hereby amended by adding the definition of Reconstruction to read:

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.

SECTION XV

Section 13.10.700-S of the County Code is hereby amended by adding the definition of Significantly Nonconforming Use to read:

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.

SECTION XVI

Section I 3.10.700-S of the County Code is hereby amended by changing the definition of Structural Alteration to read:

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 foundations 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.

SECTION XVII

If any section, subsection, division, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The Board of Supervisors of this County hereby declares that it would have adopted this ordinance and each section, subsection, division, sentence, clause, phrase, or portion thereof, irrespective of any such decision.

SECTION XVII

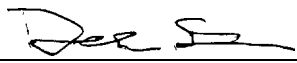
This Ordinance shall take effect on the 31st day after final passage, or upon certification by the California Coastal Commission, whichever is later.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this _____ day of _____, 1998, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____
Clerk of the Board

APPROVED AS TO FORM: 
County Counsel

ORDINANCE _____

ORDINANCE AMENDING SECTIONS 13.10.260, 13.10.265,
13.10.332, 13.10.342, 13.10.510, 13.10.658 AND 13.10.700 AND ADDING
SECTIONS 13.10.261 AND 13.10.262 TO THE COUNTY CODE
RELATING TO NONCONFORMING USES

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 13.10.260 is hereby amended to read as follows:

~~13.10.260~~ NONCONFORMING USES - PROVISIONS THAT APPLY TO ALL USES

(a) ~~Any nonconforming use within the County is detrimental to the orderly development of the County and to the general welfare. It is the intent of this Chapter that nonconforming uses shall be eliminated as rapidly as possible. In addition to the definition given in Section 13.10.700-N, any existing use for which a Use Approval is required by the terms of this Chapter shall be considered a nonconforming use unless and until the required permit is obtained.~~

(b) ~~The lawful use of land existing on the effective date of a change of zoning designation or of the zoning regulations may be continued, even if such use no longer conforms to the regulations specified by this Chapter for the district in which such land is located, provided that no such use shall be enlarged, increased, or extended to occupy a greater area than that occupied by such use at the time of the change in zoning designation or change of the zoning designation except that:~~

~~1. The nonconforming use of a portion of a building may be changed to a use of the same or more restricted nature provided that in each case a Use Approval is obtained.~~

~~2. The nonconforming use of a portion of a building may be extended throughout the building provided that in each case a Use Approval is obtained.~~

(c) ~~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, the largest of the units, or one of two or more units of similar size, may be~~

~~considered as conforming to the zone district. Accordingly, that unit only may be enlarged, extended, reconstructed, or structurally altered in accordance with the site coverage, yard, and height restrictions of this Chapter. Notwithstanding the foregoing limitation, the roof line of the other units not deemed conforming to the zone district may be structurally altered (with a Level 4 approval) provided, however, that the cubic habitable space of the structure or structures containing the other units is not increased by the alteration of the roof line, and such structural alterations of the roof line are in accordance with the height and other applicable restrictions of this Chapter.~~

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

~~(e) Whenever property for which a Use Approval has been granted is placed in a district in which the use is no longer allowed either as a permitted or as a discretionary use, the use for which the permit was granted shall be considered nonconforming. Such nonconforming use shall be subject to the provisions of this section.~~

~~(f) A nonconforming use may be ordered to be terminated by the Board of Supervisors by an Order of the Board of Supervisors upon recommendation of the Planning Commission within a period to be specified in such Order. Such an Order shall be issued only after a public hearing by the Planning Commission after 15 days' written notice to the nonconforming user. If the nonconforming user has not made a substantial investment in furtherance of such use, or if the investment can be substantially utilized or recovered through a then permitted use, such Order may require complete termination of the nonconforming use within a minimum of one year after the date of the Order. In making its recommendation, the Planning Commission shall consider the total cost of land and improvements, the length of time the use has continued, adaptability of the land and improvements to a then permitted use, the cost of moving and reestablishing the use elsewhere, and other relevant factors.~~

~~(g) Where a nonconforming use involves the removal of natural earth products, any order for termination shall be considered in accordance with Chapter 16.54, Mining Regulations, of the Santa Cruz County Code.~~

~~(h) When a use has become nonconforming because it does not comply with the requirements of Section 13.10.345 (Industrial Special Standards and Conditions), any permit subsequently issued shall set a reasonable time schedule for conformance to such requirements. In no case shall the time set for full compliance exceed five years. The time schedule for compliance shall be in addition to any other conditions to the permit.~~

~~(i) Failure to comply with a Board of Supervisors' Order to terminate a nonconforming~~

use shall constitute a violation of this chapter and is a public nuisance subject to abatement in accordance with Chapter 1.08 of this Code.

(j)—Regulations regarding the replacement of nonconforming greenhouses are found in Section 13.10.636(e) of this Code.

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.** 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 this 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

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

(ii) 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 10% 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% 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 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction.

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 10% 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 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.

(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.

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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 this Code.

~~(k)~~ **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.

SECTION II

Chapter 13.10 of the County Code is hereby amended by adding Section 13.10.261 to read as follows:

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 1½ 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 unit(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.

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 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.

SECTION 13.10.261 TABLE 1

RESIDENTIAL NONCONFORMING USE: SINGLE FAMILY DWELLING		
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation
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				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure does not meet use restrictions	NONCONFORMING: Structure meets zoning and General Plan designations but does not meet use restrictions or does not have required Development Permit	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure meets use restrictions
Ordinary maintenance and repair in kind or structural alteration for imminent threat	Yes	Yes	Yes	Yes
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				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has General Plan designation that prohibits primary residential use and dwelling group is not part of a legal mixed use	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 standards	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	NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built before Development Permit requirement, does meet zone district use, density, and standards
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% 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 nonconforming status due to cessation of use	12 continuous months**	12 continuous months**	12 continuous months**	12 continuous months**
* 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				

SECTION III

Chapter 13.10 of the County Code is hereby amended to add Section 13.10.262 to read as follows:

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.

SECTION IV

Section 13.10.265(g) is hereby amended to read as follows:

(g) If any building or structure which does not conform to the ~~use of~~ site and structural dimension regulations 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 on a reasonable estimate of the cost to the County for making such determination.

SECTION V

The last sentence of the "Commercial Change of Use" category of Section 13.10.332(b) of the County Code is hereby amended to read as follows:

(For legal, nonconforming uses,
see Sections 13.10.260 and 262
for additional requirements)

SECTION VI

The second use specified in the “Residential Use” category of Section 13.10.332(b) of the County Code is hereby amended read as follows:

~~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 BP-6 BP-6 BP-6~~

~~Repair, alteration, Expansion,
or reconstruction of dwelling
units and accessory structures
which are not inconsistent
with the General Plan up to a
one time total of an additional
500 square feet, subject
to Sections 13.10.260
and 13.10.261~~

~~Nonconforming Uses~~

~~3 BP-6 3 BP-6 3 BP-6 3 BP-6 3 BP-6 3 BP-6~~

SECTION VII

The “Residential Use” category of Section 13.10.342(b) of the County Code is hereby amended to read as follows:

~~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

Repair, alteration, expansion, or reconstruction of dwelling units and accessory structures

which are not inconsistent with the General Plan up to a total of an additional 500

square feet, subject to Section 13.10.261

Nonconforming Uses

3 BP-6

3 BP-6

3 BP-6

SECTION VII I

~~(h) Pre-Existing Parcels. The use of land permitted for the district in which the land is located shall be permitted on a building site of less area, width, depth, or frontage than that required by the regulations for such district if such land was a separate lot or parcel under ownership of record or was shown on a map of a recorded subdivision on the date said district regulation became applicable to said lot or parcel; provided that such land has not been combined or merged with a contiguous lot or parcel pursuant to the provisions of the Santa Cruz County Code now contained in Sections 14.01.102.1 through 14.01.102.4.~~

SECTION IX

Section 13.10.658(b) of the County Code is hereby amended to read as follows:

b. The following recycling collection facilities, which are ~~were in~~ existence on ~~July 23, 1987 the effective date of this ordinance,~~ are legal nonconforming uses in the zone district in which they are located and are subject to Section 13.10.260, ~~13.10.262,~~ and 13.10.265 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:

- (i) Mobile buy-back or drop off multi-material recycling collection in one location for less than eight (8) hours in any seven (7) day period;
- (ii) Stationary drop off of newspapers utilizing placement of an unattended covered or closeable drop box or bin;

- (iii) Stationary drop off of household goods or clothes for resale or recycle through a charitable organization such as the Salvation Army or Goodwill Industries.

SECTION X

Section 13.10.700-T of the County Code is hereby amended by changing the definition of Intensification of Use to read:

Intensification of Use, Commercial. Any change of commercial use which will result in a 10% increase in parking need or traffic generation from the prior use, or which is determined by the Planning Director ~~likely~~ to ~~likely~~ result in a significant new or increased impact due to potential noise, smoke, glare, odors, water use, and/or sewage generation shall be an “intensification of use” for purposes of this Chapter.

SECTION XI

Section 13.10.700-I of the County Code is hereby amended by adding the definition of Intensification of Use, Residential to read:

Intensification of Use, Residential. Any change to a residential use which results in an increase of its number of bedrooms, as defined in Section 13.10.700-B, shall be considered an “intensification of use” for purposes of this Chapter.

SECTION XII

Section 13.10.700-N of the County Code is hereby amended to change the definition of Nonconforming Use to read:

Nonconforming Use. A ~~The~~ use of a structure or land ~~which that~~ was legally established and maintained prior to the adoption, revision, or amendment of this Chapter ~~but which under this Chapter does not conform with the use regulations for the district in which it is located,~~ 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 13.10.700-S definition of Significantly Nonconforming Use)

SECTION XIII

Section 13.10.700-O of the County Code is hereby amended by adding the definition of Ordinary Maintenance and Repair In Kind to read:

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 10% 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% 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.

SECTION XIV

Section 13.10.700-R of the County Code is hereby amended by adding the definition of Reconstruction to read:

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.

SECTION XV

Section 13.10.700-S of the County Code is hereby amended by adding the definition of Significantly Nonconforming Use to read:

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.

SECTION XVI

Section 13.10.700-S of the County Code is hereby amended by changing the definition of Structural Alteration to read:

Structural Alteration. Any change, whether in kind or not, in the supporting members of a building, such as the foundation, bearing walls, columns, beams or 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 foundations 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.

SECTION XVII

If any section, subsection, division, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The Board of Supervisors of this County hereby declares that it would have adopted this ordinance and each section, subsection, division, sentence, clause, phrase, or portion thereof, irrespective of any such decision.

SECTION XVII

This Ordinance shall take effect on the 31st day after final passage, or upon certification by the California Coastal Commission, whichever is later.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this _____ day of _____, 1998, by the following vote:

510

AYES:
NOES:
ABSENT:
ABSTAIN:

CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: _____
Clerk of the Board

APPROVED AS TO FORM: _____
County Counsel

ANNOTATION OF PROPOSED ORDINANCE
(annotation shown in italics)

ORDINANCE _____

ORDINANCE AMENDING SECTIONS 13.10.260, 13.10.265,
13.10.332, 13.10.342, 13.10.510, 13.10.658 AND 13.10.700 AND ADDING
SECTIONS 13.10.261 AND 13.10.262 TO THE COUNTY CODE
RELATING TO NONCONFORMING USES

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Section 13.10.260 is hereby amended to read as follows:

13.10.260 NONCONFORMING USES - PROVISIONS THAT APPLY TO ALL USES

Since different regulations are being proposed for residential, commercial, industrial, agricultural, and historic nonconforming uses, this Section contains those regulations that apply to all of the 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.

The use of the term "significantly nonconforming" is intended to complement the regulations for nonconforming structures, which impose more restrictive requirements on structures that are considerably out of compliance with current standards. This purpose makes it clear that significantly nonconforming uses are detrimental. The current purpose

*states that a **nonconforming** use shall be eliminated as rapidly as possible; this **proposed purpose** eliminates “as rapidly as possible” so that structural repairs or **alterations for imminent threat** may be considered.*

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.

*There are many **nonconforming** uses that are closer to **conformance**. This purpose recognizes this and states that these uses may or may not be detrimental and allows the **possibility of repair and reconstruction**.*

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

*While **nonconforming** uses are legal and may **continue**, this purpose states that **conformance is preferable***

(b) Definitions. The following words and phrases, whenever used in this Section, or Sections 13.10.26 1 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 this Section, site and structural dimensions are not considered development standards.

*A use is considered **nonconforming** if it is not in compliance with applicable development standards.. Development standards are defined and it is stated that site and **structural dimensions (such as setbacks and height)** 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.

*The proposed ordinance allows certain improvements in the case of **imminent threat**. This definition defines the term and designates the staff authorized to make the determination.*

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.

For most categories of residential nonconforming uses, physical expansion and additional bedrooms are not allowed, as bedrooms result in the need for additional parking and impact existing services. This definition clearly defines what is an intensification of residential use. The County Code already contains a definition of intensification of commercial use.

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
- (i) No longer conforms to the present use, density, or development standards of the zone district in which it is located; or
- (ii) Does not have a valid Development Permit as required by the present terms of this Chapter.

This definition clearly explains what a nonconforming use is and adds language that noncompliance with the standards of Chapter 13.11 (Design Standards) creates a nonconforming use.

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 10% 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% 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.

Ordinary maintenance and nonstructural repair in kind is currently allowed; however, there is no definition, which has led to considerable confusion for staff and the public. This definition clearly describes the scope of ordinary maintenance and repair (proposed to include structural as well as nonstructural) and states the consequence of exceeding the scope, i.e. being categorized as structural alteration. The fourth and fifth sentences are identical to the language in the Nonconforming Structures regulations.

6. 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 current regulations do not have a definition of reconstruction nor language that clearly states when a structural alteration or remodel becomes a reconstruction. This has led to confusion among staff and the public and has made enforcement of the regulations difficult. This definition should correct these problems. The reference to 50% of the exterior walls being altered within any five year period complements the regulations of the Nonconforming Structures ordinance.

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.

This definition clarifies that a nonconforming use is significantly nonconforming when it does not conform to its basic General Plan LCP designation, i.e. a commercial use in a residential designation. Since the General Plan/LCP is the most important planning document, nonconformance to it should be considered as the most serious nonconforming situation.

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 10% 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 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.

The current definition of structural alteration does not include language explaining when an alteration becomes a reconstruction. This has led to confusion among staff and the public. The proposed definition will clearly define the threshold. The fourth and fifth sentences are identical to the language in the Nonconforming Structures regulations.

(c) General Requirements

I. 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.

This regulation codifies the current practice. Reviewing submitted documents can take many hours; a fee would pay for the staff time.

2. Continuation of Nonconforming Status. 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.

This proposed language is very close to that of the current ordinance. A reference to Chapter 13.11 has been added and the level of Development Permit has been added. The current language requires a Development Permit but does not state the level of review; Planning staff have interpreted this to require a Level V permit.

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.

The amount of time it takes to lose nonconforming status is proposed to vary depending on the type of use. This subsection refers the reader to the appropriate sections.

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%.

This language currently exists in the Nonconforming Structures regulations, but has never explicitly applied to the nonconforming uses. Staff has interpreted the language to include nonconforming uses. Applications for earthquake related repair are still being submitted. This language clarifies that nonconforming uses can also take advantage of the special regulations your Board adopted for earthquake related repairs.

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.

This language simplifies the language of the current ordinance and states clearly that preexisting parcels are conforming uses and may be developed.

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.

This regulation creates a cross reference to Section 13.10.575 and summarizes the Section.

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.

This regulation allows structural work required to meet ADA or Title 24 requirements even if the use is significantly nonconforming. The use of the word "sole" ensures that work beyond the scope needed to comply with the requirements will not be allowed

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.

All work authorized by this ordinance must meet current regulations unless specific exceptions exist in other ordinances.

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.

Currently, a current or new owner of a nonconforming use may not know the status of their use or the restrictions imposed on nonconforming uses. The requirement for the recordation of a Statement of Acknowledgment in conjunction with the issuance of permits will correct this problem.

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 this Code.

This proposed language is close to that of the current ordinance. This clarifies that a use determined to be an imminent threat may be terminated immediately, and that a use in which a substantial investment has been made may be given a longer time to conform. It also adds additional factors that may be considered in determining if termination is appropriate.

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.

There has been no change. to this subsection.

SECTION II

Chapter 13.10 of the County Code is hereby amended by adding Section 13.10.261 to read as follows:

13.10.261 RESIDENTIAL NONCONFORMING USES

Since the General Plan/LCP contains different policies for residential, commercial, industrial, and agricultural nonconforming uses, the nonconforming use regulations are proposed to be tailored to each

category.

(a) Single Family Dwelling Regulations.

1. A dwelling located on a parcel whose general plan designatibn 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.

The regulations for a significantly nonconforming single-family dwelling, as shown in Table I, are the same as current regulations except for two changes: structural repairs and structural alterations for imminent threat are allowed, - loss of nonconforming status is changed, from six continuous months to twelve continuous months. Staff believes that six months is too short a time period as houses are sometimes vacant for more than six months due to the owner being on sabbatical or the house being offered for sale during a sluggish real estate market. When cessation is caused by a catastrophic event, it is proposed that the time restriction be relaxed to require issuance of a building permit within two years. This language comes from Senate Bill 21 12.

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.

A single family dwelling in this category has a residential General Plan designation and meets all regulations but has a Commercial or Industrial zoning. The rural rezoning work program project will correct these inconsistent zonings and confer conforming status. In the meantime, these uses are considered the most benign and it is proposed that they be allowed to repair, remodel, reconstruct arid slightly expand. Cessation of use is proposed to not affect nonconforming status. At the Board of Supervisors hearing on the conceptual review of these proposed changes, the Board expressed concern about the low level of review (Level III) and suggested that a higher level of review, which includes public notice or hearing, might be more appropriate. Staff understands the Board's concern, but believes that, because of the benign nature of the single family dwelling uses, subjecting a property owner to the expense and time involved in a higher level of review is not warranted. The level of review for dwelling units in this category has been increased to a Level V.

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.

This is the same criteria used in the Nonconforming Structure regulations. It also clarifies that only the extent of damage to the exterior walls is considered in calculating the percent of damage.

(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 13.10.26 1 Table 2.

The regulations for a significantly nonconforming accessory structure, as shown in Table 2, are the same as current regulations except for two changes: structural repairs and structural alterations for imminent threat are allowed; loss of nonconforming status is changed from six continuous months to twelve continuous months. When cessation is caused by a catastrophic event, it is proposed that the time restriction be relaxed to require issuance of a building permit within two years. This language comes from Senate Bill 2112.

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.

Accessory structures in this category are further divided into those that meet the current use restrictions and those that do not. Those that do not meet the use restrictions (such as size and story limitations) will be restricted in the variety of improvements allowed and require higher level Development Permits. Those that meet the use restrictions are the most benign and are allowed greater improvements and lower levels of review.

3. An accessory structure that does not meet the use standards of Section 13.10.6 11 shall be deemed nonconforming and subject to the restrictions provided in Section 13.10.261 Table 2.

Property owners with accessory structures in this category may prefer to seek conformance, but if not, limited improvements are allowed and a public notice is required.

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% inches in size may be repaired, structurally altered, or reconstructed with no physical expansion upon issuance of a building permit.

Your Board directed, as part of the approval of changes to the Accessory Structure ordinance, that this language be added to the nonconforming use regulations.

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.

These regulations are unchanged.

(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 unit(s) shall be subject to the requirements of this Section.

These regulations are unchanged with the exception of allowing the owner to choose which unit shall be deemed as conforming. Currently, only the largest of the units may be considered as conforming. Staff have seen cases where the smaller unit is in better condition and more worthy of restoration and expansion. This change allows the owner more flexibility.

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 13.10.26 1 Table 3.

The regulations for a significantly nonconforming dwelling group, as shown in Table 3, are the same as current regulations except for three changes: structural repairs and structural alterations for imminent threat are allowed; loss of nonconforming status is changed from six continuous months to twelve continuous months; and reconstruction of attached units up to 100% in the case of catastrophe is permitted (discussion of reconstruction is found in subsection (e) below). Staff believes that six months is too short a time period as units are sometimes vacant for more than six months due to the owner being on sabbatical or the house being offered for sale during a sluggish real estate market. When cessation is caused by a catastrophic event, it is proposed that the time restriction be relaxed to require issuance of a building permit within two years. This language comes from Serrate Bill 2112.

3. All other nonconforming dwelling groups shall be subject to the restrictions as provided in Section 13.10.261 Table 3.

Additional improvements and lower level Development Permits are allowed for dwelling groups that are closer to being in conformance. At the Board of Supervisors hearing on the conceptual review of these proposed changes, the Board expressed concern about the low level of

review (Level III) proposed for the most benign category and suggested that a higher level of review, which includes public notice or hearing, might be more appropriate. Staff has reviewed this request and agrees with the Board's concern; the proposed level of review has been changed to Level V.

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.

*This exception for roof lines was created by Ordinance 4467. Staff is proposing that the exception also be **granted** for foundations. A property owner who wishes, for example, to replace a slab foundation with a pier foundation is not permitted, as the new foundation results in a slight physical expansion.*

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 district in which the use is permitted.

*The purpose for nonconforming uses states that they **may** be detrimental. These findings determine if the proposed reconstruction is truly detrimental, and if found to be, the project must be denied.*

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.

This subsection gives the Approving Body guidance in the factors that should be considered when making the above findings.

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 13.10.26 1 Table 3.

Subsection (e) is proposed to implement Senate Bill 2112, which mandates that local jurisdictions create provisions for the reconstruction of dwelling groups after catastrophe. Senate Bill 21 I2 contains internal inconsistencies; staff has drafted language, with the assistance of County Counsel, that contains most of its language while still meeting the spirit of the legislation.

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.

Senate Bill 2 I 12 defines “multifamily dwelling” as a structure designed for human habitation that is divided into two or more independent living quarters. If Senate Bill 21 I2 was not in force, significantly

nonconforming dwelling groups would not be permitted to be reconstructed. To implement the Bill, only those significantly nonconforming dwelling groups that meet the definition of “multifamily dwelling” (i.e. two or more units in one structure) may be reconstructed. Significantly nonconforming detached units (two or more units on one parcel) are not proposed to be allowed to reconstruct. Nonconforming attached or detached dwelling groups are proposed to be allowed to be reconstructed.

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,

This is the same criteria used in the Nonconforming Structure regulations. It also clarifies that only the extent of damage to the exterior walls is considered in calculating the percent of damage.

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

The following criteria are from Senate Bill 2112.

- (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 of County Code Chapter 13.11, so long as the predamage size and number of dwelling units are not exceeded; and

Reference to the standards of County Code Chapter 13.11 have been added and will be applicable to projects of three or more units.

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

The phrase "and construction diligently pursued" is added to ensure that proper demolition and cleanup will occur in a timely manner.

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

The following findings are from Senate Bill 2112.

- (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 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.

*This subsection gives the Approving Body guidance in the-factors that should be considered when **making** the above findings.*

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.

*This subsection provides a reminder that the use **must** have significantly nonconforming or nonconforming status at the time of damage to qualify for reconstruction. Uses that have ceased for more than 12 continuous months prior to the damage may not be considered under this subsection.*

Tables 1, 2 and 3 in the proposed ordinance set forth the specific regulations for each category of nonconforming and significantly nonconforming use.

SECTION 13.10.261 TABLE 1		
RESIDENTIAL NONCONFORMING USE: SINGLE FAMILY DWELLING		
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation
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				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has Commercial or Industrial General Plan designation and a residential use only on site	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure does not meet use restrictions	NONCONFORMING: Structure meets zoning and General Plan designations but does not meet use restrictions or does not have required Development Permit	NONCONFORMING: Parcel has Commercial or Industrial zoning and a Residential General Plan designation and accessory structure meets use restrictions
Ordinary maintenance and repair in kind or structural alteration for imminent threat	Yes	Yes	Yes	Yes
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 USC	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				
TYPE OF ALTERATION	SIGNIFICANTLY NONCONFORMING: Parcel has General Plan designation that prohibits primary residential use and dwelling group is not part of a legal mixed use	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 standards	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	NONCONFORMING: Parcel has General Plan designation that allows primary residential use and built before Development Permit requirement, does meet zone district use, density, and standards
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 intensification
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% 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 nonconforming status due to cessation of use	12 continuous months**	12 continuous months**	12 continuous months**	12 continuous months**
* 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				

SECTION III

Chapter 13.10 of the County Code is hereby amended to add Section 13.10.262 to read as follows:

13.10.262 NONRESIDENTIAL NONCONFORMING USES

Since revised regulations for commercial, industrial, and agricultural uses are proposed for Phases 2 and 3, this section gathers all existing regulations for these uses together. No policy changes are proposed in this ordinance. This section will be replaced as revised language is adopted by your Board in Phases 2 and 3 (unless your Board chooses to not revise the existing regulations).

(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.

This language currently is found in the Nonconforming Structure regulations (Section 13.10.265). It is illogical that a regulation affecting nonconforming uses is located in an unrelated section and, therefore, it is being relocated to the appropriate section.

(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 several types of nonconforming uses are located in other parts of the County Code. Subsection d through i create cross references to these various sections.

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) Exoansion 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.

SECTION IV

Section 13.10.265(g) is hereby amended to read as follows:

(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 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 on a reasonable estimate of the cost to the County for making such determination.

This section of the Nonconforming Structure regulations is amended to delete the word "me". These regulations for nonconforming uses are being relocated to the Nonconforming Use regulations, as discussed above.

SECTION V

The last sentence of the "Commercial Change of Use" category of Section 13.10.332(b) is hereby amended to read as follows:

(For legal, nonconforming uses,
see Sections 13.10.260 and .262
for additional requirements)

This subsection is amended to include a reference to the new Section 13.10.262.

SECTION VT

The second use specified in the "Residential Use" category of Section 13.10.332(b) of the County Code is hereby amended to read as follows:

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 BP-6 BP-6 BP-6

This adds a new category for residential uses that have a residential General Plan designation and commercial zoning.

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

This category refers to residential uses that have a General Plan designation which precludes primary use (such as commercial) and commercial zoning. These uses are proposed to be significantly nonconforming. The proposed language amends the existing language to add a reference to new Section 13.10.261, deletes the possibility of expansion, and indicates the various levels of review required.

SECTION VII

The "Residential Use" category of Section 13.10.342(b) of the County Code is hereby amended to read as follows:

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

This adds a new category for residential uses that have a residential General Plan designation and industrial zoning.

Repair, alteration, expansion, or reconstruction of dwelling units and accessory structures which are inconsistent with the General Plan, subject to Section 13.10.261
Nonconforming Uses

BP-6 BP-6 BP-6

This category refers to residential uses that have a General Plan designation which precludes primary use (such as commercial) and industrial zoning. These uses are proposed to be significantly nonconforming. The proposed language amends the existing language to add a reference to new Section 13.10.261, deletes the possibility of expansion, and indicates the various levels of review required,

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SECTION VIII

Section 13.10. S I O(h) of the County Code is hereby repealed.

The previous regulations regarding preexisting parcels is repealed.

SECTION IX

Section 13.10.658(b) of the County Code is hereby amended to read as follows:

Reference to new Section 13. IO.262 and the actual effective of the ordinance creating this Section are added.

b. The following recycling collection facilities, which were in existence on July 23, 1987, are legal nonconforming uses in the zone district in which they are located and are subject to Section 13.10.260, 13.10.262, and 13.10.265 of the Santa Cruz County Code, provided that ail such collection facilities are associated with a legal conforming use and can demonstrate permission from the property owner to occupy the site:

- (i) Mobile buy-back or drop off multi-material recycling collection in one location for less than eight (8) hours in any seven (7) day period;
- (ii) Stationary drop off of newspapers utilizing placement of an unattended covered or closeable drop box or bin;
- (iii) Stationary drop off of household goods or clothes for resale or recycle through a charitable organization such as the Salvation Army or Goodwill Industries.

SECTION X

Section 13.10.700-I of the County Code is hereby amended by changing the definition of Intensification of Use to read:

Intensification of Use, Commercial. Any change of commercial use which will result in a 10% increase in parking need 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 noise, smoke, glare, odors, water use, and/or sewage generation shall be an “intensification of use” for purposes of this Chapter.

Currently, the title of this definition is “Intensification of Use”. It is being amended to clarify that it refers to commercial uses. A grammatical error is also being corrected

SECTION XI

Section 13.10.700-I of the County Code is hereby amended by adding the definition of Intensification of Use, Residential to read:

Intensification of Use. Residential. Any change to a residential use which results in an increase of its number of bedrooms, as defined in Section 13.10.700-B, shall be considered an “intensification of use” for purposes of this Chapter.

SECTION XII

Section 13.10.700-N of the County Code is hereby amended to change the definition of Nonconforming Use to read:

Nonconforming Use. The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of this Chapter, 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 13.10.700-S definition of Significantly Nonconforming Use)

SECTION XIII

Section 13.10.700-0 of the County Code is hereby amended by adding the definition of Ordinary Maintenance and Repair In Kind to read as follows:

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 10% 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% 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.

SECTION XIV

Section 13.10.700-R of the County Code is hereby amended by adding the definition of Reconstruction to read:

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.

SECTION XV

Section 13.10.700-S of the County Code is hereby amended by adding the definition of Significantly Nonconforming Use to read:

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.

SECTION XVI

Section 13.10.700-S of the County Code is hereby amended by changing the definition of Structural Alteration to read:

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% 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 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.

SECTION XVII

If any section, subsection, division, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The Board of Supervisors of this County hereby declares that it would have adopted this ordinance and each section, subsection, division, sentence, clause, phrase, or portion thereof, irrespective of any such decision.