



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

September 6, 2011

AGENDA DATE: September 14, 2011

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95062

SUBJECT: PROPOSED CHANGES TO LAND USE REGULATIONS REGARDING NONCONFORMING STRUCTURES AND USES, COMMERCIAL CHANGES OF USE AND SELECTED PARKING PROVISIONS, "ALTERED WALLS" PROVISIONS, MINOR REVISIONS TO DESIGN REVIEW REGULATIONS, REFINEMENT OF THE "LEVEL IV PERMIT PROCESS", AND REVISIONS TO THE GEOLOGIC HAZARDS ORDINANCE REGARDING WHEN GEOLOGIC REVIEW MAY BE REQUIRED

Members of the Commission:

INTRODUCTION

As your Commission knows, Planning staff has been developing ordinance amendments to implement a more streamlined and reality-based approach to regulating nonconforming structures and uses, as well as commercial uses. We have focused on changes of commercial use in existing buildings in order to more flexibly accommodate the substitution of one business tenant with another. Staff have also developed additional proposed code revisions to replace the "altered wall" method of measuring alterations to buildings, to make "clean up" changes to the Design Review Ordinance, to delete the local amendment to the Building Code defining a "structure" for the purpose of soils reports, and to revise the threshold above which geologic review may be initiated for development projects, as expressed in the definition of "development" in the Geologic Hazards Ordinance.

Potential revisions to the Code were most recently presented in concept to the Board of Supervisors on June 28, 2011. The letter of the Planning Director to the Board, which describes the reasons why revisions are necessary and lays out the goals for the proposed changes, is attached as Exhibit A. At that time the Board directed planning staff to meet with focus groups representing different community interests and concerns, for discussions about the proposals. The Board also authorized staff to hold a community workshop with your Commission to provide an opportunity for the community at large to learn about the proposed changes and to share ideas regarding these changes. Planning Staff has met with focus groups, incorporated ideas from these focus groups into the proposed revisions, and is here today to present these proposals to your Commission and the public. The Board of Supervisors will receive these same materials at its meeting of September 20, 2011, along with a verbal report regarding this Planning Commission Community Workshop.

CONTENT OF THE ATTACHED WRITTEN MATERIALS

This package of proposed ordinance revisions is complicated, so there is much material to

present to your Commission and the public. This letter provides an overview and explanation of key proposed changes. Attachments provide additional information and the proposed ordinance amendments, as follows:

- A: Letter of Planning Director to Board of Supervisors, Board agenda June 28, 2011
- B: List of participants in focus groups
- C: Existing General Plan policies regarding nonconforming uses and structures
- D: Comparison Table of existing nonconforming regulations and proposed revisions.
- E: Proposed nonconforming ordinance (new ordinance to replace existing ordinance)
- F: Existing nonconforming ordinance and definitions (proposed for deletion)
- G: Defining "Reconstruction"
- H: Comparison Table of proposed revisions to parking standards, commercial changes of use, new commercial uses (Chapter 13.10), Design Review (Chapter 13.11)
- I: Strikeout/underline version of revisions to Chapters 12.10, 13.10, 13.11, 16.10, 18.10

BACKGROUND

In 2009, staff at that time working on developing amendments to the nonconforming ordinance presented a different concept to the Board, which entailed a partial revision of the ordinance, with other portions contemplated to occur in subsequent proposals. The work plan being pursued at that time included phased revisions to 1) residential nonconforming structures, 2) non-residential nonconforming structures, 3) residential uses, and 4) non-residential uses. The current proposal involves a complete update of the nonconforming provisions, rather than a piecemeal approach that would not achieve the extent of simplification, clarification and modernization as is possible under a comprehensive update. A comprehensive revision is less costly to pursue, and allows for consistency of policy basis for each component.

In June 2011, staff presented a concept proposal for revision of not only the non-conforming ordinance, but also certain regulations affecting commercial uses, particularly changes of commercial uses within existing buildings. The June 2011 letter of the Planning Director to the Board of Supervisors (Exhibit A) discusses the positive contribution made by legal nonconforming structures and uses, and the proposed shift away from the idea that legal, nonconforming structures will deteriorate and "go away" over time. This idea, particularly for non-residential structures and uses, is actually not consistent with existing General Plan goals and policies related to nonconforming uses and structures (Exhibit C). The proposed package of regulatory changes intends to bring the Code into greater conformity with the General Plan. Key differences between features of the existing and proposed regulations is provided in the Comparison Tables; with Exhibit D reviewing the nonconforming regulations and Exhibit H reviewing the commercial and parking regulations.

FOCUS GROUP PROCESS

The focus group process was very valuable and the proposed code changes presented today vary in significant ways from what was presented in August 2011 to the focus groups for discussion. For example, each group was very interested in the threshold and calculation methodology that will be used to determine whether a given project triggers the a requirement for discretionary site development and/or use permit review, rather than the requirement being for a more straightforward ministerial building permit. As a reminder, a discretionary permit allows for imposition of conditions of approval, while a ministerial permit must be approved if it conforms to fact-based (not judgment-based) standards such as building code standards or other performance standards. Focus group discussions resulted in our recommendation not to recommend a method that relies on the dollar valuation of the structure and the proposed work. There were many other improvements to the proposed code that were suggested by the focus

groups that have been incorporated into the proposals. A list of the focus group sessions and participants is presented in Exhibit B.

The focus groups confirmed that values such as clear regulations, flexibility, more predictable outcomes, administrative efficiency, neighborhood participation, support for businesses (especially in these hard economic times), cost of permits, environmental protection, and “fairness” in treatment of both high- and low-value structures, and to both urban and rural properties, are all important and must be balanced in some way.

DISCUSSION OF PROPOSED REVISIONS

Each of the proposed changes were developed with a consistent focus on the twin goals of simplifying and modernizing land use regulations on the one hand; and maintaining or expanding environmental protection, protection of neighborhoods, and opportunities for public input on the other. The result is a package of proposed changes that accomplishes a significant measure of simplification and modernization, yet which also offers increased potential for riparian corridor preservation and enhancement, expands opportunities to reuse existing resources and implement sustainable development practices, and in a few cases expands current public notice requirements and opportunities for public input into the permit process.

The recommended revisions, updated to reflect focus group input, were based on extensive research into practices of other jurisdictions, peer review within the Planning Department, focus group input and industry statistical data. The proposals reflect our effort to balance the sometimes competing priorities expressed by the public and the focus groups thus far.

It is important to note that while staff is presenting the proposed changes in the form of a preliminary draft of new ordinance language, the material discusses a range of options, which should be discussed at the workshop. The objective this Fall is to develop a version of the proposal that will serve as the “project description” for the purposes of CEQA environmental review. Only after the environmental document has been subject to public review will public hearings occur before the Commission and Board, and ultimately the Coastal Commission.

In particular, there is a range of options regarding the definition of “reconstruction”. Reconstruction is proposed to be the threshold at which existing legal nonconforming structures would need a discretionary site development permit in order to maintain the nonconformity, or ~~when a remodel project would possibly be subject to a requirement for a Geologic Hazard~~ Assessment. The site development review process could lead to conditions of approval that could require a proposal to come into greater conformity with the code and/or to remove the nonconforming aspects of the structure.

The final selection of how to define “reconstruction” will reflect a decision about which elements of a project are being measured to describe the extent of the remodel, and how they are being measured. A very detailed measuring process that factors in, or “counts”, all internal and external, structural and non-structural elements of a remodel may support a higher threshold; while a less detailed process that counts only major elements of the remodel may pair with a lower threshold. This relational aspect of the portions of the nonconforming code is discussed further in Exhibit G, “Defining Reconstruction”.

KEY INFORMATION GUIDING REFINEMENTS OF THE PROPOSED AMENDMENTS

The code amendments now being proposed incorporate ideas that post-date the Board meeting last June, including information that has been developed since that time as well as revisions suggested by the focus groups. Key information that has guided the revision, and major

components of the proposal, includes:

- Analysis of the extent to which the existing regulations governing nonconforming uses and structures do not track with the General Plan policies. The General Plan is significantly more accepting of nonconforming uses and structures than the County Code. See Exhibit C for a comparison of General Plan policies and the existing nonconforming ordinance. Revisions that create better alignment between the General Plan and the implementing code by definition increase clarity and simplify permit review;
- When projects remodeling an existing nonconforming structure exceed the proposed "Reconstruction" (intended to mean "close to a replacement building") threshold below which only a building permit is required, a "Modified Level 4" site development permit with public notice to owners and occupants within 100 feet, appropriate findings and the opportunity to impose Conditions of Approval would be required, as opposed to a variance, which is the current requirement. A variance is oftentimes difficult to approve given the necessary approval findings; a site development permit allows conditions and changes to the project which would allow it to proceed as conditioned;
- Confirmation that there is no single "best" method for characterizing the extent of a remodel to an existing nonconforming structure that would constitute "Reconstruction", such that it can be easily determined when a nonconforming structure would be subject to approval of a discretionary approval and may be subject to conditions of approval and need to be brought closer into or into compliance with current site standards. Refer to Exhibit G "Defining Reconstruction" for a more detailed discussion of this issue; at this time the proposed approach involves the following new definitions:

Reconstruction: A remodel of an existing habitable structure is considered to be a reconstruction when [75%-80%; or up to 100% for post-disaster projects] of the major structural components as defined by Section 13.10.260(b)(4) are substantially altered within the area of work associated with the building project(s), within a consecutive five-year period. The calculation of extent of work will be done in accordance with administrative procedures established by the Planning Director.

Major Structural Components: The major structural components of a structure are defined to include the foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story structures, roof framing, exterior siding including doors and windows, and roofing material. Decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, kitchen and bathroom fixtures, mechanical, electrical and plumbing are not considered major structural components for the purposes of Chapters 13 and 16.

- A new provision to extend environmental protection, and public safety, by having the threshold for subjecting a project to a discretionary process be significantly lower for structures located within the riparian corridor, or over a property line or right-of-way, than elsewhere. The riparian corridor is defined as from top of bank to top of bank; or from edge of hydrophilic riparian vegetation to edge of hydrophilic riparian vegetation;
- Conforming additions are proposed to not be counted toward the threshold for requiring a discretionary permit, such that if the existing nonconforming structure is not being "reconstructed" it may remain, with any additions needing to conform to current site

development standards;

- The process for rebuilding following a catastrophe has been further simplified, with an emphasis on making property owners who have suffered losses "100% whole," up to and including full reconstruction, as long as rebuilding the nonconforming situation is "substantially in kind" with what existed prior to the loss;
- Revisions to 13.11 to address the loss of the Urban Designer position and to reinforce and strengthen sections of the Design Review Ordinance pertaining to neighborhood compatibility reviews and beachfront development;
- Revisions to the definition of "development" in Chapter 16.10, to establish a more clear threshold for when a Geologic Hazards Assessment may be required, primarily to change from "50% Alteration of Exterior Walls" to "Reconstruction" as to be defined by County Code;
- Elimination of the "local amendment" to the California Building Code that defined "structure" for the purpose of when a soils report is required; recognizing that the current CA Building Code has been updated to supply sufficient authority, guidance and flexibility;
- Further refinements to parking standards, to modernize in accordance with current industry standards, to create more flexibility for changes of commercial uses in existing commercial buildings, and to allow for more feasible compliance with ADA requirements in remodeled parking lots.
- Revisions to the "Level IV" permit process, to eliminate requirement for publication of notice in newspaper and notice upon filing, and instead require notice prior to action on the project as recently established for the Minor Exceptions permit process. This approach reduces confusion to the public of noticing a project that has not had any staff review and may change before it is recommended for action, and eliminates the cost of a newspaper ad in favor of posting on the County website. Neighbors and the public still review notice in sufficient advance of action to provide comments to staff, but not immediately upon submittal of an application (which is not required for any other "level" of permit review).

CLARIFICATION OF NONCONFORMITIES ADDRESSED BY NONCONFORMING ORDINANCE, AND APPLICABILITY OF EXISTING ENVIRONMENTAL REGULATIONS

There are two factors to note about the relationship of the non-conforming code revisions to existing environmental regulations. First, nonconforming structures are legal structures that are not compliant with current zoning district *site development standards*, which are defined in the code primarily as front, side and rear setbacks; height; floor area ratio (FAR) and lot coverage. Site development standards originate in Chapter 13.10, the Zoning Ordinance and are specific to each zoning district. Nonconformity, as it is the subject of these proposals, is not related to whether or not a structure meets a setback established for environmental protection, most of which originate in Chapter 16. For example, an existing structure may not meet current rules for separation from riparian corridors (riparian corridors are defined for the nonconforming section as "top of bank to top of bank or from edge of hydrophilic riparian vegetation to edge of hydrophilic riparian vegetation"). Unless that structure is *also* nonconforming relative to site standards, it will be unaffected by these proposals.

Second, any standard in the code relating to environmental protection will continue to apply in the current manner, unchanged by these proposals. If an existing nonconforming structure encroaches into sensitive habitat, for example, there is nothing in this package that would cause

the sensitive habitat protections to be over-ridden or altered. For example, under current codes, even if a project is "small enough" that it may be processed as a ministerial building permit, if it is located in the riparian corridor and involves ground disturbance, then a requirement for a discretionary riparian exception is triggered pursuant to Chapter 16.30. In order to proceed, that project must obtain approval of a Riparian Exception regardless of what Chapter 13.10 states. The point of discussing this factor is to emphasize that the whole code taken together defines the review process for a given project, and even if a nonconforming structure or use "escapes" discretionary review under the nonconforming ordinance, some other portion of the code such as the riparian ordinance or coastal regulations may require a discretionary permit.

COMMERCIAL REGULATIONS

The proposed revisions to regulations affecting businesses are presented in strikeout/underline format in Exhibit I, and a Comparison Table is presented in Exhibit H. Note that a more comprehensive set of Code revisions will be recommended at a later time (it will likely be between a year and two from now before a draft proposal is developed) as part of a broader modernization of Zoning District Use Charts and Development Standards, as well as Permit Processes. For the present, staff is recommending these relatively straightforward revisions as an interim "regulatory reform" package while work on the broader code update continues. The current proposals will provide many benefits in the short term, particularly in the arena of allowing new commercial tenants in existing commercial structures at less cost in shorter time.

Within changes affecting commercial uses, there is an emphasis on parking requirements because parking often determines whether a new business can be approved in a given commercial space, as the code requires different number of spaces for different types of businesses. The fact that businesses of similar character, each of which is allowed in the zone district but which have different parking requirements, flow in and out of established buildings is not very well accommodated by the current parking standards. Additional flexibility is necessary to accomplish these typical tenant changes, as well as to encourage re-use of existing buildings, which benefits the environment in many ways. The proposed adjustments will make parking standards more accurate and up-to-date by specifying a larger area of commercial space per parking space, consistent with data developed through surveys of actual parking use conducted by the Institute of Transportation Engineers (ITE). Other changes, in many cases modeled after neighboring jurisdictions, adjust or codify current practices and include the additional goal of encouraging shared parking and accessibility upgrades. Exhibit H summarizes the parking revisions under consideration.

DESIGN REVIEW ORDINANCE

"Clean-up" revisions are proposed for Design Review, Chapter 13.11, to accommodate the fact that the Urban Designer position is not currently funded (13.10.323 and 13.10.325), to add beachside homes to Design Review, and to strengthen reviews of neighborhood compatibility. None of these changes will substantively affect how the county reviews plans but they will clarify the County Code. The text of proposed revisions to 13.11 in strikeout/underline format is presented in Exhibit I, and also appears in the Comparison Table V of Exhibit H.

PROPOSAL FOR WHEN SOILS REPORTS AND GEOLOGIC REVIEW MAY BE REQUIRED

When the 2007 California Building Code was adopted, a significant change was the extent to which that code required soils reports, and many applicants believed the requirement was excessive. This led Santa Cruz County to adopt a "local amendment" which took the form of defining a "structure" for the purpose of establishing when a soils report would be required. This local amendment is now proposed for deletion, in recognition that the current 2010 CA Building Code has been updated to supply sufficient authority, guidance and flexibility for the

determination of when a soils report is needed.

Also, consistent with the proposal outlined to the Board of Supervisors in June 2011, staff is proposing to revise the definition of "Development" in the Geologic Hazards code section (16.10), to move away from the use of altered walls and altered foundations, and shift to a "reconstruction" threshold, which would be in effect along with other existing thresholds that would be retained, such as the existing "50% addition" threshold. The proposed revisions to Chapter 16.10 are shown in strikeout/underline format in Exhibit I.

CONCLUSION, RECOMMENDATION, AND NEXT STEPS

The proposed code revisions reflect the realities that many structures and uses in our community are nonconforming to current site standards or zoning district use charts, yet generally contribute positively to the community and environment. They should be allowed to continue and to be maintained and improved as envisioned in the General Plan.

The revisions are also intended to provide greater flexibility for commercial uses to locate within existing commercial buildings, more quickly and at lower cost.

Furthermore, certain other changes are intended to remove certain requirements that add time and expense to processing of development proposals, which are excessive in relation to any benefit that such requirements may be providing.

Today's workshop is an opportunity for additional public information, discussion and comment on the proposals presented this morning. Staff recommends that, following the presentation, your Commission:

1. Provide the public with an opportunity to comment on the proposals and draft ordinances;
 2. Provide input on the proposals to staff, and;
 3. Direct staff to return to the Board of Supervisors with further refinements to the proposals and draft ordinance(s) as recommended by your Commission, for acceptance of the proposed draft ordinance language as the "project description" for the purpose of environmental review, and for authorization to release a CEQA document on the proposed changes.
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As previously noted, Planning staff is scheduled to provide a status report on the proposed revisions to the Board of Supervisors next week on Tuesday, September 20, 2011. We will advise the Board of the discussions and comments heard today.

Sincerely,



Kathleen Molloy Previsich
Planning Director

Exhibits: A: Letter of Planning Director to Board of Supervisors, Board agenda June 28, 2011
 B: List of participants in focus groups

- C: Existing General Plan policies regarding nonconforming uses and structures
- D: Comparison Table of existing nonconforming regulations and proposed revisions.
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KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

June 13, 2011

AGENDA DATE: June 28, 2011

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

**SUBJECT: STATUS REPORT ON CHANGES TO REGULATIONS REGARDING
NONCONFORMING STRUCTURES AND USES, COMMERCIAL
CHANGES OF USE, AND "ALTERED WALLS"**

Members of the Board:

As directed by your Board, planning staff has been working on a number of proposals for ordinance amendments, to identify ways to simply and streamline aspects of local land use regulations while continuing to protect the environment and neighborhood character.

PURPOSE

The purpose of today's letter is to provide your Board with an update and status report on two of the efforts: developing a more streamlined and reality-based approach to regulating nonconforming structures and uses; and updating regulations regarding commercial uses, especially changes of commercial uses in existing buildings. Related to these efforts are proposed changes to "altered wall" provisions that exist in various sections of the code.

While the Board has previously expressed its desire for changes, and has discussed certain possible changes in the past, it is now appropriate that the Board become aware of the more fully developed proposals prior to such proposals being considered by public stakeholders. Upon acceptance of this report, staff will meet with public stakeholders during July 2011 to obtain review and comment on preliminary ordinance amendments, and will then further refine the proposals. Staff plans to return to the Board with proposed draft ordinance language in late August, for acceptance as the "project description" and for authorization to release a CEQA document for the proposed project.

BACKGROUND

You may recall that on December 15, 2009 the Board discussed a staff proposal to initiate a "second phase" of regulatory reform (the first phase related to small-scale residential structures) which was going to focus only on Residential Nonconforming Structures, including provisions for those damaged by fire or other catastrophic events. A "third phase" had also been contemplated, which was going to address Commercial Changes of Use. At that time, updates of provisions for Non-residential Structures and for both Residential and Non-residential Uses had not yet been programmed into a "phase".

Staff provided status reports to your Board on June 15, 2010 and again on October 26, 2010 regarding regulatory reform efforts. Additional initiatives relating to minor exceptions, commercial height exceptions, garages in rear yards, fences, agricultural structure setbacks, vacation rentals and medical marijuana were identified, as well as the idea of expanding the amendments to include non-residential nonconforming structures and nonconforming uses (rather than just residential non-conforming structures) and taking up amendments to various "altered wall" provisions in conjunction with the proposed amendments to the Nonconforming Ordinance. The status reports also indicated that staff was analyzing commercial regulations to identify additional ordinance amendments that would more fully address factors that contribute to unnecessarily confusing, lengthy and costly permit processes for non-residential uses.

Since the fall of 2010 staff has made significant progress towards simplifying and refining the overall approach to this package of amendments, responding in part to feedback received from the business community and homeowners at community forums and focus groups. The business community related its need for a simpler and more predictable process for review of commercial nonconforming structures, and homeowners voiced concerns about being able to remodel existing homes, and to be allowed to rebuild nonconforming residences after a fire or other catastrophic event. Additionally, staff has developed approaches that address difficulties with administration of current regulations, which we hope would further clarify the process for repairing and modernizing nonconforming structures.

Key elements of the package of proposed ordinance amendments are summarized below. A CEQA document will be prepared that addresses this package of proposals.

NONCONFORMING ORDINANCE

As a reminder, nonconforming structures are legal buildings, constructed under earlier zoning development standards or before standards were adopted by the County in 1958, which do not conform to current site development standards of the zoning district that applies to the property, such as those for height, setbacks, lot coverage and floor area ratio. Nonconforming uses are legally established uses, which exist at a location that has a current zoning designation that doesn't allow such use as a principal or conditionally permitted use within that zone district.

A feature of the county's existing Nonconforming Ordinance is that it does not draw much of a distinction between nonconforming uses and nonconforming structures. For example, a use in a building that does not comply with development standards is considered a nonconforming *use*, instead of more appropriately considering the building as a nonconforming *structure*. The county's ordinance is confusing and very restrictive, such that currently many uses simply establish without obtaining permits.

Traditionally, nonconforming uses have been of greater concern for land use regulators, in that incompatible land uses may exist adjacent to each other which could have public health and safety impacts. Also, land uses may exist at locations which impede the transition of an area to develop into a land use pattern consistent with existing zoning, such as some residential homes within a larger area that is appropriate and planned for a

larger-scale commercial redevelopment, which interferes with desired benefits for the public welfare such as jobs and fiscal revenues.

The proposed nonconforming ordinance amendments would establish distinct provisions for nonconforming uses as against nonconforming structures, and update regulations for residential and non-residential uses and structures, for a completely new ordinance. The ordinance amendments would also shift from a "percentage of exterior walls" (altered wall) basis for triggering applicability of certain code requirements, to either a percentage of square footage or a valuation approach, similar to that currently used in the floodplain ordinance. Certain of the changes to the nonconforming ordinance will also assist in accomplishing the objectives of the ordinance amendments for commercial uses. The changes made that relate to nonconforming structures and uses are discussed below.

Nonconforming Structures

Value of Existing Nonconforming Structures

As noted in earlier discussions with your Board, there are many nonconforming structures that have been an integral part of many neighborhoods for many years. In some neighborhoods, nonconforming structures comprise the majority of homes or businesses. As such, it would benefit the character and uniqueness of many neighborhoods to allow nonconforming structures to continue, and to be improved, rather than to become dated and fall into disrepair. Additionally, fostering the continuation of existing nonconforming residences and businesses within nonconforming structures is more "green" and sustainable than having regulations that lead to lack of investment, making improvements without permits (which jeopardizes public safety) and/or encouraging replacement of existing legal structures.

Therefore, staff is proposing to move away from the idea that legal nonconforming structures will deteriorate and "go away" over time, in favor of allowing such structures to continue and to be improved. We believe this approach recognizes the fact that nonconforming structures hold value over time and that it is practical and realistic to plan for the maintenance and upgrading of these structures to current design and building standards. This approach recognizes the reality that for most property owners, it is difficult to be able to purchase a property in the first place, and most owners are not in a position to be able to continue paying a mortgage on the purchased improvements and then also pay for demolition and construction of new a new building.

Simplified Categories

Regulations for nonconforming structures would be greatly simplified. The current distinction between "significantly nonconforming" and "regular nonconforming" would be eliminated. Under the new approach there would be one set of regulations for nonconforming structures, with provisions to ensure that alterations to that subset of nonconforming structures that are more likely to impact public health and safety or neighboring properties (such as structures that are over a property line or within 5 feet of a traveled way or right of way) will be more closely regulated than in other cases by allowing a lesser percentage of improvement prior to a need to obtain a variance to allow the factor.

Measuring the Size of Repair and Modification Projects

For nonconforming structures, the method for evaluating the amount of work allowed on a nonconforming structure would change from measuring the percentage of exterior nonconforming wall(s) that are proposed to be altered, to a more straightforward method based on the value of the proposed project as a percentage of market value of the existing structure, as is currently the case with floodplain regulations. The "altered wall" approach has been difficult to implement in a fair and consistent manner for a number of reasons. There can be lack of awareness or agreement about what constitutes "alteration", especially out in the field during construction. The measure of "altered walls" does not address the common situation where unforeseen deteriorated conditions are uncovered after construction is underway and larger portions of the structure than originally anticipated must be altered, such as replacement of an additional stud in a wall. This can land a property owner in the position of having to obtain a variance or other discretionary approval midway through construction of a permitted project. The valuation calculation can more easily be determined in advance of building permit issuance, by using building valuation tables, appraisals, and/or constructor's bids for the proposed work. Staff believes that a revised approach that measures the size of a project by its value as a percentage of the total market value of the structure will avoid some of the difficulties and frustrations caused by attempts to measure altered walls.

Increasing Thresholds for Repairs, Remodels and Additions

Currently, the limits on work that can be done to nonconforming structures and the complexity of the permit process are strong disincentives to upgrading existing homes and structures. Some applicants, however, try to use the existing "loophole" that allows nearly the entirety of a nonconforming structure to be reconstructed, as long as no more than 50% of the wall(s) or element that happens to be nonconforming is altered. This approach usually ends up with pressure to replace the entire nonconforming wall, such that the entire nonconforming structure is rebuilt, without having the variance process occur to consider whether or not there are special circumstances that justify allowing the nonconformity to continue.

Under the proposed approach, alterations, remodels and additions to nonconforming structures would be allowed with a building permit, as long as the value of such work did not exceed 90% of the market value of the structure. For structures over a property line or within 5 feet of a traveled way or right of way, alterations, remodels and additions could not exceed 50% of the market value of the structure. Projects that exceed the threshold would require a variance.

To facilitate the repair or reconstruction of nonconforming residences damaged in a catastrophic event such as a fire, work exceeding the 90% threshold, (or the 50% threshold for structures over a property line or within 5 feet of a right of way) would be allowed with discretionary review and CEQA review, including noticing of neighbors. This approach is much like the "Reconstruction Permit" mechanism currently in place at the City of Santa Cruz.

EXHIBIT A

Non-residential Nonconforming Structures

While staff recognizes that some commercial and industrial nonconforming structures have the potential to impact neighboring properties, usually it is the nature of the use rather than the building itself that creates those impacts. In order to encourage the retention, investment in, upkeep of and good health of existing businesses, staff proposes to treat non-residential structures the same as residential structures. This would allow increased thresholds for repair, remodel and addition, with more applications being processed at lower "levels" of review. Proposed projects that exceed the thresholds would be addressed through the variance process, to consider whether or not there are special circumstances that justify allowing the nonconformity to continue.

Nonconforming Uses

The proposed reforms are intended to simplify and clarify existing regulations for nonconforming uses, and provide a more unified approach for residential and commercial nonconforming uses. In particular, staff is proposing changes to facilitate the maintenance of existing commercial buildings, the continuation of existing businesses, and the development of appropriate new business.

Scope of Proposed Changes

In many communities, nonconforming uses are defined as uses which do not conform to the uses allowed by the zone district, or uses that exceed density limits. Under our local existing regulations, a use that does not have the permit currently required is considered nonconforming, even if the use is allowed under current zoning. For example, a use that currently requires a development permit but that was legally established in the 1950's before a development permit was required by the County would be considered a nonconforming use under current regulations, even if the use is allowed under current zoning. Staff is proposing to modify the definition for nonconforming uses to a more standard definition, so that a use that was legally established and is allowed under current zoning would be considered a conforming use.

Current regulations differentiate between "regular" nonconforming uses and "significantly" nonconforming uses, which is an approach rarely seen in other zoning codes. To simplify our current approach, similar to the proposal for nonconforming structures, staff is proposing to delete the terms "regular" and "significantly" and simply provide one set of regulations for all nonconforming uses. Any impacts from uses that are currently considered significantly nonconforming would be addressed through establishing different discretionary permitting processes and/or requiring additional findings and conditions for items that would be considered significant. It should be noted that the County does have the ability to deny applications for a discretionary permit, as warranted due to inability to make required findings.

Under current regulations, nonresidential nonconforming uses are treated much more restrictively than residential uses. For nonresidential nonconforming uses, only nonstructural maintenance and repair is allowed. Upgrades to the building accommodating a commercial nonconforming use, or expansion of or changes to the

existing use, are not allowed. Such an approach discourages proper maintenance of buildings and investment in our community, decreases flexibility for building owners to accommodate different tenants, and constrains development of new businesses. At community forums, the business community noted in particular a need for flexibility in allowing different types of tenants in a building, and for a faster review process for new commercial uses or for building upgrades. Under the proposed approach, commercial and other nonresidential nonconforming uses would be treated similarly to residential uses, simplifying the overall approach and providing greater certainty and flexibility for commercial uses.

Details of the proposed approach are discussed below.

Changes to the Building accommodating a nonconforming use

The proposal would allow for more improvements to a building accommodating a nonconforming use, particularly for nonresidential uses. Maintenance and structural repairs up to 25% of the value of the structure would be allowed with a building permit only. More extensive upgrades to the building, up to 75% of the value of the structure, and limited expansions of the building, would be allowed with discretionary review. Voluntary reconstruction of the building exceeding 75% of the value of the building which houses a nonconforming use would require a rezoning and/ or General Plan Amendment in order to be allowed. Reconstruction of a building accommodating a nonconforming use after a catastrophic event would be considered in situations where transition to a conforming use is not feasible. Approval of post-catastrophe reconstructions would require a public hearing and would include conditions to address impacts to neighboring properties.

Flexibility for the use

The proposal would also allow more flexibility for the nonconforming use itself, particularly as it relates to nonresidential uses. The proposed modifications would allow for expansion of existing nonconforming uses throughout an existing building, subject to discretionary review. Additionally, change to another type of nonconforming use could be considered with discretionary review when a conforming use is not feasible due to the nature of existing development on the site, as long as there is no intensification of that use. If there is intensification proposed, then a higher level of discretionary review, findings and conditions would be required; and some proposed intensifications would not be allowed.

Conditions and findings to address impacts

Alterations to a building accommodating a nonconforming use beyond maintenance and repairs, expansion of the existing use within an existing structure, or change to another nonconforming use, would require discretionary review to ensure that the continuation or expansion of the use would not impact neighboring parcels. Conditions of Approval would be added as needed to ensure the continuation of the nonconforming use would not impact neighboring parcels. For example, hours of operation for a restaurant or a repair shop that is a nonconforming use could be limited to minimize impacts to residential parcels. In cases where an existing use is incompatible with surrounding land uses, a

determination may be made to limit or deny expansion, and to limit activities to those that do conform to allowed uses in the zone district.

Maintaining Environmental Protections

While the proposed changes would provide a more streamlined process for existing legal nonconforming structures or uses that do not conform to either current site standards or to uses allowed under the zone district, the proposed changes would not affect existing local regulations protecting the environment. Therefore, the proposed changes are not anticipated to result in environmental impacts or to weaken existing environmental protections. For example, existing regulations in Chapter 16.30 of the County Code state that development activities within riparian corridors or riparian buffer zones are not allowed unless otherwise exempted, or unless an exception is obtained subject to the required findings. Existing regulations protecting riparian corridors would continue to apply and would not be affected by the proposed reforms. Staff plans to meet with environmental groups to discuss the proposed changes and solicit input prior to developing the final version of the proposed ordinance amendments.

COMMERCIAL REGULATIONS

A package of amendments has been identified that will more fully address obstacles to commercial uses being able to establish in existing non-residential buildings, involving changes to parking standards and other code changes in addition to modifying provisions that relate to "commercial changes of use".

Modifications to Parking Standards

Parking regulations have a strong effect on the use of commercial property. As staff researched the commercial regulations it became clear that in order to increase the flexibility for existing commercial structures to be able to house varying types of businesses, and to incorporate concepts of sustainable development into designs for parking lots, parking standards should be modified. Staff is proposing to decrease the required number of parking spaces for office (not including medical offices) and retail uses from the current 1 space per 200 square feet to 1 space per 250 square feet, a ratio that is in the middle range among the jurisdictions surveyed.

Staff is also proposing modifications that will facilitate alternative parking plans where there is shared use, proximity to transit, or grouping of uses that foster multi-use trips, which will provide greater flexibility for re-using existing buildings, decrease land area required to be dedicated to parking, and will allow more space for low impact treatment of pavement runoff as well as other green site management practices.

Lastly, to encourage the vitality of existing commercial buildings, staff proposes that new business supply the additional required spaces only when the size of a structure is proposed to be increased by more than 20%, or the business is changed to a more parking intensive use that calls for at least four additional spaces. Currently the threshold to require conforming parking is 10% of the requirement, and the full current standard,

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rather than just the incremental number of additional spaces needed for the proposed change, is required.

Additional Modifications

In order to ease the movement of tenants and businesses in and out of established commercial structures, staff is proposing that the Level 1 change of use process be extended to apply to changes of businesses in an existing building in any area that has a Specific Plan or Village Plan. As a reminder, the Level 1 permit process allows a simplified "zoning plan check" process to substitute for a complete review of the zoning and permit history of a property, basically looking only at whether the proposed use is allowed in the zoning district, and the requirements of other permitting agencies such as Building, Fire, Sanitation, or Environmental Health. The Level 1 Change of Use can be processed in as little as a few days, depending on the applicant's ability to obtain sign-offs from the other permitting agencies. The regulations currently allow Level 1 changes only for properties with existing Master Occupancy Plans and any commercial property within a special plan area in the San Lorenzo Valley.

In addition, staff believes it will be beneficial to raise the size threshold for when a commercial use permit is heard by the Zoning Administrator from the current 2000 square feet to 5000 square feet. Commercial uses of less than 5,000 feet could locate in a building without a full public hearing. It is important to emphasize that "new development" still requires a discretionary permit and that site development standards still apply, even if a use of more than 2,000 square feet is proposed to occupy a building.

It should be noted that, beyond the commercial code modifications described above, staff continues (as time permits) to work on a more comprehensive review and revision of the Code, involving updating the use charts and certain site development standards of zoning districts, and revising Chapter 18.10 to simplify the existing "level 1 through 7" approach. That effort will include possible proposals such as creating principal permitted uses in various zoning districts, standardizing permit processes to include more public notice and expanded appeal rights, lowering "levels" of process for certain permit types, and amendments to the sign regulations that would allow business owners to proceed directly to the building permit stage (rather than undergo planning/zoning review) to a greater extent than is currently allowed. In the context of desire for job creation and investment in our community, and being more "open for business", these types of code changes would facilitate new and expanding commercial uses that comply with zoning land use provisions and applicable requirements, in a more streamlined manner. Staff will keep the Board updated as this effort continues, but it is a more expansive effort that will likely take more than a year to develop. At this time, staff is proposing the package of "commercial" code amendments as an interim package of changes that will allow for increased flexibility for commercial buildings, and offer more streamlined and less costly permit processes.

CODE CHANGES RELATED TO "ALTERED WALL" PROVISIONS

As indicated earlier in this report, there are many places in the Code that use the "percent of alteration of exterior walls" to define the threshold for when certain code requirements apply. For the same reason as explained above, staff is proposing to change the "altered

EXHIBIT A

wall" approach to use a "valuation" and/or a "percent addition" approach. The current Floodplain Regulations within the Geologic Hazards ordinance uses this approach, but the Geologic provisions use the altered wall approach, creating confusion and unnecessarily restrictive approaches to regulations. The sections of the code that will be proposed for modification in this regard include:

Geologic Hazards
Definition for "Structural Alteration"

Nonconforming Structures and Uses
Determining when a soils report is required

SUMMARY AND RECOMMENDATION

The effort to simplify and clarify regulations relating to existing legal nonconforming uses and structures, to commercial development, and to projects that currently involve "altered wall" components is well underway. Staff believes that the concepts described above will addresses the needs of your Board and the community for regulations that are clear and straightforward, allow rebuilding of nonconforming structures after a catastrophic event, and foster the development of new and existing businesses; while continuing to protect the environment, the quality of neighborhoods, and the public health, safety and welfare.

After receiving any input and direction from your Board, and upon acceptance of this report, staff will meet with public stakeholders during July 2011 to obtain review and comment on preliminary ordinance amendments, and will then further refine the proposals. Staff would then plan to return to the Board with proposed draft ordinance language in late August, for acceptance as the "project description" and for authorization to release a CEQA document for the proposed project.

It is, therefore, RECOMMENDED that your Board take the following actions:

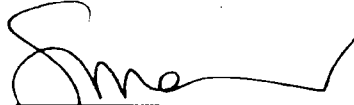
1. Provide input and direction to staff, and accept and file this report; and
2. Direct Planning staff to convene with business, homeowner and environmental groups for discussion and feedback regarding these proposals; and
3. Direct Planning staff to return with proposed ordinance amendments for the Board's further consideration on or about August 23, 2011; for acceptance of proposed draft ordinance language as the "project description" and for authorization to release a CEQA document for the proposed project.

Sincerely,



Kathleen Molloy Previsich
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
COUNTY ADMINISTRATIVE OFFICER



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

FOCUS GROUP ATTENDEES

Architects, Designers and Land-Use Consultants (8/2/11 meeting):

Name
Marty Fiorovich, architect
Dee Murray, land use consultant
Betty Cost, land use consultant
Ron Powers, land use consultant
Frank May, appraiser
Deidre Hamilton, land use consultant
Cove Britton, architect
Laurie Swett, designer
Hugh Carter, architect
Jessie Nickell, Barry Swenson Builder

Environmental and Sustainable Land Use (8/4/11 meeting)

Bill Parkin, attorney
Bill Davilla, Ecosystems West (County Consultant)
Mark Primack, architect
Matthew Thompson, architect
Betsy Herbert (Commission on the Environment)
Joe Christie (Rural Bonny Doon Association)
Virginia Johnson, Ecology Action
Kevin Collins, Sierra Club (8/17 meeting)
Mike Guth, Sierra Club (8/17 meeting)

Neighborhood Groups (8/3/11 meeting):

Sheri Sobin (Davenport/ North Coast Assoc.)
Ken Fein (Davenport/ North Coast Assoc.)
Shirley Allen (Pleasure Point Business Assoc.)
Betty Danner (Santa Cruz County Association of Realtors)
Keith Adams (Coastal Property Owners Assoc.)
David Dobson (County Economic Development)
Linda Wilshusen (Live Oak Neighbors)
Eric Hammer (San Lorenzo Valley)
Doug Silveira

Business and Commercial Development (8/4/11 meeting)

Doug Kaplan, Lomak Property Group
Mary Anderson, SLV Chamber of Commerce
Bryan Chambers, SLV Chamber
Doug Fischer, SC County Bank

Geologic Hazards Ordinance Group (8/3/11 meeting):

Erik Zinn (Zinn Geology)
Brian Bauldry (Bauldry Engineering)
Jim Olson (Bayside Geology)

EXHIBIT B

GENERAL PLAN POLICIES RELATING TO NONCONFORMING STRUCTURES AND USES

A) Policies and programs related to nonconforming structures:

1) Policy 8.4.2 Retaining Existing Housing

Encourage the maintenance and repair of existing nonconforming single and multi-family residential structures on residentially designated land and allow reconstruction where appropriate when not found to be detrimental to the health, safety or welfare or the surrounding neighborhood. Limit expansion, structural alteration, or reconstruction of existing significantly nonconforming residential structures (revised in 1998).

2) Importance and purpose of residential site standards:

Policy 8.1.3 Residential Site and Development Standards Ordinance:

Maintain a Residential Site and Development Standards Ordinance for the purpose of protecting light, solar opportunities, air and open space for public and private properties; and require all residential projects to comply with the standards for maximum structural height, maximum number of stories, minimum structural setbacks, maximum ratio of building floor area-to-parcel size, and other criteria.

3) Objective 2.23 – Conservation of Coastal Land Resources

Policy 2.23.1 Restrict conversion or demolition of existing residential units occupied by persons or families of lower or moderate income, unless provision has been made for replacement of those units. (Note: Supports preserving or continuing nonconforming structures, esp. apartments, etc., since new replacement conforming structures are likely to be more expensive housing.)

Policies in Housing Element:

4) Program 4.3 Develop methods to streamline and simplify the land use regulations as they apply to nonconforming residential structures.

5) Goal 4: Preserve and Improve existing housing units and expand affordability within the existing housing stock

B) Policies related to nonconforming commercial uses and signs:

1) Objective 2.18 Nonconforming commercial or light industrial development

Phase out existing commercial or industrial land uses that are inconsistent with General Plan designation

2) 2.18.2 Allows for normal maintenance and repair of buildings containing nonconforming commercial or light industrial uses, without requiring discretionary review. Allows expansion of nonconforming use within building with a use permit.

3) Signs: 2.18.4 Require that all signage be brought into conformance with current County Sign ordinance standards as a condition of any discretionary development permit.

Programs

a. Work with business and property owners of legal nonconforming commercial or light industrial uses within the County RDA to assist in the relocation or conversion of those uses to uses conforming to the standards on the zoning district in which they are located.

EXHIBIT C

b. Actively abate nonconforming uses that are creating a nuisance or have a negative impact on the health, safety, or welfare of area residents.

B) General Plan policies related to nonconforming uses

GP Policy 2.18.1 Continuation of Non-conforming Commercial or Light Industrial Uses

Allow the continuation of existing commercial or light industrial uses* that do not conform to the activities allowed by the General Plan and LCP Land use designation of the property, provided the following criteria are satisfied:

- (a) The existing business is completely contained within a structure originally built for commercial or light industrial purposes, or a structure which has legally converted to commercial or light industrial use; and
- (b) The property on which the business is located has a continuous history of commercial or light industrial use [see Glossary definition of continuous History]; and
- (c) The use is compatible with adjacent land uses, such that the hours of operation of the business, the noise levels, the aesthetic impacts, the environmental impacts, and traffic to the site do not significantly effect adjacent land uses; and
- (d) The use is not creating a nuisance or adversely affecting the health, safety, or welfare of area residents.

*Note: this section does not apply to Home Occupations

GP Policy 2.18.2:

Allow commercial or light industrial uses meeting the criteria listed in Policy 2.18.1 to continue the present use and allow normal maintenance and repair of the structure in which they are located, according to the provisions in the building code. No additional discretionary review shall be required for normal maintenance and repair. Allow expansion of the nonconforming use within existing buildings with an approved use permit.

2.18.3 Phase out of Nonconforming Commercial Uses

Phase out all commercial or light industrial uses that do not conform to the type of activity allowed by the General Plan and LCP Land Use designation of the property and do not meet the criteria of policy 2.18.1. Identify these uses for relocation to appropriately designated areas, and do not allow reconstruction, expansion or change of use, except to a conforming use, on these properties.

Glossary:

Continuous History of Commercial or Light Industrial Use

The utilization of a building or site for commercial purposes for a period of three or more of the previous five years in legal conformance with the provisions of the County Zoning Ordinance.

EXHIBIT C

COMPARISON TABLES OF EXISTING AND PROPOSED FEATURES OF NONCONFORMING USES AND STRUCTURES REGULATIONS

Table 1. Definitions

EXISTING REGULATIONS	PROPOSED REGULATIONS
<p>A significantly nonconforming structure is defined as any structure that is:</p> <ol style="list-style-type: none"> 1. Located within 5 feet of a vehicular right-of-way; 2. Located across a property line; 3. Located within 5 feet of another structure on a separate parcel; 4. Located within 5 feet of a planned future public right-of-way improvement (i.e. adopted plan line); or, 5. Exceeds allowable height limit by more than 5 ft. <p><i>Measuring to structures on other properties is not desired, as actions of other property owners place adjacent properties in a different regulatory status.</i></p> <p><i>Some ROWs such as Highway 9 are not likely to ever be improved to the full extent of the ROW.</i></p>	<p>The term, “significantly nonconforming structure” is deleted. Instead, a different lower threshold for triggering a permit requirement is established for the following*:</p> <p>Remodels affecting more than 50% of the major structural components of nonconforming structures located as follows require an Administrative Site Development Permit, with opportunity for appeals (<i>usual threshold will be 75%-80%</i>):</p> <ol style="list-style-type: none"> 1. Located across a property line, 2. Within a riparian corridor as defined, 3. Within 5 feet of a vehicular right-of-way, or 4. Within 5 feet of a planned future public right-of-way improvement (i.e. an adopted plan line) <p>* unless waived by Planning Director based on nature and circumstances of existing or likely status of the condition</p>
<p>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 General Plan and:</p> <ol style="list-style-type: none"> 1. Has not lost its nonconforming status due to cessation of use, as outlined in Sections <u>13.10.260</u>, <u>13.10.261</u> or <u>13.10.262</u>; and 	<p>Changes are proposed to the definition of Nonconforming use (<i>one objective of code amendment is to clearly distinguish between a nonconforming <u>structure</u> and nonconforming <u>use</u></i>):</p> <p>A use that does not conform to the applicable General Plan designation is simply nonconforming (not “significantly nonconforming”).</p>
<ol style="list-style-type: none"> 2. No longer conforms to the present use, density, or development standards of the zone district in which it is located; or 3. Does not have a valid Development Permit as required by the present terms of this chapter. (See also Section 13.10.700-S definition of Significantly Nonconforming Use) (Ord. 4525, 12/8/98) 	<p>Cessation of use will be revised to be consistent with the General Plan: 3 of the past 5 years.</p> <p>A nonconforming structure is no longer considered a nonconforming use.</p> <p>A use is no longer considered nonconforming if it conforms to the County Code and General Plan but simply lacks a Development Permit.</p>
<p>Significantly nonconforming use. The legally established use of a structure or land that does not conform to the present General Plan land use designation.</p>	<p>The term, “significantly nonconforming use,” is deleted. Instead, certain types of changes to nonconforming uses are subject to an administrative or conditional use permit requirement, and findings for approval address when a nonconforming use should be conditioned or denied.</p>

Reconstruction: A structural alteration or repair that involves greater than 50% of the exterior walls being altered within any five-year period shall be brought into conformance with all site and structural standards. Under existing regulations, projects which exceed this 50% standard must obtain a variance in order to proceed.

Reconstruction is defined as a remodel of an existing habitable structure that involves substantial alteration of more than [75%-80% - or up to 100% for post-disaster projects] of the major structural components in the area of work of the project(s) within a consecutive five-year period. A new definition for **Major Building Components** is added.

Table 2. Regulations for Nonconforming Structures

<u>EXISTING REGULATIONS</u>	<u>PROPOSED REGULATIONS</u>
<p>Regulations for significantly nonconforming structures are as follows:</p> <ul style="list-style-type: none"> - Only repair and limited minor changes are allowed to commercial structures - Non-structural alterations are allowed with a building permit. - Structural alterations to conforming portion requires discretionary approval with a public hearing - Structural alterations to the nonconforming portion requires a variance 	<p>Remodels for existing nonconforming structures affected by special conditions: If a proposed remodel affects more than 50% of the major structural components of a structure located across a property line, within a riparian corridor, within five feet of a vehicular right-of-way, or within five feet of a planned future public right-of-way improvement (i.e. an adopted plan line), an Administrative Site Development Permit with public notice and opportunity for appeals will be required*.</p> <p>* unless waived by Planning Director or designee based on nature and circumstances of existing or likely status of the condition</p> <p>Conforming additions will be allowed with a building permit.</p>
<p>Allowed work to regular nonconforming structures:</p> <ul style="list-style-type: none"> - Remodels altering less than 50% of exterior walls of the nonconforming portion of the structure are allowed with a building permit. Altering more than 50% of the nonconforming portion of the exterior walls requires a variance. - Residential additions up to 800 square feet in area are allowed by building permit; greater than 800 square feet requires an administrative permit with public notice and appeals. - Reconstruction: If reconstructed, the structure must be brought into conformance with all current site and structural standards. 	<p>Allowed work to nonconforming structures that do <u>not</u> cross a property line, encroach into a riparian corridor or stand within 5 feet of a right-of-way or planned right-of-way improvement:</p> <ul style="list-style-type: none"> - Remodels that are "under" and do not meet the definition of "reconstruction" (of major structural components) are allowed with a building permit. - Residential additions of any size would require only a building permit as long as the addition conforms to current site and structural standards. - Reconstruction: If a remodel is of an extent that qualifies as a "reconstruction", then an Administrative Use Permit would be required in order for the project to proceed, with the possibility of conditions of approval or denial of project.
<p>Nonconforming structures affected by catastrophic event.</p> <p>The same regulations for repair or reconstruction after a catastrophic event apply both to regular and</p>	<p>Nonconforming structures affected by catastrophic event.</p> <p>Repairs, reconstruction or replacement of up to 100% of the structure is allowed upon issuance of a</p>

<p>significantly nonconforming structures:</p> <p>Altering, moving or replacing less than 75% of the exterior walls of the structure allowed with a building permit. Altering, moving or replacing more than 75% of the exterior walls of the structure requires approval of a variance in order to make the improvement or reconstruct the structure.</p>	<p>building permit if the work does not increase the nonconforming dimensions of the structure and is located in substantially the same location as the current/prior structure. New locations on the site may be accepted without the need for a discretionary site development permit if that location results in greater conformance with code requirements, in which case only a building permit is required. HOWEVER, unless waived, structures affected by the special conditions noted above (property line, riparian corridor, right-of-ways) are limited to 75% of the structure unless a discretionary site development approval is granted.</p>
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Table 3. Regulations for Nonconforming Uses

<u>EXISTING REGULATIONS</u>	<u>PROPOSED REGULATIONS</u>
<p>Commercial and other nonresidential uses:</p> <ul style="list-style-type: none"> - Only non-structural maintenance and repairs are allowed to any structure housing any nonresidential, legal nonconforming use. Structural alterations of any kind are prohibited. - No physical expansion is allowed to a structure containing a nonresidential, nonconforming use. - A Level 5 discretionary permit is required to expand any nonresidential, nonconforming use throughout the building. - A Level 5 discretionary permit is required to replace any nonresidential, nonconforming use with a new use involving no intensification. - Replacement of an existing nonresidential, nonconforming use with a new use involving intensification is not allowed. 	<p>Commercial and other nonresidential uses:</p> <ul style="list-style-type: none"> - Structural alterations, maintenance and repairs are allowed upon issuance of a building permit for a structure containing a nonresidential, nonconforming use, as long as the modifications do not exceed 75% substantial alteration of major structural components (i.e. do not meet the definition of "reconstruction"). - Any proposed project exceeding the over-75% limitation is required to obtain an Administrative Use Permit, which provides opportunity for imposing conditions of approval. Mandatory findings for approval protect health and safety, neighborhood concerns and light and air. - Physical expansion is allowed once every five years with a Conditional Use Permit (Level 5). - An Administrative Use Permit is required to expand any nonresidential, nonconforming use throughout the building. - An Administrative Use Permit is required to replace a nonconforming use with another nonconforming use with no intensification. With intensification, a Conditional Use Permit is required.
<p>Nonconforming residential uses</p> <p>Examples of residential nonconforming uses include many two-unit dwelling groups: Any legal, pre-existing second dwelling on a single-family parcel is considered nonconforming unless it is a permitted second unit or part of a permitted dwelling group. Any dwelling group or multifamily development that exceeds current density standards is legal</p>	<p>Nonconforming residential uses</p> <p>Same definitions and restrictions as for nonresidential uses above:</p> <ul style="list-style-type: none"> - Structural alterations, maintenance and repairs are allowed upon issuance of a building permit for a structure containing a nonresidential, nonconforming use, as long as the modifications do not exceed 75%

<p>nonconforming, as is any conforming multi-dwelling complex that does not have a use permit.</p> <p>The current County Code establishes detailed, variable requirements for each of these residential nonconforming uses. Following are some of the main points:</p> <ul style="list-style-type: none"> - Ordinary maintenance and repairs are allowed with a building permit for most nonconforming residential uses. - Structural alteration is limited to 50% of the exterior wall length every five years, for most. - No physical expansion is allowed to almost any legal nonconforming residential structure. - Reconstruction of nonconforming, multifamily attached units, without intensification, may be allowed with a Level 5 or 6 approval, if site standards are met and adequate parking is provided. 	<p>substantial alteration of major structural components (i.e. do not meet the definition of “reconstruction”).</p> <ul style="list-style-type: none"> - Any proposed project exceeding the over-75% limitation is required to obtain an Administrative Use Permit, which provides opportunity for imposing conditions of approval. Mandatory findings for approval protect health and safety, neighborhood concerns and light and air. - Physical expansion is allowed once every five years with a Conditional Use Permit (Level 5). - An Administrative Use Permit is required to expand any nonresidential, nonconforming use throughout the building. - An Administrative Use Permit is required to replace a nonconforming use with another nonconforming use with no intensification. With intensification, a Conditional Use Permit is required.
<p>Reconstruction after disaster</p> <p>Most nonconforming residential uses may be reconstructed up to 75% (of the length of exterior walls) after a disaster. Greater than 75% reconstruction of uses that have use permits requires only a building permit; for other uses a public hearing is required; some are limited to 500 sq. ft.</p>	<p>Reconstruction after disaster</p> <p>Reconstruction of a structure accommodating a nonconforming use after a catastrophic event requires only a building permit if less than 75% of the overall structure. If exceeding the 75% threshold, an Administrative Use Permit is required.</p>
<p>Significantly nonconforming residential uses.</p> <p>A significantly nonconforming residential use is one that has a Commercial or Industrial General Plan designation and only a residential use on the site. Such a use may not be physically expanded, structurally altered (except for imminent threat) or reconstructed. It may be reconstructed after a disaster with a Level V approval, as long as less than 75% destroyed. If more than 75% destroyed, it may not be reconstructed.</p>	<p>The term, “significantly nonconforming use,” is deleted, along with all regulations specific to such uses. Single family dwellings that have a Commercial or Industrial General Plan designation and only a residential use on the site are treated the same as all other nonconforming uses.</p> <p>The proposed revisions recognize the fact that the existing County Code has not forced many significantly nonconforming uses out of existence, and that structural maintenance and improvement of such structures helps to maintain neighborhoods and housing stock. However, if such a use is proposed for “reconstruction”, a use permit is required which may be subject to conditions of approval, or denied.</p>
<p align="center">Table 4. Loss of Nonconforming Status</p>	
<p align="center"><u>EXISTING REGULATIONS</u></p>	<p align="center"><u>PROPOSED REGULATIONS</u></p>
<p>Nonresidential nonconforming use. Under the current County Code, a nonresidential</p>	<p>All nonconforming uses maintain their</p>

nonconforming use loses its nonconforming status after 6 continuous months. However, under the existing General Plan, a Commercial or Light Industrial use maintains its nonconforming status if used for three or more of the previous five years. In areas of conflict, the General Plan guideline is enforced. The Code is proposed for amendment in order to achieve consistency with the General Plan.	nonconforming status if used for three or more of the previous five years, in accordance with the existing General Plan definition.
Residential nonconforming use. Most residential nonconforming uses lose nonconforming status after 12 continuous months. In case of disaster, a residential nonconforming use loses its nonconforming status unless a building permit is obtained within two years.	In case of disaster, a nonconforming use loses its nonconforming status unless a building permit is obtained within three years. Issuance of a building permit then triggers additional timeframes for performance to implement construction of the post-disaster project.
Table 5. Historic Structures; Accessibility Improvements; Code Compliance	
<u>EXISTING REGULATIONS</u>	<u>PROPOSED REGULATIONS</u>
No significant changes are proposed to provisions pertaining to nonconforming structures: Work performed to comply with federal standard for rehabilitation of historic properties is not counted toward limitations on nonconforming structures. NEW PROVISIONS extend that same treatment to work performed to comply with accessibility standards, or to work performed to correct substandard or dangerous building elements pursuant to a notice or requirement of the County Building Official.	

EXHIBIT !!

Proposed Nonconforming Ordinance (DRAFT)

13.10.260 Nonconforming uses and structures – general provisions

(a) Purpose:

To establish regulations for nonconforming structures and uses that recognize the prevalence of legally established nonconforming uses and structures, the neighborhood benefit of well-maintained buildings, and the need to preserve and improve existing housing stock and commercial space. To allow legal nonconforming uses and structures to continue to exist, and to be improved, within appropriate parameters that address potential impacts to public health, safety and welfare. To establish a threshold for when existing nonconforming uses and structures are subject to a discretionary permit requirement in order to make changes, and to possibly be required to cease or come into greater conformity or full conformity with current zoning regulations. To establish provisions whereby nonconforming uses that are determined to be detrimental to public health, safety or welfare may be terminated by the Board of Supervisors.

(b) Definitions. In addition to and/or congruent with 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. **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, but which does not conform to the present use or density standards of the current zoning district in which the use is located. A legally established use shall not be deemed nonconforming due to the lack of a use permit. A nonconforming structure is not a nonconforming use.

2. **Nonconforming Structure:** A structure which was lawfully erected prior to the adoption, revision or amendment of this Chapter but which does not conform with current zoning district development standards of lot coverage, yard setbacks, height of structures, distance between structures or floor area ratio as prescribed in the regulations for the district in which the structure is located. Failure of an existing structure to conform to current environmental standards established in other sections of the County Code does not render a structure nonconforming.

3. **Reconstruction:** A remodel of an existing habitable structure as defined by Chapter 16.10 is considered to be a reconstruction when *[75%-80%; or 100% for a post-disaster project]* of the existing major structural components as defined by Section 13.10.260(b)(4) are substantially altered within the area of work associated with the building project(s), within a consecutive five year period. The calculation of extent of work will be done in accordance with administrative procedures established by the Planning Director.

4. **Major Structural Components:** The major structural components of a structure are defined to include the foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story structures, roof framing, exterior siding including doors and windows, and roofing material. Decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, kitchen and bathroom fixtures, mechanical, electrical and plumbing are not considered major structural components for the purposes of Chapters 13 and 16.

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

6. **Intensification of Use, Non-Residential:** Any change or expansion of a non-residential use which will result in a requirement to provide additional parking spaces or which is determined by the

Planning Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation shall be an "intensification of use" for the purposes of this Chapter.

(c) General Requirements.

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

2. Compliance with Other Provisions of the County Code. Work performed on a nonconforming structure or a structure accommodating a nonconforming use shall be pursuant to a building permit as required by Chapter 12.10, and shall meet the requirements of these Nonconforming Structures and Uses Regulations unless a waiver or exception is granted as provided in these Regulations. Any proposed expansion of a nonconformity shall only occur upon approval and issuance of permits that are required under the County Code, which may include but not be limited to a Minor Exception, Variance or Use Permit.

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

4. Pre-existing 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 the parcel was legally created and the parcel has not been combined or merged pursuant to Sections 14.01.110 and 14.01.111.

5. 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.

6. Exception for compliance with accessibility requirements. Work performed to comply with the American with Disabilities Act or with Chapter 11 of the State Building Code shall be allowed, and shall not count towards overall limits on remodels or major structural alterations for the purpose of this chapter.

7. Exception for historic properties, or for corrective work on substandard or dangerous building elements. Work performed to comply with federal standards for rehabilitation of historic properties, or to comply with a notice or requirement of the County Building Official to correct substandard or dangerous building elements, shall not count towards overall limits on remodels or major structural alterations for the purpose of this chapter.

8. Other regulations pertaining to nonconformity.

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

- i. Nonconforming signs. See Section 13.10.588 .
- ii. Nonconforming Greenhouses. See Section 13.10.636(c).
- iii. Nonconforming Farm Worker Housing. See Section 13.10.631.
- iv. Nonconforming Recycling Collection Facilities. See Section 13.10.658(b).
- v. "M-1" Zone District Uses Not in Compliance with Section 13.10.345(a). Uses in the "M-1" Light Industrial zone district which are not in compliance with the provisions of Section 13.10.345(a)(1-6) are considered nonconforming uses subject to Sections 13.10.345(a)(7)

and 13.10.345(a)(8).

- vi. Lands designated with a "P" Combining District. Modification or expansion of uses on lands designated with a "P" Agricultural Preservation Combining District shall be processed as set forth in Section 13.10.473.
- vii. Expansion of Organized Camps with Nonconforming Densities. See Section 13.10.353(b)3.

13.10.261 Nonconforming Uses

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

(b) General requirements.

1. Continuation and Maintenance of Nonconforming Use Rights. The lawful use of land existing on the effective date of the adoption, revision or amendment of the zoning designation or of the zoning regulations that affect a property may be continued, even if the use no longer conforms to the regulations specified by Chapter 13.10 for the district in which the land is located. A nonconforming use that is not in use for at least three (3) out of the past five (5) years loses its status as a nonconforming use, and use of the land or site must conform to current uses allowed by the zone district. If cessation of use is caused involuntarily by fire or other catastrophic event, nonconforming rights are retained for three (3) years after the event, by which time a building permit must be obtained and exercised to repair or reconstruct the nonconforming use in order to retain nonconforming rights.

2. Termination of Use. The Board of Supervisors may order a nonconforming use to be terminated, upon recommendation of the Planning Commission, if such a use represents a threat to public health, safety, or welfare, or has been determined to be a public nuisance. The Planning Commission shall conduct a public hearing after 15 days written notice to the nonconforming user and property owner. If the nonconforming user and/or property owner has not made a substantial investment in furtherance of the use, or if the investment can be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a minimum of one year after the date of the Order. If the nonconforming user and/or property owner has made a substantial investment in furtherance of the use, or if the investment cannot be substantially utilized or recovered through a currently permitted use, the Order may require complete termination of the nonconforming use within a longer reasonable amount of time. Nonconforming uses that are determined to be an imminent threat to public health or safety may be terminated immediately, pursuant to Chapter 1.14 of this Code. In making its recommendation and its decision, the Planning Commission and the Board of Supervisors shall consider:

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

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

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

(c) Changes to nonconforming uses: Permits required.

1. Alterations to the structure accommodating an existing nonconforming use.

The following types of remodels and alterations may be allowed to structures that accommodate nonconforming uses, subject to obtaining the required permit and to the required findings noted in section (f) below.

Type of Remodel or Substantial Alteration	Permit Required
Repairs and improvements to existing structure, altering up to 75% of the major structural components in the area of work associated with the building project	Allowed
Reconstruction and improvements to existing structure, altering more than 75% of the major structural components in the area of work associated with the building project	Conditional Use Permit (Level 5 Approval) (See Procedures below)
Additions to an existing structure accommodating the nonconforming use, once within a 5-year period	Conditional Use Permit (Level 5 Approval)
Reconstruction of a structure accommodating a nonconforming use after a catastrophic event, altering more than 75% of the overall structure and replacing the structure substantially in-kind	Administrative Use Permit

2. Changes related to an existing nonconforming use

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

Type of Change	Permits Required
Expansion of an existing nonconforming use throughout an existing structure	Administrative Use Permit
Intensification of an existing nonconforming use as defined in 13.10.260(b)(5) for residential uses and 13.10.260(b)(6) for non-residential uses	Conditional Use Permit
Change of Use at a site to another	Administrative Use Permit

nonconforming use with no intensification

Change of use at the site to another
nonconforming use with intensification as
defined in 13.10.260(b)(5) for residential uses
and 13.10.260(b)(6) for non-residential uses

Conditional Use Permit

(d) Procedures for Administrative Use Permit

1. Application. The application for the Administrative Use Permit shall contain such information as required by the Planning Department.

2. Application Review. The Planning Director or designee shall review and make a determination on the application for an Administrative Use Permit. At the discretion of the Planning Director, the project may be referred to the Zoning Administrator or Planning Commission for a public hearing.

3. Noticing. Not less than 21 days prior to the County taking action on an Administrative Use Permit, notice of the pending decision shall be posted on the County of Santa Cruz Planning Department Website and shall also be sent to owners and occupants of property within 100 feet of the subject parcel. The notice shall include the date after which a decision will be made on the project, the final date on which comments will be accepted, and information regarding the appeal process. The contents of the notice shall be consistent with Section 18.10.222(d).

4. Required Findings. See subsection (f) below.

5. Project Conditions. The project may be conditioned as needed to ensure compliance with County policies and ordinances, in accordance with Section 18.10.240. Conditions may include operational conditions, such as restrictions on the hours of use, to address potential impacts to neighboring properties.

6. Appeal. A decision to approve, conditionally approve or deny an Administrative Use Permit may be appealed by any person whose interests are adversely affected. Appeals of a Planning Director decision shall be heard at a public hearing before the Zoning Administrator, or by the Planning Commission if the Planning Director determines this to be in the public interest. Consistent with Section 18.10.340, any person whose interests are adversely affected by an appeal determination of the Zoning Administrator may appeal the decision to the Planning Commission, and any person whose interests are adversely affected by an appeal determination of the Planning Commission may appeal the decision to the Board of Supervisors. A notice of the public hearing for the appeal shall be sent to all property owners and occupants within 300 feet of the subject property, and to local agencies that provide essential services to the subject parcel, at least 10 days prior to the hearing. A notice shall also be posted on site in accordance with Section 18.10.224. Appeal hearings shall be conducted in accordance with Section 18.10.310.

(e) Procedures for a Conditional Use Permit.

1. Procedures for a Conditional Use shall be in accordance with those established for Level 5 Approvals in Chapter 18.10, including the requirement for a public hearing.

(f) Findings. Approval of Administrative or Conditional Use Permits that are required for nonconforming uses pursuant to subsection (c) above are subject to the following findings:

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

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

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

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

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

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

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

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

13.10.262 Nonconforming structures

(a) Changes to Nonconforming Structures: Permits required.

1. Remodels, alterations and improvements to an existing habitable structure within a consecutive five-year period that do not constitute Reconstruction as defined by Section 13.10.260(b)(3) are allowed with a building permit.

2. Work on a nonconforming structure within a consecutive five-year period that meets the definition of a Reconstruction as defined by Section 13.10.260(b)(3), involving construction that substantially alters more than [75%-80%; or up to 100% for post-disaster projects] of the major structural components as defined by Section 13.10.260(b)(4) within the area of work associated with the building project(s), requires an Administrative Site Development Permit (see subsection b) below. The calculation of extent of work will be done in accordance with administrative procedures established by the Planning Director.

(i) Exception establishing lower threshold for properties related to property line, riparian corridor or right of way conditions:

Unless waived by the Planning Director or designee based upon the nature and circumstances related to the current or likely status of the subject property line, riparian corridor or right of way*; a different and lower threshold is established for when a permit is required for changes to nonconforming structures in the following locations:

Nonconforming structures that are located over the property line, within a riparian corridor

(defined as from top of bank to top of bank; or from edge of hydrophilic riparian vegetation to edge of hydrophilic riparian vegetation), within 5 feet of a vehicular right-of-way, or within 5 feet of a future planned right-of-way improvement may potentially impact public health, safety, welfare or the environment. To provide the opportunity to address potential impacts, modification of more than 50% of the nonconforming structure within a 5-year period requires an administrative site development permit.

* Nothing in this ordinance is intended to allow encroachment without necessary legal authorization, either by easement, quiet title action or other legal means.

(ii) Exception for structures designated as historic resources:

The reconstruction or alteration of a nonconforming structure which has been designated as a historic resource pursuant to County Code Chapter 16.42 is permitted upon issuance of only those building permits and/or development permits that are required by other Sections of the County Code, if one or more of the following criteria are met:

A. The structural enlargement, extension, reconstruction or alteration conforms to the Secretary of the Interior's Standards for Rehabilitation of Historic Properties;

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

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

(iii) Exception for corrective work on substandard or dangerous building elements:

Work performed to comply with a notice or requirement of the County Building Official to correct substandard or dangerous building elements shall not count towards overall limits on remodels, reconstructions, or major structural alterations for the purpose of this chapter.

3. Conforming Additions. Conforming additions that do not increase the nonconforming dimensions of the structure are allowed in accordance with the zone district site development standards, upon issuance of a building permit.

4. Repairs, reconstruction or replacement of a nonconforming structure after a catastrophic event.

Repairs, reconstruction or replacement of up to 100% of the structure after a catastrophic event are allowed if the repaired, reconstructed or replacement structure does not increase the nonconforming dimensions of the structure and is located in substantially the same location as the current/prior structure. New locations on the site may be considered without the need for a discretionary site development permit, if planner finds that the new location results in greater conformance with code requirements, in which case the project may occur upon issuance of a building permit.

(i) Exception for repairs, reconstruction or replacement of nonconforming structures after a catastrophic event establishing lower threshold for properties related to property line, riparian corridor or right of way conditions: Unless waived by the Planning Director or designee based upon the nature and circumstances related to the current or likely status of the subject property line, riparian corridor or right of way*; a different and lower threshold is established for when a permit is required for changes to nonconforming structures after a catastrophic event in the following locations:

Nonconforming structures that are located over the property line, within a riparian corridor (defined as from top of bank to top of bank; or from edge of hydrophilic riparian vegetation to

edge of hydrophilic riparian vegetation), within 5 feet of a vehicular right-of-way, or within 5 feet of a future planned right-of-way improvement may potentially impact public health, safety, welfare or the environment. To provide the opportunity to address potential impacts, modification of more than 75% of the nonconforming structure within a 5-year period requires an administrative site development permit.

* Nothing in this ordinance is intended to allow encroachment without necessary legal authorization, either by easement, quiet title action or other legal means.

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

Procedures for a site development permit under these Nonconforming Regulations are the same as those required under 13.10.261(d) above for Administrative Use Permits, except that in addition the permit application shall be reviewed for neighborhood compatibility, in accordance with building design criteria provided in Section 13.11.073.

(c) Findings. The following findings apply to site development permits for alterations to nonconforming structures as required under Section 13.10.262(a):

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

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

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

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

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

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

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

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

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

10. For projects within a riparian corridor, a condition of approval of the site development permit

has been imposed to require riparian preservation and/or enhancement on the site, as reasonably related to the project.

AMENDMENTS TO CERTAIN DEFINITIONS CONTAINED IN CHAPTER 13.10

13.10.700-I "I" definitions.

DELETE ANY CHAPTER 13.10.700-I DEFINITIONS OF INTENSIFICATIONS OF STRUCTURES, AND ADD:

"Intensification of Use, Non-Residential" means any change or expansion of non-residential use which will result in a requirement to provide additional parking spaces or which is determined by the Planning Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation shall be an "intensification of use" for the purposes of this Chapter.

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

13.10.700-M "M" definitions.

"Major Structural Components" means the major structural components of a structure are defined to include the foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story structures, roof framing, exterior siding including doors and windows, and roofing material. Decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, kitchen and bathroom fixtures, mechanical, electrical and plumbing are not considered major structural components for the purposes of Chapter 13 and 16.

13.10.700-N "N" definitions.

~~Non-conforming use" means 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 Section 13.10.700-S definition of Significantly Nonconforming Use) (Ord. 4525, 12/8/98)~~

"Nonconforming Use" means the use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of this Chapter, but which does not conform to the present use or density standards of the current zoning district in which the use is located. A legally established use shall not be deemed nonconforming due to the lack of a use permit. A nonconforming structure is not a nonconforming use.

DELETE ANY CHAPTER 13.10.700-N DEFINITION OF NONCONFORMING STRUCTURE, AND ADD:

"Nonconforming Structure" means a structure which was lawfully erected prior to the adoption,

revision or amendment of this Chapter but which does not conform with current zoning district development standards of lot coverage, yard setbacks, height of structures, distance between structures or floor area ratio as prescribed in the regulations for the district in which the structure is located. Failure of an existing structure to conform to current environmental standards established in other sections of the County Code does not render a structure nonconforming.

13.10.700-R “R” definitions.

DELETE ANY CHAPTER 13.10.700-R DEFINITION OF RECONSTRUCTION, AND ADD:

“Reconstruction” means a remodel of an existing habitable structure as defined by Chapter 16.10 is considered to be a reconstruction when [75%-80%; or 100% for a post-disaster project] of the existing major structural components as defined by Section 13.10.260(b)(4) are substantially altered within the area of work associated with the building project(s), within a consecutive five year period. The calculation of extent of work will be done in accordance with administrative procedures established by the Planning Director

13.10.260 Nonconforming uses—Provisions that apply to all uses.

The following provisions apply to all categories of nonconforming uses.

(a) Purpose and Intent:

1. Significantly nonconforming uses are detrimental to the orderly development of the County, to the general welfare, and to the implementation of the General Plan/Local Coastal Program. It is the intent of this Chapter that significantly nonconforming uses be rapidly eliminated through restrictions on repairs, alterations, expansion, reconstruction, change and intensification of use, cessation of use, and termination of use in conformance with the policies of the General Plan/LCP.
2. Nonconforming uses that are not significantly nonconforming may be detrimental to the orderly development of the County and the general welfare based on the degree of nonconformity. It is the intent of this Chapter to regulate the repair, alteration, expansion, reconstruction, change and intensification of use, cessation of use, and termination of use in conformance with the policies of the General Plan/LCP.
3. Nonconforming uses that can become conforming to the regulations of this Chapter are encouraged to do so.

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

1. Development Standards: Standards that regulate the development of uses, including but not limited to signage, useable open space and the design regulations found in Chapter 13.11. For the purposes of the Section, site and structural dimensions are not considered development standards.
2. Imminent Threat: A situation that poses an impending threat to life or property as determined by the Planning Director, Building Official and/or the County Geologist.
3. Intensification of Use, Residential: Any change to a residential use which will result in an increase of its number of bedrooms, as defined in Section 13.10.700(B), shall be an "intensification of use" for purposes of this Chapter.
4. Nonconforming Use: The use of a structure or land that was legally established and maintained prior to the adoption, revision, or amendment of Chapters 13.10 or 13.11, conforms to the present General Plan/Local Coastal Program land use designation, and:
 - (i) Has not lost its nonconforming status due to cessation of use, as outlined in Sections 13.10.260, 13.10.261, or 13.10.262; and
 - (ii) No longer conforms to the present use, density, or development standards of the zone district in which it is located; or
 - (iii) Does not have a valid Development Permit as required by the present terms of this Chapter.

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

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

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

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

(c) General Requirements.

1. Determination of Nonconforming Status. The property owner shall have the burden of proof in establishing the nonconforming use status of any land or structure. The Planning Director may charge a

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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.

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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:

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- (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.

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

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

- (i) Any structure reconstructed and/or relocated for the nonconforming use will not exceed the floor area, height, or bulk of the replaced structure;
- (ii) The use will remain the same;
- (iii) A Level V approval is obtained based on a finding that the relocated use and any structure for the use will not be detrimental to the health, safety, or welfare of persons residing or working in the vicinity or the general public, nor be materially injurious to properties or improvements in the vicinity, and that any relocated or reconstructed structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood. (Ord. 560, 7/14/58; 740, 12/11/61; 1704, 4/25/72; 2047, 8/20/74; 2452, 6/21/77; 2787, 10/2/79; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83; 3593, 11/6/85; 4217, 10/20/92; 4411, 4/16/96; 4467, 8/12/97; Ord. 4525, 12/8/98)

13.10.261 Residential nonconforming uses.

(a) Single-Family Dwelling Regulations.

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

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

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

The percentage of damage or destruction of the total length of the exterior walls (exclusive of the foundation or roof) that occurred and the percentage of the exterior walls (exclusive of the foundation or roof) that will be required to be moved, replaced or altered in any way to restore the structure, except that the replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be counted in this calculation. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any

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additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans shows as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

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

1. An accessory structure located on a parcel whose general plan designation prohibits primary residential use and is not part of a permitted mixed use development shall be deemed significantly nonconforming and limited to the improvements and restrictions provided in Section 13.10.261 Table 2.
2. An accessory structure located on a parcel with Commercial or Industrial zoning and a Residential general plan designation shall be deemed nonconforming and subject to the restrictions as provided in Section 13.10.261 Table 2.
3. An accessory structure that does not meet the use standards of Section 13.10.611 shall be deemed nonconforming and subject to the restrictions provided in Section 13.10.261 Table 2.

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

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

(c) Nonstructural Uses and Home Occupations Regulations.

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1. Nonstructural uses and home occupations shall not be expanded.
 2. Loss of nonconforming status occurs after a continuous six month cessation of use.

(d) Dwelling Groups Regulations.

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

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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.

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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.

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

- (i) That the reconstruction, restoration or rebuilding will be detrimental or injurious to the health, safety or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvement in the neighborhood; or
- (ii) That the existing nonconforming use of the building or structure would be more appropriately moved to a zone district in which the use is permitted; or
- (iii) That the building is located in an industrial zone district.

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

- (i) Whether the multifamily residential use, as defined in subsection (e)2 of this subsection, is significantly nonconforming;
- (ii) Compatibility with the existing land use patterns and densities of the surrounding neighborhood;
- (iii) The availability of off and on-street parking, both on the subject property and in the surrounding neighborhood; and
- (iv) The adequacy of light, air and privacy on both the subject property and adjacent properties.

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

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

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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

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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

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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 not 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% or greater after disaster:	Yes no intensification	Yes no intensification	Yes no intensification	Yes Level V if intensifies

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detached units, with no expansion				
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

(Ord. 4836 § 8, 10/3/06)

13.10.262 Nonresidential nonconforming uses.

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

(b) Reconstruction of Involuntarily Damaged or Destroyed Nonresidential Uses. If any building or structure which does not conform to the use of the district in which it is located is involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy to the extent that the reconstruction or repair of the structure will require more than 75% of the total length of the exterior walls (exclusive of the foundation or roof) to be moved, replaced or altered in any way, except that the replacement or alteration of the interior or exterior wall coverings or the replacement of windows and doors without altering their openings will not be counted in this calculation, the land and structure shall be subject to all regulations specified by this Chapter for the district in

which such land and structures are located. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

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

(d) Nonconforming Greenhouses. Regulations regarding the replacement of nonconforming greenhouses are found in Section 13.10.636(c).

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- (e) Nonconforming Farm Worker Housing. Regulations regarding repair and replacement of nonconforming farm worker housing are found in Section 13.10.631(c).
- (f) Nonconforming Recycling Collection Facilities. Regulations regarding nonconforming recycling collection facilities are found in Section 13.10.658(b).
- (g) "M-1" Zone District Uses Not in Compliance with Section 13.10.345(a). Uses in the "M-1" zone district which are not in compliance with the provisions of Section 13.10.345(a)1 through 6 are subject to Sections 13.10.345(a)7 and 8.
- (h) Lands designated with a "P" Combining District. Modification or expansion of uses on lands designated with a "P" Combining District shall be processed as set forth in Section 13.10.473.
- (i) Expansion of Organized Camps with Nonconforming Densities. Expansion of organized camps with nonconforming densities shall be processed as set forth in Section 13.10.353(b)3. (Ord. 4525, 12/8/98)

13.10.265 Nonconforming structures.

- (a) The lawful use of a structure existing on the effective date of a change of zoning or of the zoning regulations may be continued even if such a structure and/or use does not conform to the change in zoning or change of the zoning regulations specified for the district in which such structure is located.
- (b) The structural enlargement, extension, reconstruction, or alteration which conforms to the site development standards of the district in which the structure is located may be made to a nonconforming structure upon issuance of only those building permits and/or development permits required by other Sections of the County Code if the property's use is made to conform to the uses allowed in the district and provided that the structure is not significantly nonconforming as defined in this Section, and further provided that where the floor area of an addition exceeds 800 square feet net, a Level IV Use Approval shall be required.
- (c) When the use of the nonconforming structure conforms to uses allowed in the district in which the structure is located, but the enlargement, extension, reconstruction, or structural alteration of said building involves a variation from height, building site area, lot width, lot coverage, floor area ratio, or side, front, or rear yard requirements for the district, a Variance Approval shall be required in accordance with the provisions of Section 13.10.230, with the exception that, where the dedication requirements of Section 15.10.050 cause an existing structure to become nonconforming, a Variance Approval is not required provided that the front yard is not reduced to less than 10 feet and the street side yard to not less than 6 feet. In addition, no Variance Approval shall be required for any structural alterations which conform to Subsection (e) of this Section.
- (d) The ordinary maintenance and repair, structural enlargement, extension, reconstruction or alteration of a non-conforming structure which has been designated as a historic resource pursuant to County Code Chapter 16.42 is permitted upon issuance on only those building permits and/or development permits required by other Sections of the County Code regardless of any other provisions of this Chapter to the contrary, if one or more of the following criteria are met:
 - 1. The ordinary maintenance and repair, structural enlargement, extension, reconstruction or alteration conforms to the site development regulations of the Zoning district in which it occurs;

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2. The ordinary maintenance and repair, structural enlargement, extension, reconstruction or alteration does not conform to the setback or height regulations of the Zoning district in which it occurs, but is within the structural outline of the structure or any extensions thereof which are not more nonconforming than the existing structural outline of the structure and does not expand the perimeter foundation line of the structure. The structural outline of a structure shall include that space which is enclosed by the structural posts, columns, beams, trusses and girders of the structure; or

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

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

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

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

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

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

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

(g) If any building or structure which does not conform to the site and structural dimension regulations of the district in which it is located is damaged or destroyed by fire, other catastrophic event, or public enemy to the extent that the reconstruction or repair of the structure will require more than seventy-five (75) percent of the total length of the exterior walls (exclusive of the foundation or roof) to be moved, replaced or altered in any way, except that the replacement or alteration of the interior or exterior wall coverings, windows and doors without altering their openings will not be counted in this calculation, the land and structure shall be subject to all

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regulations specified by this chapter for the district in which such land and structures are located. This determination shall be made by the Building Official, taking into account the damage caused by the event as well as any additional demolition which is proposed by the applicant or which is required by the currently adopted codes and ordinances as part of the reconstruction. The Planning Director may require that a registered engineer or other professionals(s) acceptable to the Planning Director be retained at the applicant's expense to certify that the portions of the structure which the plans show as proposed to remain are in fact structurally sound and that it will not be necessary to alter such portions of the structure during the course of construction. The Building Official may charge a fee for this determination which shall be based upon a reasonable estimate of the cost to the County for making such determination.

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

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

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

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

1. That the existing structure and the conditions under which it would be operated and maintained is not detrimental to the health, safety or welfare of persons residing or working in the vicinity or the general public, or be materially injurious to properties or improvements in the vicinity.
2. That the retention of the existing structure will not impede the achievement of the goals and objectives of the County General Plan, or of any Specific Plan which has been adopted for the area.
3. That the retention of the existing structure will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood.
4. That the proposed project will not increase the nonconforming dimensions of the structure unless a Variance Approval is obtained.

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

1. Located within five feet of a vehicular right-of-way;
2. Located across a property line;
3. Located within five feet of another structure on a separate parcel;
4. Located within five feet of a planned future public right-of-way improvement (i.e. an adopted plan line); or,
5. Exceeds the allowable height limit by more than 5 feet. (Ord. 2788, 10/2/79; 3266, 6/22/82; 3186, 1/12/82; 3344; 3746, 4/22/86; 11/23/82; 3432, 8/23/83; 3927, 6/28/88; 4024, 10/24/89; 4160, 12/10/91; 4368, 5/23/95; 4525, 12/8/98; 4642, 11/6/2001; Ord. 4771 § 3, 4/12/05; Ord. 4836 §§ 9, 10, 10/3/06)

13.10.270 Appeals.

All appeals of actions taken pursuant to the provisions of this Chapter shall be made in conformance with the procedures of Chapter 18.10. (Ord. 560, 7/14/58; 747, 1/8/66; 1508, 4/21/70; 1704, 4/25/72; 1863, 5/1/73; 2245, 2/17/76; 2472, 6/7/76; 2391, 2/8/77; 2506, 11/22/77; 3117, 6/9/81; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

Part VII. DEFINITIONS

13.10.700 Definitions.

For the purposes of this chapter, certain terms used herein are defined as follows:

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. (Ord. 4285, 12/14/93; 4525, 12/8/98)

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. (Ord. 4525, 12/8/98)

"Non-conforming structure" means a structure which was lawfully erected prior to adoption of this chapter but which, under this chapter, does not conform with the standards of coverage, yard spaces, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located.

"Non-conforming use" means 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

EXHIBIT F

2. No longer conforms to the present use, density, or development standards of the zone district in which it is located; or
3. Does not have a valid Development Permit as required by the present terms of this chapter. (See also Section 13.10.700-S definition of Significantly Nonconforming Use) (Ord. 4525, 12/8/98)

Reconstruction. The rebuilding of a structure or portion(s) of a structure. A structural alteration or repair that involves greater than 50% of the exterior walls being altered within any five year period shall be deemed a reconstruction. The Planning Director may require that a termite inspector, registered engineer or other professional(s) acceptable to the Planning Director be retained at the applicant's expense to certify that portions of the structure which the plans show as proposed not to be structurally repaired or altered are in fact structurally sound and that it will not be necessary to repair or alter such portions of the structure during the course of construction. (Ord. 4525, 12/8/98)

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.

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

DEFINING "RECONSTRUCTION"

Proposed revisions to the nonconforming ordinance are intended to achieve greater conformance with existing General Plan policies, and are based on the idea that legal nonconforming structures and uses add value to the community, and that the premise reflected by the current code that such structures and uses will cease to exist if repairs and modernization are strongly limited is not correct. It is in the interest of public health, safety and welfare to allow repairs, remodels and improvements to legal nonconforming structures; and especially to ensure that unreasonable regulations do not create an incentive for owners to pursue unpermitted construction or locations.

If this basis is accepted, the question becomes "at what point is a modernization, i.e. a remodeling project, extensive enough that the structure or use should be brought into conformance with current site standards?"

Staff has surveyed other jurisdictions and explored this question with planners, decision makers, building and design professionals, appraisers, representatives of neighborhood and environmental groups and other members of the public. That research, as well as the Department's experience administering various methods of quantifying the magnitude, or "extent", of construction projects for other purposes, informs the following analysis and recommendations.

WHEN SHOULD STRUCTURES UNDERGOING REMODELING BE REQUIRED TO MEET CURRENT SITE STANDARDS?

There is widespread support for the idea that teardown and replacement of a structure should result in a structure that complies with site standards. Replacement can be thought of as a 100%, or total, remodel. A sizeable but less than total (100%) remodel may be thought of as a "reconstruction". The process of arriving at a specific threshold for when a structure may be required to be brought into conformity (if the threshold is lower than 100%) is the process of defining the term "reconstruction". Staff therefore recommends this be made explicit in the ordinance, and that a new definition of "reconstruction" be added to the ordinance to reflect this approach. The proposed ordinance (Exhibit E) contains an approach that relies upon two new definitions:

Reconstruction: A remodel of an existing habitable structure is considered to be a reconstruction when [75%-80%; or up to 100% for post-disaster projects] of the major structural components as defined by Section 13.10.260(b)(4) are substantially altered within the area of work associated with the building project(s), within a consecutive five year period. The calculation of extent of work will be done in accordance with administrative procedures established by the Planning Director.

Major Structural Components: The major structural components of a structure are defined to include the foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story structures, roof framing, exterior siding including doors and windows, and roofing material. Decks, chimneys and interior elements including but not limited to interior walls and sheetrock, insulation, kitchen and bathroom fixtures, mechanical, electrical and plumbing are not considered major structural components for the purposes of Chapter 13 and 16.

One goal of revising the nonconforming regulations is to create a clear process for identifying projects that are considered to be reconstruction. The staff recommendation, as expressed in the proposed new ordinance, is that reconstruction projects be required to go through discretionary review. That review process will assess whether the structure should be brought closer into, or into, compliance with current zoning district provisions by considering site-specific circumstances and public input. Staff recommends that the discretionary process be a "Modified Level 4" review, which includes public notice

to owners and occupants within 100 feet of the subject property, and provision for any party to appeal, but no automatic public hearing. Currently, relatively small repair and remodel projects cannot be done unless the structure is brought into conformance or a variance is obtained. A variance is oftentimes difficult to approve given the necessary approval findings; a site development permit or use permit allows conditions and changes to the project which would allow it to proceed as conditioned.

Given the recommended regulations for reconstruction, staff is recommending that the term be defined as something between 75%-80% (and 100% for post-disaster reconstruction).¹ The recommended percentage has not been finalized because it depends on, and must be considered in concert with, the other factors discussed below.

ESTABLISHING THE QUANTITATIVE DEFINITION OF RECONSTRUCTION

Establishing a threshold for when a structure should be reviewed and possibly be subject to conditions of approval to come into greater compliance (or comply) with current site standards, depends upon deciding what elements of the project should be "counted" toward the threshold, and assigning some type of description of magnitude to each element (which can then be summed to describe the magnitude of the project as a whole), are three aspects of the single question "at what point is a project extensive enough that the non conformity should be corrected?". These three aspects must be considered together in order for the definition of reconstruction to function as intended. Establishing which elements should be counted is first, followed by the method of describing how much those elements are being changed. At that point an appropriate quantitative definition of "reconstruction" which balances the various concerns of the community¹ can be identified.

CHARACTERIZING THE EXTENT OF A CONSTRUCTION PROJECT

Characterizing the magnitude of a construction project is not a straightforward exercise.

1. Identifying those elements of a project that should count toward "reconstruction"

After evaluating several possible combinations of elements that can be used to describe the extent of a proposed project, including applying different methodologies to actual sets of plans and comparing the outcomes, staff believes that the most sensible approach is to look only at major structural components. These are the foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story

structures, roof framing, exterior siding including doors and windows, and roofing material. These are the most relevant components in terms of the public view of the structure and neighborhood compatibility. Adding more components to the evaluation, including decks, chimneys and interior elements of interior walls, sheetrock, insulation, kitchen and bathroom fixtures, and mechanical, electrical and plumbing overly complicates the calculation, requires more detailed plans at an early stage of design, and does not yield better results.

The current code considers only whether the nonconforming portion of the existing structure is being modified and to what extent. This creates strong incentive to leave walls that are in need of repair in place (e.g. 50% of the nonconforming wall that makes a structure nonconforming is left in place), because to replace the wall(s) is to trigger the requirement for a variance. It can provide incentive to either build without permits or to "game the system" with construction methods such as encasing nonconforming walls with a steel support system in order to attain needed strength without altering the walls. Whichever elements of the proposed construction are ultimately determined to count toward the threshold, staff recommends that the revised code apply to the structure as a whole, not to the nonconforming portion.

EXHIBIT G

2. Measuring the extent of the proposed project in terms of those elements

Standard methods in use by other jurisdictions to describe the extent of a remodel project are the dollar value of the project as a percentage of the dollar value of the existing structure (the "valuation" method), and methods that focus on characterizing the physical construction elements unmediated by a dollar value. An objective of the current code amendment is to replace the current County of Santa Cruz approach in many sections of the Code that relies upon "Percent of Altered Wall", which is a less holistic method of determining when a structure is approaching "reconstruction".

As required by federal law, the County currently uses the ratio of the dollar value of the existing structure to the value of the proposed project for evaluating projects in the FEMA flood zone, and has found that system can be inaccurate and difficult to administer fairly. The information used to determine relative value is imperfect. Appraisals are subjective and favor owners who have the resources to buy several appraisals in order to choose the most favorable one. Appraisers have difficulty factoring out location and valuing only the structure, which again favors high value property owners. Assessor's values are not accurate enough to substitute for appraisals in many cases. Lastly, because appraisers cannot "value" a future project accurately, and builders cannot "estimate" existing structures using standard manuals accurately, the process inevitably compares two different types of values, one (market) for the existing structure and a different one (replacement) for the proposed project. This compromises the ratio between the two, even though that ratio is the basis for the method. For these and other reasons staff is not recommending that a market or other dollar value method be used to determine whether or not a project is a "reconstruction".

Staff recommends a method that focuses on the physical elements of the proposed work on the whole of the existing habitable structure (rather than only "altered wall", or "valuation"). One method that is appropriate and feasible is to analyze a project in terms of the percentage of change to the foundation, underfloor frame, wall framing, floor/ceiling assembly, roof framing, exterior wall covering and/or roof covering. Since each of these elements typically represents a certain "percentage" of a residential or commercial structure, building counter and plans checking staff can use that to describe the extent of the proposed work. The result would be expressed in terms of a percentage. The formula would be similar to: the sum of (the percentage of the construction element that is being remodeled) x (the percentage that element is of a whole structure) for each construction element; with all elements then added up. Advantages to this method are that it can be standardized to a large degree, increasing predictability, it can be applied by the applicant to draft plans early on, also increasing predictability, it is the same for land located anywhere in the County, and is less expensive and more objective than appraisals.

3. Determining an appropriate definition of reconstruction

This last step can be only be completed after the previous two questions are settled. As stated earlier, given the recommended rules that will apply to projects determined to be reconstructions, it appears appropriate that reconstructions be defined as something between 75%-80%, and 100% for post-disaster reconstruction projects that a substantially in-kind replacements¹. A specific recommendation has not been finalized because it depends in part on what is being measured and the methodology that is being used.

CONCLUSION

Determining the definition of reconstruction is a complicated policy question because of the number of factors that must be balanced and integrated. In addition to varying perspectives on "how much

change is too much” to leave a nonconformity in place, there are questions of implementation. Detailed measuring methods are rigorous but not efficient or cost effective. Simpler, more interpretive methods are more efficient but potentially less consistent and are less predictable. There is no perfect approach or single appropriate answer.

¹ Many communities ONLY regulate replacements, not reconstructions or remodels, allowing 100% reconstruction of any nonconforming structures, not just those affected by a disaster. These communities include the City of Santa Cruz.

EXHIBIT G

PROPOSED REVISIONS TO COMMERCIAL USE REGULATIONS

Table I. Proposed Revisions to County of Santa Cruz Parking Standards Chart

<u>Use</u>	<u>Current Parking Standard</u>	<u>Proposed Parking Standard</u>
Business office	1 space / 200 square feet*	1 space / 300 square feet
Retail stores and service	1 space / 200 square feet*	1 space / 250 square feet
Supermarkets	1 space / 200 square feet**	Remains 1 space / 200 square ft.
Medical office	1 practitioner:** 7 spaces 2 practitioners: 13 spaces 3 practitioners: 17 spaces 4 practitioners: 21 spaces 5 practitioners: 25 spaces 5 spaces for each additional practitioner	1 space / 225 square feet

* Exclude any area used for storage or truck loading

* Supermarkets are not currently separated from retail

**Practitioners shall include, but not be limited to, doctors, hygienists, hypnotists and others providing health-related services.

Table II. Proposed Text Revisions to Parking Regulations

<u>Existing standard</u>	<u>Proposed Standard</u>
Physical expansion of an existing commercial structure does not require additional parking if it does not increase parking demand by more than 10%.	Require new spaces only when five or more additional spaces are necessary. Without the five space minimum small businesses and small sites, which reach the 10% very quickly, are disadvantaged.
A new use does not require additional parking if it does not increase parking demand by more than 10%.	To facilitate changes of commercial use, do not require new parking unless the new use increases parking demand by more than 20% . Also, include an exception: new spaces will be required only if they number more than four.
Where parking spaces are shared between two or more commercial uses, the required parking may be reduced by up to 10 percent for 1-4 uses, 15% for 5-7 uses and 20% for 8 or more uses.	Remove ceiling on how much reduction is allowed for shared parking, but require submittal of a parking study (unless waived) on which to base allowed reduction. Formalize the following criteria for evaluating parking reductions: 1) The uses occur at separate times of day; 2) the uses overlap but their peak hours occur at different times of day; 3) the uses foster multipurpose trips; 4) the uses serve demographic groups known for below-average rates of vehicle ownership; 5) verify that the parking reduction is commensurate with the level of vehicle activity

	typically associated with the proposed use(s), site location or incremental change in site floor area or intensity of use. These changes remove the arbitrary ceiling, and instead focuses on impact.
Whenever an expanded or intensified use requires added parking, the entire building or use must comply with current parking standards (all uses).	If existing parking is nonconforming, require additional parking only for the additional increment of square footage or intensity of use (all uses). Do not require parking for all of the original uses on site to be brought up to current standards at the same time. New businesses often cannot be approved at buildings with existing nonconforming parking; this revision focuses the parking review on the new use rather than on historic conditions at the entire business center.
Where a use is not listed in parking charts, parking standards must match the closest use, or can be reduced with a Level 5.	Change the Level 5 to a Level 4 use approval.
Parking standards may be relaxed by no more than 20% through implementation of transportation and parking demand management programs at a project site.	Remove the 20% limitation, allowing parking standards to be based solely on statistical evidence regarding parking demand reductions typically associated with the proposed transportation management programs for the site.
Accessibility upgrades are not formally exempt from current parking standards.	Allow accessibility upgrades even if they reduce the number of spaces in a nonconforming parking lot, unless there is room to expand the lot. This ensures that accessibility requirements do not prevent commercial expansion, and facilitates accessible parking.

Table III. Proposed Revisions to Changes of Use in Existing Buildings

<u>Existing standard</u>	<u>Proposed Standard</u>
Level 1 approvals are allowed for changes of use within existing commercial buildings in Felton, Ben Lomond and Boulder Creek because of existing Village Plans.	Level 1 approvals are also allowed for changes of use in three other areas covered by Village Plans: Soquel Village, Seacliff Village and part of Aptos Village. This implements the purpose of having Village Plans in place.
A change of use with no intensification requires a Level 1 approval in the C-1, C-2 and PA districts, and a Level 4 with intensification. In the CT and VA districts, however, a level 4, 5 or 6, based on area, is currently required when changing use, with or without intensification.	The proposed revisions would make the CT and VA standards the same as C-1, C-2 and PA. Level 4 processing, which is simpler and less costly, preserves public notice, opportunity for public input, and ability to control impacts through Conditions of Approval.
In the PA, C-1 and C-2 districts, if an existing use does not have a valid permit, a change of use requires a Level 4 if affecting 2,000 to 20,000 square feet and, in C-1 and C-2, a Level 5 if 20,000 square feet or more. The CT and VA districts, however, require higher approvals for these categories: a Level 5 use approval for a change of use affecting 2-20,000 square feet and	The proposed revision would reduce approval levels in the CT and VA districts to match the C-1 and C-2 districts. This simplifies the process for the smallest projects, while preserving public notice, opportunity for public input, and ability to control impacts through Conditions of Approval.

a Level 6 for more than 20,000 square feet.	
In a Town or Village Plan area, a change of use in a C-4 district requires a Level 1 Change of Use approval.	Increase the processing level for a Change of Use in a C-4 district in a Town or Village Plan area from Level 1 to Level 4. This change ensures that the most intensive commercial uses receive adequate public input and are conditioned appropriately to control impacts.
Changes of Use affecting C-4 uses outside a Town or Village Plan require a Level 4 if under 2,000 square feet and a Level 5 (public hearing) if equal to or greater than 2,000 square feet.	Changes of Use affecting C-4 uses outside a Town or Village Plan require a Level 4 if under 5,000 square feet and a Level 5 (public hearing) if equal to or greater than 5,000 square feet. This simplifies the process for the smallest projects, while preserving public notice, opportunity for public input, and ability to control impacts through Conditions of Approval.
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.	Intensification of Use, Commercial. The proposed revision would delete the 10% increase in parking or traffic generation trigger for intensification, and instead declare that commercial intensification is caused by any change or expansion of commercial use which will result in a <u>requirement to provide additional parking</u> . The significance of new traffic generation would be one of the elements reviewed by the Planning Director, along with noise, smoke, glare, odors, water use, and/or sewage generation. Hazardous materials would be added to the list of potential sources of intensification. This change reflects other revisions to parking standards that facilitate commercial changes of use and makes explicit the potential concern over hazardous materials.

Table IV. Proposed Revisions to New Commercial Buildings

Currently, the zoning ordinance allows a Level 4 approval for many commercial uses, as long as the total floor area of the proposed use is less than 2,000 square feet in area.	The revision would allow Level 4 approvals for new commercial buildings of up to 5,000 square feet. This simplifies the process for the smallest projects, while preserving public notice, opportunity for public input, and ability to control impacts through Conditions of Approval.
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Table V. Proposed Revisions to Design Review

"Sensitive Site" shall mean any property located adjacent to a scenic road or within the viewshed of a scenic road as recognized in the General Plan; or located on coastal bluff, or on a ridgeline.	"Sensitive Site" shall mean any property located adjacent to a scenic road or within the viewshed of a scenic road as recognized in the General Plan; or located on or at the base of a coastal bluff, or on a ridgeline, or <u>fronting a beach</u> . These additional formally recognize that beaches have high scenic value and are sensitive in character.
Building heights up to a maximum of thirty three (33) feet may be allowed without increased yards or variance	Building heights up to a maximum of thirty three (33) feet may be allowed without increased yards or variance

EXHIBIT 

approval, subject to review and recommendation by the Urban Designer and approval by the Zoning Administrator following a public hearing. Appeals from this decision shall be processed pursuant to Chapter 18.10.	approval, subject to review and recommendation by the Urban Designer <u>or Planning Director</u> and approval by the Zoning Administrator following a public hearing. Appeals from this decision shall be processed pursuant to Chapter 18.10. This change recognizes that there is no Urban Designer position at the present time.
Large Dwelling Design Guidelines. New large dwellings and related accessory structures regulated by this Section are subject to the following design guidelines. The intent of these guidelines is to assist the applicant in meeting the requirements of the large dwelling regulations, and to assist the Urban Designer and Zoning Administrator in reviewing applications.	Large Dwelling Design Guidelines ... The intent of these guidelines is to assist the applicant in meeting the requirements of the large dwelling regulations, and to assist the Urban Designer <u>or Planning Director</u> and Zoning Administrator in reviewing applications. This change recognizes that there is no Urban Designer position at the present time.
13.11.073 Building design. (b) It shall be an objective of building design to address the present and future neighborhood, community, and zoning district context. (1) Compatible Building Design. (i) Building design shall relate to adjacent development and the surrounding area. (ii) Compatible relationships between adjacent buildings can be achieved by creating visual transitions between buildings; that is, by repeating certain elements of the building design or building siting that provide a visual link between adjacent buildings. One or more of the building elements listed below can combine to create an overall composition that achieves the appropriate level of compatibility: (A) Massing of building form. (B) Building silhouette. (C) Spacing between buildings. (D) Street-face setbacks. (E) Character of architecture. (F) Building scale. (G) Proportion and composition of projections and recesses, doors and windows, and other features. (H) Location and treatment of entryways. (I) Finish material, texture and color.	13.11.073 Building design. (ii) Compatible relationships between adjacent buildings can be achieved by creating visual transitions between buildings; that is, by repeating certain elements of the building design or building siting that provide a visual link between adjacent buildings. One or more of {The building elements listed below can combine to create an overall composition that achieves the appropriate level of <u>shall be reviewed for neighborhood compatibility:</u> (A) Massing of building form. (B) Building silhouette. (C) Spacing between buildings. (D) Street-face setbacks. (E) Character of architecture. (F) Building scale. (G) Proportion and composition of projections and recesses, doors and windows, and other features. (H) Location and treatment of entryways. (I) Finish material, texture and color. This change formalizes the practice that each of these design elements is considered when assessing compatibility.

The net result of the above changes should be more flexible spaces that are available to various types of businesses, as long as allowed in the zone district. Further, the revisions simplify the permitting process for the smallest developments, while preserving public notice, public input and control of any impacts associated with these uses.

EXHIBIT H

Text of Proposed Interim Changes Relating to Commercial Uses,
Design Review and Geologic Definition of "Development"

Commercial uses

Amend 13.10.332 as follows:

Commercial Uses Chart

KEY:

A = Use must be ancillary and incidental to a principal permitted use on the
P = Principal permitted use (see Section 13.10.332(a)); no use approval necessary if "P" appears alone

- 1 = Approval Level I (administrative, no plans required)
- 2 = Approval Level II (administrative, plans required)
- 3 = Approval Level III (administrative, field visit required)
- 4 = Approval Level IV (administrative, public notice required)
- 5 = Approval Level V (public hearing by Zoning Administrator required)
- 6 = Approval Level VI (public hearing by Planning Commission required)
- 7 = Approval Level VII (public hearing by Planning Commission and Board of Supervisors required)
- = Use not allowed in this zone district
- * = Level IV for projects of less than 2,000-5,000 square feet
- * = Level V for projects of 2,000-5,000 to 20,000 square feet
- * = Level VI for projects of 20,000 square feet and up

USE	PA	VA	CT	C-1	C-2	C-4
Change of use in accordance with an approved master occupancy program	1	1	1	1	1	1
Change of use within under the <u>Felton or Ben Lomond</u> Town plans areas of the San Lorenzo Valley, the Boulder Creek Specific Plan or the Soquel, Seacliff or Aptos village plans, to a use in conformance with <u>at the Town applicable</u> Plan and not resulting in an intensification of use.	1	1	1	1	1	<u>14</u>
Change from a use conforming to a valid development (use) permit, to another use allowed in the zone district which will not result in an intensification of use.	1	<u>4/5/6*1</u>	<u>4/5/6*1</u>	1	1	4/5/6*
Change from a use conforming to a valid development (use) permit, to another use allowed in the zone district which will result in an intensification of use.	4	<u>4/5/6*</u>	<u>4/5/6*</u>	4	4	4/5/6*
Change from a use not approved by a valid development (use) permit, to another use allowed in the zone district: for projects of:						
<u>Under 2,000-5,000</u> sq. ft.	<u>34</u>	4	4	<u>34</u>	<u>34</u>	4
<u>2,000-5,000-20,000</u> sq. ft.	4	<u>54</u>	<u>54</u>	4	4	5
<u>Over 20,000</u> sq. ft.	4	<u>65</u>	<u>65</u>	5	5	6

Parking

Amend 13.10.551(a) as follows:

13.10.551 Off-street parking facilities required.

(a) In all districts, in connection with every use, there shall be provided at the time of initial occupancy of a site or of construction of a structure or a major alteration, ~~or enlargement or change in use~~ of a site or structure, off-street parking space for automobiles and bicycles in accordance with requirements prescribed in this Chapter, except as provided in (c) below for historic resources, as defined in Section 16.42.030. For the purposes of this Chapter, "parking space" shall mean a space conforming to the standards set forth in Section 13.10.554 and maintained open, clear and available for the parking of motor vehicles. Also, for the purpose of this chapter the term "major alteration or enlargement" shall mean ~~a change of use or an addition or remodel~~ which would increase the number of parking spaces required by ~~not less more~~ than 10 percent of the total required and more than four spaces. A "change in use" shall not be subject to the requirements of this chapter unless it would increase the number of parking spaces required by more than 20 percent and more than four spaces. ~~and~~ The term "bicycle" shall include mopeds as defined in the California Vehicle Code. If, in the application of the requirements of this Chapter, a fractional number is obtained, one parking space shall be provided for a fraction of one-half or more, and no parking spaces shall be required for a fraction of less than one-half. For any major alteration or enlargement affecting a nonresidential structure or use for which the existing parking is nonconforming, additional off-street parking shall be required only for the additional increment of square footage or use. Allow reductions in number of parking spaces to facilitate accessibility upgrades to existing parking lots or buildings.

Amend 13.10.552(b) as follows:

Use	Requirements		
	Auto Parking Spaces		Bicycle Parking Spaces
Retail stores and service establishments	1 per 200 250 sq. ft. (48.6 sq. meters) of gross floor area*; 3 minimum		1 per 1000 sq. ft. (92.9 sq. meters) of gross floor area*; 2 minimum
<u>Supermarket</u>	<u>1 per 200 sq. ft. of gross floor area*</u>		<u>1 per 1000 sq. ft. (92.9 sq. meters) of gross floor area*; 2 minimum</u>
Business Office	1 per 200 300 sq. ft. (48.6 sq. meters) of gross floor area		1 per 1000 sq. ft. (92.9 sq. meters) of gross floor area*; 2 minimum
Medical Office	Number of Practitioners**	Spaces Req.	1 per 1000 sq. ft. (92.9 sq. meters) of gross floor area*; 2 minimum
	1	7	
	2	13	
	3	17	
	4	21	
	5	25	
	5 spaces for each		

EXHIBIT I

	additional practitioner	
Medical Office**	1 per 225 sq. ft. of gross floor area, two minimum	1 per 1000 sq. ft. of gross floor area, 2 minimum
* Exclude any floor area used only for storage or truck loading.		
** Practitioners shall include, but not be limited to, doctors, hygienists, hypnotists and others <u>who accept individual appointments for providing health related services.</u>		

Amend 13.10.552(c) as follows:

(c) Other Uses. Any use not specified in this schedule shall require the same number of spaces as the most similar use, as determined by the Approval Body or, if it can be shown that a use is not expected to utilize the required number of spaces, and assurance is given by recorded indenture, or other means, that the required number of spaces will be provided when the use or circumstances of occupancy change, then a different parking requirement may be authorized by a Level ~~V~~IV Approval.

Amend 13.10.553 as follows:

13.10.553 Variations to Alternate parking requirements.

The off-street parking requirements of this Chapter may be satisfied or modified in alternate ways:

(a) **Parking Plan.** A specific parking plan initiated by the County and approved by the appropriate Approving Body may supersede those parking standards contained in Section 13.10.552, if the purpose of this Section is met, or in order to permit or preserve significant public amenities, and for either case in the Coastal Zone, a specific finding is made and supported that visitor access and parking will not be preempted.

(b) **Reductions in Required Shared Parking.** ~~Parking facilities~~reductions for two or more uses that participate in a parking agreement may be shared thereby ~~reducing the overall parking requirement for the uses if their entrances are located within three hundred (300) feet of the parking facility, if their hours of peak parking do not coincide, and/or it can be demonstrated that the nature or number of uses of the facilities will result in multipurpose trips authorized by a Level 4 Use Approval.~~ The total number of spaces required for all uses sharing the parking may be reduced to no less than the number of spaces required by 13.10.552 for the single use among those proposed which is required to provide the most parking. The reduction shall be numerically justified by one or more of the following criteria applied to the participating uses:

Reductions in the total number of parking spaces may be made according to the following table:

Number of independent property users	Reduction allowed
2 to 4	10%
5 to 7	15%
8 or more	20%

The Approving Body may allow a larger reduction if it can be demonstrated that parking demands for the uses occur at different times of the day.

EXHIBIT 1

1. The uses occur at separate times of day.
2. The uses overlap, but their peak hours occur at different times of day.
3. The uses foster multipurpose trips.
4. The uses serve seniors, youth or other demographic groups known for below-average rates of vehicle ownership.
5. The parking reduction is commensurate with the level of vehicle activity typically associated with the proposed use(s), site location or incremental change in site floor area or intensity of use.

Any applicant proposing a parking reduction pursuant to section 13.10.553(b) shall submit a parking study prepared by a qualified, independent professional transportation planner. The analysis shall: (1) recommend an appropriate parking reduction based on the above criteria, and (2) recommend terms of the associated parking agreement. The requirement for a parking study may be waived by staff if the proposed parking reduction seems clearly justified by site conditions and the proposed parking agreement.

Amend 13.10.553(d) as follows:

Transportation and Parking ~~Alternatives~~ Demand Management. Parking requirements prescribed for any use, or combination of uses on the same or adjoining sites may be reduced by as much as twenty (20) percent ~~subject to acceptance of the Approving Body based upon a detailed Alternate Transportation and Parking Demand Management Program supplied by the applicant, and certified by the County, which may include, but is not limited to, provision of special transit incentives for employees, the operation of effective pooling programs, preferential parking arrangements, charter buses, club buses, employer's contribution to bus service cost, staggered or variable work hours.~~

In evaluating the request, the Approving Body shall consider, among other factors:

1. Projected effectiveness of carpool, vanpool, staggered work hours or similar transportation programs.
2. Proximity to public transportation facilities serving a significant portion of employees and/or customers.
3. Evidence that employees and/or customers utilize, on a regular basis, transportation alternatives to the automobile.
4. Evidence of land owned, leased or otherwise guaranteed for use by developer that can be held in contingency reserve to be used for supplying additional parking in the event that the program does not ~~reduce parking demand by the required amount.~~

Where an Alternate Transportation and Parking Program is employed and plans approved which reduce the number of required off-street parking spaces for a development, a written agreement between the landowner(s) and the County must be approved. Such an agreement must be in satisfactory form and content to County Counsel and is subject to approval by all appropriate Approving Bodies. This agreement shall be in a form capable of and subject to being recorded to constitute a covenant running with the land. The agreement shall include:

1. A guarantee that program will not be diminished, suspended, eliminated, or in any way be operated at a lower level of effort on the part of those responsible for its implementation without prior County approval.
2. A provision for bi-annual certification of the program by the County which will include, among other things, review of past year's effort to encourage employee's and customer's use of alternative transportation, and an accounting of the number of persons targeted by the program that actually and regularly employ techniques promoted by program. Such a report shall update that section of the plan outlining efforts to increase participation in the program during the coming years. The County shall retain the option to require changes, including but not limited to, the uses' intensity and program as are needed to achieve the required reduction in peak parking demand.

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Amend 13.10.700-1 as follows:

Intensification of Use. Commercial. Any change or expansion of commercial use which will result in a 40% increase in parking need or traffic generation from the prior use, a requirement to provide additional parking or which is determined by the Planning Director likely to result in a significant new or increased impact due to potential traffic generation, noise, smoke, glare, odors, hazardous materials, water use, and/or sewage generation shall be an "intensification of use" for purposes of this chapter. (Ord. 4285, 12/14/93; 4525, 12/8/98)

Design Review

Amend 13.10.323(e)(5)(B) as follows:

B. Building heights up to a maximum of thirty three (33) feet may be allowed without increased yards or variance approval, subject to review and recommendation by the Urban Designer or Planning Director, and to approval by the Zoning Administrator following a public hearing. Appeals from this decision shall be processed pursuant to Chapter 18.10.

Amend 13.10.325(d) as follows:

(d) Large Dwelling Design Guidelines. New large dwellings and related accessory structures regulated by this Section are subject to the following design guidelines. The intent of these guidelines is to assist the applicant in meeting the requirements of the large dwelling regulations, and to assist the Urban Designer, Planning Director and Zoning Administrator in reviewing applications.

Amend 13.11.073 as follows.

13.11.073 Building design.

(b) It shall be an objective of building design to address the present and future neighborhood, community, and zoning district context.

(1) Compatible Building Design.

(i) Building design shall relate to adjacent development and the surrounding area.

(ii) Compatible relationships between adjacent buildings can be achieved by creating visual transitions between buildings; that is, by repeating certain elements of the building design or building siting that provide a visual link between adjacent buildings. One or more of tThe building elements listed below can combine to create an overall composition that achieves the appropriate level of shall be reviewed for neighborhood compatibility:

(A) Massing of building form.

(B) Building silhouette.

(C) Spacing between buildings.

(D) Street-face setbacks.

(E) Character of architecture.

(F) Building scale.

(G) Proportion and composition of projections and recesses, doors and windows, and other features.

(H) Location and treatment of entryways.

(I) Finish material, texture and color.

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Amend 16.10.040(s) as follows:

(s) Development/Development Activities. For the purposes of this chapter, and this chapter only, any project that includes activity in any of the following categories is considered to be development or development activity. This chapter does not supersede Section 13.20.040 for purposes of determining whether a certain activity or project is considered development that requires a coastal permit; some activities and projects will require coastal permits although they do not fall under the this following specific definition.

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

(2) Any repair, replacement or reconstruction as defined by Section 13.10.260(b)(3)
[reconstruction to be defined as a remodel of an existing habitable structure where [75%-80%; or 100% for post-disaster projects] of the major structural components as defined by Section 13.10.260(b)(4) are substantially altered within the area of work associated with the building project(s). Major structural components include foundation, underfloor frame, wall framing, floor/ceiling assembly for multi-story elements, roof framing, exterior siding including doors and windows, and roofing material], alteration, addition, or improvement of a habitable structure that modifies or replaces more than fifty (50) percent of an existing habitable structure within a consecutive five year period, as calculated in accordance with the guidelines established by the County of Santa Cruz Planning Department; or major structural alterations involving more than fifty (50) percent within a consecutive five year period of an existing critical structure or facility as defined by this chapter, the total length of the exterior walls, exclusive of interior and exterior wall coverings and the replacing of windows or doors without altering their openings. This allows a total modification or replacement of up to fifty (50) percent, measured as described above, whether the work is done at one time or as the sum of multiple projects during the life of the structure;

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

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

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

(6) The repair, replacement, or upgrade of an existing foundation of a habitable structure that affects more than fifty (50) percent of the foundation (measured in linear feet for perimeter

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foundations, square feet for slab foundations, or fifty (50) percent of the total number of piers), or an addition to an existing foundation that adds more than fifty (50) percent of the original foundation area. This allows repair, upgrade, or addition up to fifty (50) percent, measured as described above, whether the work is performed at one time or as the sum of multiple projects during the life of the structure;

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

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

(97) Any repair, alteration, reconstruction, replacement or addition of any structure posted "Limited Entry" or "Unsafe to Occupy" due to geologic hazards; or involving a habitable structure that is located on a site that has been identified as being affected by recent or observable slope stability geologic concerns, such as sites that are or could be affected by a debris flow;

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

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

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

(1311) Installation of a septic system;

~~(1412) Any human-made change to developed or undeveloped real estate in the Special Flood Hazard Area, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials. This is in addition to any activity listed in items 1-13.~~

(1513) Any other project that is defined as development under Section 13.20.040, and that will increase the number of people exposed to geologic hazards, or that is located within a mapped geologic hazard area, or that may create or exacerbate an existing geologic hazard, shall be determined by the Planning Director to constitute development for the purposes of geologic review.
(Ord. 4024, 10/24/89; 4080, 9/11/90)

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