

CHAPTER 35.101 - NONCONFORMING USES, STRUCTURES, AND LOTS

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35.101.010 - Purpose and Intent

- A. Purpose.** This Chapter establishes uniform provisions for the regulation of nonconforming lots, structures, and uses of land and structures that were lawful before the adoption, amendment, or revision of this Development Code, or previously adopted County ordinances, but which would be prohibited, regulated, or restricted differently under the terms of this Development Code or future amendments.
- B. Intent.**
1. It is the intent of this Development Code, with limited specified exceptions, to:
 - a. Discourage the long-term continuance of these nonconformities, providing for their eventual elimination, but to permit them to exist under the limited conditions outlined in this Chapter.
 - b. Prevent nonconforming uses and structures from being enlarged, expanded, or extended, or being used as grounds for adding other structures or uses prohibited by the zone in which the nonconformity is located.
 2. Generally, this Chapter is intended to be administered in a manner which encourages the eventual abatement of these nonconformities.

35.101.020 - Nonconforming Uses of Land and Structures

A nonconforming use may be continued subject to the following provisions, so long as the use remains otherwise lawful.

A. Structural change.

1. **Allowed enlargements, extensions, moving, reconstruction, or structural alterations.** Except as listed below or otherwise provided in this Development Code, no existing structure devoted to a nonconforming use under this Development Code shall be enlarged, extended, moved, reconstructed, or structurally altered unless the use is changed to a use allowed in the zone in which it is located.
 - a. **Seismic retrofits allowed.** Seismic retrofits as defined in [Article 35.11 \(Glossary\)](#) in compliance with [Section 35.20.040 \(Exemptions from Planning Permit Requirements\)](#), may be allowed but shall be limited exclusively to compliance with earthquake safety standards and other applicable Building Code requirements, including State law (e.g., Title 24, California Code of Regulations).
 - b. **Rehabilitation of dwellings.** Existing structures devoted to a nonconforming residential use

may be enlarged, extended, reconstructed, relocated, and/or structurally altered in compliance with Subsection F. (Limited exceptions for certain nonconforming residential uses) below.

- c. **Rehabilitation of dwellings threatened due to coastal erosion.** Existing structures devoted to a nonconforming residential use that are threatened due to coastal erosion may be enlarged, extended, reconstructed, relocated, and/or structurally altered provided all of the following criteria are met:
 - (1) The structure is located on property zoned either SR-M or SR-H.
 - (2) Any alteration complies with the setback and height requirements of the applicable zone.
 - (3) Any alteration does not result in the removal of required parking spaces.
 - (4) Any alteration does not result in an increase in the number of bedrooms within the dwelling, unless the increase is in compliance with the bedroom density standards of the applicable zone.
- d. **Normal maintenance and repair.** Normal maintenance and repair may occur provided no structural alterations are made.
- e. **Historical landmarks.** A structure that has been declared to be a historical landmark in compliance with a resolution of the Board may be enlarged, extended, reconstructed, relocated, and/or structurally altered provided the County Historical Landmarks Advisory Commission has reviewed and approved the proposed structural alterations and has determined that the proposed structural alterations will help to preserve and maintain the landmark in the long-term.

- 2. **Accessory to a conforming use.** No structure accessory to a nonconforming use under this Development Code shall be enlarged, erected, or extended unless the structure is also accessory to a conforming use.

B. Expansion or extension.

- 1. An existing nonconforming use may be extended throughout or relocated within an existing structure; provided, no structural alterations are made except those required by law or ordinance (e.g., Building Code regulations).
- 2. No existing nonconforming use shall be extended to occupy any land outside of the structure.
- 3. No existing nonconforming use of land outside structures, or not involving structures, shall be enlarged, extended, or increased to occupy a greater area of land than was occupied at the time the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use.

C. Allowed changes of use. A nonconforming use may only be changed to a conforming use.

D. Abandonment/discontinuance. A nonconforming use that is discontinued for a continuous period of at least 12 consecutive months shall be considered to be abandoned and the rights to continue the nonconforming use shall terminate. If a nonconforming use is abandoned, any future use shall comply with the provisions of the zone in which the use is located.

E. Damage. This Section identifies the standards for allowing the continuation of a nonconforming use in a structure or other development that is damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs.

1. **Non-residential uses.**
 - a. **Damage 75 percent or more.** If structure or other development dedicated to a non-residential nonconforming use is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, then the nonconforming use shall be discontinued and the damaged structure or other development thereafter used only in compliance with regulations of the zone in which it is located, unless allowed to continue by the Zoning Administrator, in compliance with Section 35.82.100 (Hardship Determinations).
 - b. **Damage less than 75 percent.** If the damage caused by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs is less than 75 percent of the replacement cost of the total structure before the damage, as determined by the Director, the structure or other developments may be restored to the same or lesser size and in the same general footprint location. The nonconforming use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged or intensified.
2. **Residential uses.** Except in industrial zones, structures dedicated to nonconforming residential dwelling uses (e.g., one-family, two-family, and multi-family units, and second residential units), that are damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs, may be reconstructed to the same or lesser size and in the same general footprint location. The nonconforming residential dwelling use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged, expanded, or intensified (e.g., increase in gross floor area, increase in the number of bedrooms). If the structure dedicated to a nonconforming residential dwelling use is located in an industrial zone, the damage standards of Subsection E. 1 (Non-residential uses) above, shall apply.
3. **Reconstruction shall commence within 24 months.** The restoration of a nonconforming use allowed in compliance with Subsection E.1 (Non-residential uses) and Subsection E.2 (Residential uses) above, shall commence within 24 months of the time of damage and be diligently carried out to completion.
 - a. The 24-month time limit may be extended by the Director for a maximum of 12 months for good cause, provided a written request, including a statement of reasons for the time extension request, is filed with the Department before the expiration of the 24-month period.
 - b. If the restoration of the nonconforming use does not commence within 24 months or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.
4. **Applicability of permit requirements.**
 - a. **Exempt from the Development Code permit requirements.** The restoration or reconstruction of a structure or other development dedicated to a nonconforming use that is damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of property on which the nonconforming use occurs shall be exempt from the permit requirements of this Development Code only if the structure or other development complies with the provisions of this Chapter and if the structure or other development conforms to the specifications documented to exist before the damage or destruction, as determined by the Director. Full compliance with applicable Building Code provisions is still required.

- b. **Design Review required.** If the Director determines that the exterior design or specifications are proposed to be changed or the footprint of the structure is relocated, the replaced or restored structure shall be subject to the provisions of [Section 35.82.070 \(Design Review\)](#), if otherwise subject to review (e.g., the site is subject to [Section 35.28.080 \(Design Review \(D\) Overlay Zone\)](#), the project is subject to [Section 35.62.040 \(Ridgeline and Hillside Development Standards\)](#)) in compliance with this Development Code.
- c. **Subject to Development Code permit requirements.** If the structure or other development is proposed to be altered from the original specifications, as determined by the Director, the reconstruction or restoration shall be subject to all applicable permit requirements of this Development Code.
- d. **Sites within the Toro Canyon Plan Area.** The following shall apply to nonconforming uses located within the Toro Canyon Plan Area.
 - (1) The replacement or re-establishment of nonconforming uses are subject to the regulations of the Toro Canyon Plan and this Development Code only to the extent that some type of permit may be required by this Development Code. Any permit may be approved only in compliance with the regulations of the Toro Canyon Plan and this Development Code.
 - (2) Nonconforming uses located within nonconforming structures located on a bluff top or on the beach may not be increased or expanded into additional locations or structures.

F. Limited exceptions for certain nonconforming residential uses. Existing structures devoted to a nonconforming residential use may be enlarged, extended, reconstructed, relocated, and/or structurally altered, subject to the following criteria:

1. The site is within a zone which allows residential use as an allowed use requiring only a Coastal Development Permit or a Land Use Permit.
2. On any lot, only one existing structure devoted to a nonconforming residential use may be enlarged, extended, moved, reconstructed, and/or structurally altered.
3. No enlargements shall result in a structure devoted to a nonconforming residential use that exceeds 1,200 square feet of gross floor area and no enlargements shall be allowed to any structure which has a current legal nonconforming residential gross floor area of 1,200 square feet or more.
4. No enlargement, extension, reconstruction, relocation, or structural alteration shall exceed the height of, or protrude higher than, the highest point of, the existing structure.
5. The structure shall comply with all applicable building, electrical, fire, mechanical, and plumbing codes, and shall not compromise the adequate performance of any existing water system or liquid waste disposal (e.g., septic) system, as determined to the satisfaction of the County Public Health Department.
6. Any enlargement, extension, reconstruction, relocation, or structural alteration shall comply with all height, lot coverage, parking, setback, and other requirements of the zone in which the structure is located.

G. Limited exception determinations for certain nonconforming industrial uses.

1. **Process and findings required.** Improvements comprising minor enlargements, expansions, extensions, or structural alterations of a structure dedicated to an industrial, public works, or energy-related nonconforming use may be allowed, subject to the following process and findings.

2. **Requirement for limited exception determination.** The review authority shall approve a Limited Exception Determination in compliance with [Section 35.82.120 \(Limited Exception Determinations\)](#) before the approval of any permit in compliance with [Section 35.82.050 \(Coastal Development Permits\)](#) or [Section 35.82.110 \(Land Use Permits\)](#) to allow minor enlargements, expansions, extensions, or structural alterations.
 - a. Where a discretionary permit has not been previously approved for the existing nonconforming industrial use, appropriate non-discretionary permits may be issued after a Limited Exception Determination has been approved in compliance with [Section 35.82.120 \(Limited Exception Determinations\)](#)
 - b. Where a discretionary permit has previously been approved, changes to that permit may be made in compliance with this Development Code and the appropriate non-discretionary permits may be issued after a Limited Exception Determination has been approved in compliance with [Section 35.82.120 \(Limited Exception Determinations\)](#).
- H. Parking.** If a use is nonconforming solely with respect to existing parking standards, the structure devoted to the use may be altered but the use may not be expanded, extended, or intensified in a manner that would increase the required number of off-street parking spaces in compliance with [Chapter 35.36 \(Parking and Loading Standards\)](#) unless:
1. The use is brought into compliance with the requirements of [Chapter 35.36 \(Parking and Loading Standards\)](#); or
 2. A modification to the parking requirements has been approved.

35.101.030 - Nonconforming Structures

A structure that is conforming as to use but nonconforming as to height, lot coverage, setbacks, or other requirements concerning the structure may remain so long as it is otherwise lawful, subject to the following provisions.

A. Structural change, expansion, or extension.

1. **Enlargements or extensions allowed in limited circumstances.** Except as listed below or otherwise provided in this Development Code, a nonconforming structure may not be enlarged, extended, moved, or structurally altered unless the enlargement, extension, etc., complies with the height, lot coverage, setback, and other requirements of this Development Code.
 - a. **Seismic retrofits allowed.** Seismic retrofits as defined in [Article 35.11 \(Glossary\)](#) and in compliance with [Section 35.20.040 \(Exemptions from Planning Permit Requirements\)](#) may be allowed but shall be limited exclusively to compliance with earthquake safety standards and other applicable Building Code requirements, including State law (e.g., Title 24, California Code of Regulations).
 - b. **Normal maintenance and repair.** Normal maintenance and repair may occur provided no structural alterations are made.
 - c. **Historical landmarks.** A structure that has been declared to be a historical landmark in compliance with a resolution of the Board may be enlarged, extended, reconstructed, relocated, and/or structurally altered provided the County Historical Landmarks Advisory Commission has reviewed and approved the proposed structural alterations and has determined that the proposed structural alterations will help to preserve and maintain the landmark in the long-term.
2. **Accessory living quarters.** No living quarters may be extended into an accessory structure located

in the required front, side, or rear setbacks by any addition or enlargement.

B. Damage. This Section identifies the standards for allowing the reconstruction or restoration of a nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure.

1. One-family dwellings. Nonconforming one-family dwellings that are damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure may be reconstructed to the same or lesser size in the same general footprint location.

2. Structures other than one-family dwellings - Inland area.

a. Damage 75 percent or more.

(1) If a nonconforming structure, other than a one-family dwelling, is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, then the structure may not be reconstructed unless allowed by the Zoning Administrator, in compliance with [Section 35.82.100 \(Hardship Determinations\)](#).

(2) If the damaged nonconforming structure is accessory to a primary structure and there is substantial question regarding the extent of damage, as determined by the Director, the Zoning Administrator shall first find, in compliance with [Section 35.82.140 \(Nonconforming Status and Extent of Damage Determination\)](#) that the structure is nonconforming and shall determine the extent of damage.

b. Damage less than 75 percent.

(1) Where a nonconforming structure, other than a one-family dwelling, is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of less than 75 percent of the replacement cost of the total structure before the damage, as determined by the Director, the structure may be reconstructed to the same or lesser size in the same general footprint location.

(2) If the damaged nonconforming structure is accessory to a primary structure, notice of the potential reconstruction shall be given in compliance with [Section 35.106.020 \(Notice of Public Hearing and Review Authority Action\)](#). If a request for public hearing is received by the Department within the applicable period of time, then the reconstruction of the accessory structure shall not commence unless the Zoning Administrator first finds, in compliance with [Section 35.82.140 \(Nonconforming Status and Extent of Damage Determination\)](#) that the structure is nonconforming and that the extent of damage is less than 75 percent.

3. Structures other than one-family dwellings - Coastal Zone.

a. Damage 75 percent or more. Except for greenhouse related development (e.g., greenhouses, packing and shipping facilities, shade and hoop structures) in the Carpinteria Agricultural overlay, a nonconforming structure that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, may not be reconstructed unless allowed by the Zoning Administrator, in compliance with [Section 35.82.100 \(Hardship Determinations\)](#).

b. Damage less than 75 percent. Where a nonconforming structure, other than a one-family dwelling, is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the

control of the owner of the structure to an extent of less than 75 percent of the replacement cost of the total structure before the damage, as determined by the Director, the structure may be reconstructed to the same or lesser size in the same general footprint location.

- 4 Sites within the Carpinteria Agricultural overlay zone.** Notwithstanding the above, a nonconforming greenhouse, packing and shipping facility, shade and hoop structure, or greenhouse-related structure in the Carpinteria Agricultural overlay zone that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, shall only be reconstructed in compliance with [Section 35.28.070 \(Carpinteria Agricultural \(CA\) Overlay Zone\)](#) thereby becoming a conforming structure.
- 5. Sites within the Toro Canyon Plan Area.** Notwithstanding the above, the following standards apply to nonconforming structures on lots identified within the Toro Canyon Plan Area. In case of a conflict, the standards of this Subsection shall take precedence.
 - a. Inland area.** The following shall apply to the repair or reconstruction of nonconforming structures located outside of the Coastal Zone.
 - (1) Residential structures.**
 - (a) A residential structure that is damaged or destroyed by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure may be reconstructed to the same or lesser size on the same site and in the same general footprint location.
 - (b) A residential structure that is nonconforming solely due to any policy, development standard, or zoning regulation first applied and adopted under the Toro Canyon Plan, which requires partial or complete reconstruction or structural repair due to normal wear-and-tear (e.g., structural pest damage or dry rot) may be reconstructed or repaired to the same or lesser size on the same site and in the same general footprint location.
 - (c) A residential structure that is nonconforming solely due to its location within an Environmentally Sensitive Habitat area or Environmentally Sensitive Habitat buffer area may be expanded upward, or outward and away from the Environmentally Sensitive Habitat area, consistent with Development Standards BIO-TC-7.5 and BIO-TC-7.8 of the Toro Canyon Plan and in a manner that otherwise complies with the regulations of the Toro Canyon Plan and this Development Code.
 - (d) For the purpose of this Subsection, “residential structure” shall mean primary dwellings, secondary dwellings including Residential Second Units, farm employee dwellings, guesthouses, and all attached appurtenances (e.g., garages and storage rooms) that share at least one common wall with the residential structure. One detached private garage structure may be included within the meaning of “residential structure” in compliance with [Section 35.82.140 \(Nonconforming Status and Extent of Damage Determination\)](#).
 - (2) Non-residential agricultural support structures.**
 - (a) A nonconforming agricultural support structure that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure may be reconstructed to the same or lesser size on the same site and in the same general footprint location.

- (b) A agricultural support structure that is nonconforming solely due to any policy, development standard, or zoning regulation first applied and adopted under the Toro Canyon Plan, which requires partial or complete reconstruction or structural repair due to normal wear-and-tear (e.g., structural pest damage or dry rot) may be reconstructed or repaired to the same or lesser size on the same site and in the same general footprint location.
- (c) Expansion of nonconforming agricultural support structures located within Environmentally Sensitive Habitat areas or Environmentally Sensitive Habitat buffer areas: Any agricultural support structure that is nonconforming solely due to its location within an Environmentally Sensitive Habitat area or Environmentally Sensitive Habitat buffer area may be expanded upward, or outward and away from the Environmentally Sensitive Habitat area, consistent with Development Standards BIO TC 7.5 and BIO TC 7.8 of the Toro Canyon Plan and in a manner that otherwise conforms with the regulations of the Toro Canyon Plan and this Development Code.
- (d) For the purpose of this Subsection, “agricultural support structure” shall mean any structure that is essential to the support of agricultural production on agriculturally-zoned property.

(3) Non-residential structures, not including agricultural support structures.

- (a) A nonconforming non-residential structure that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Director, may be reconstructed to the same or lesser size on the same site and in the same general footprint location, provided that the reconstruction complies with the regulations of the Toro Canyon Plan and this Development Code to the maximum extent feasible, and if allowed by the review authority in compliance with [Section 35.82.100 \(Hardship Determinations\)](#).
- (b) A nonconforming non-residential structure that requires partial or complete reconstruction or structural repair due to normal wear-and-tear (e.g., structural pest damage or dry rot) may be reconstructed or structurally repaired to the same or lesser size on the same site and in the same general footprint location, provided that the repair or reconstruction conforms with the regulations of the Toro Canyon Plan and this Development Code to the maximum extent feasible and if allowed by the review authority in compliance with [Section 35.82.100 \(Hardship Determinations\)](#).
- (c) A structure that is nonconforming solely due to its location within a front, rear, or side setback area, due to any increase in the setback area that resulted from a change of zone adopted with the Toro Canyon Plan, may be enlarged or expanded in a manner that does not further encroach into any setback area and that otherwise complies with the regulations of the Toro Canyon Plan and this Article.

b. Coastal Zone. The following shall apply to the repair or reconstruction of nonconforming structures located within the Coastal Zone.

(1) Residential structures.

- (a) A nonconforming residential structure that is damaged or destroyed by

earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure may be reconstructed to the same or lesser size on the same site and in the same general footprint location.

- (b) A nonconforming residential structure, located within an Existing Developed Rural Neighborhood as designated on the Comprehensive Plan maps and either located within an Environmentally Sensitive Habitat area or within an Environmentally Sensitive Habitat buffer area, which requires partial or complete reconstruction or structural repair due to normal wear-and-tear (e.g., structural pest damage or dry rot) may be reconstructed or repaired to the same or lesser size on the same site and in the same footprint location. If the reconstructed residence is proposed to be larger than the existing structure, it may only be allowed where findings are first made that the development does not adversely impact the adjacent riparian species, complies with all other provisions of the Toro Canyon Plan, and the Local Coastal Program including development standards for native and non-native protected tree species, and complies with Development Standards BIO-TC-5.1 through 5.4 of the Toro Canyon Plan. Reconstruction includes any project that results in the demolition of more than 50 percent of the exterior walls.
- (c) A primary dwelling, located within an Existing Development Rural Neighborhood, that is nonconforming solely due to its location within an Environmentally Sensitive Habitat buffer area may be expanded upward, or outward and away from the Environmentally Sensitive Habitat area, consistent with Development Standards BIO-TC-5.1 and BIO-TC-5.4 of the Toro Canyon Plan and in a manner that otherwise complies with the regulations of the Toro Canyon Plan and this Development Code.
- (d) For the purpose of this Subsection, “residential structure” shall mean primary dwellings, secondary dwellings including Residential Second Units, farm employee dwellings, and all attached appurtenances (e.g., garages and storage rooms) that share at least one common wall with the residential structure. One detached private garage structure may be included within the meaning of “residential structure” in compliance with [Section 35.82.140 \(Nonconforming Status and Extent of Damage Determination\)](#).

(2) Non-residential agricultural support structures.

- (a) A nonconforming agricultural support structure, other than greenhouses or greenhouse related development located within the Carpinteria Agricultural overlay, that is damaged by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure, may be reconstructed to the same or lesser size on the same site and in the same general footprint location. Nonconforming greenhouses and greenhouse related development located within the Carpinteria Agricultural overlay zone may only be reconstructed in compliance with that overlay.
- (b) Except for structures located in an Environmental Sensitive Habitat area, an agricultural support structure that is nonconforming solely due to any policy, development standard, or zoning regulation first applied and adopted under the Toro Canyon Plan, which requires partial or complete reconstruction or structural repair due to normal wear-and-tear (e.g., structural pest damage or dry rot) may be reconstructed or repaired to the same or lesser size on the same site and in the same general footprint location.

- (c) For the purpose of this Subsection, “agricultural support structure” shall mean any structure, other than “greenhouse development” as defined in the Carpinteria Agricultural overlay zone, which is essential to the support of agricultural production on agriculturally-zoned property.

(3) Non-residential structures, not including agricultural support structures.

- (a) A nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure to an extent of 75 percent or more of the replacement cost of the total structure before the damage, as determined by the Department, may be reconstructed or structurally repaired to the same or lesser size on the same site and in the same general footprint location, provided that the reconstruction complies with the regulations of the Toro Canyon Plan and this Development Code to the maximum extent feasible, and if allowed by the Zoning Administrator in compliance with [Section 35.82.100 \(Hardship Determinations\)](#).

(4) Expansion of certain nonconforming structures located within setbacks. A structure that is nonconforming solely due to its location within a front, rear, or side setback area, due to any increase in the setback area that resulted from a change of zone adopted with the Toro Canyon Plan, may be enlarged or expanded in a manner that does not further encroach into any setback area and complies with the regulations of the Toro Canyon Plan and this Development Code.

(5) Expansion of nonconforming structures located on a bluff top or beach. Additions to nonconforming structures located on a bluff top or on the beach that increase the size of the structure by 50 percent or more are not allowed unless the entire structure is brought into compliance with the policies and standards of the Local Coastal Program. Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a nonconforming structure is not allowed unless the entire structure is brought into compliance with the policies and standards of the Local Coastal Program.

6. Reconstruction shall commence within 24 months.

- a. The reconstruction or restoration of a nonconforming structure that is required due to damage by earthquake, fire, flood, vandalism, or other calamity beyond the control of the owner of the structure allowed in compliance with Subsection B. (Damage) above shall commence within 24 months of the time of damage and be diligently carried out to completion.
- b. Within the Toro Canyon Plan Area, reconstruction or structural repair required due to normal wear and tear (e.g., structural pest damage or dry rot) as allowed above shall commence within 24 months of the time of the owner’s first documented discovery of the need for reconstruction or repair, and shall be diligently carried out to completion.
- c. The 24-month time limit may be extended by the Director one time for good cause, provided a written request, including a statement of reasons for the time extension request, is filed with the Department before the expiration of the 24-month time period.
- d. If the reconstruction or restoration of the structure does not commence within 24 months or the extended time period that may be granted by the Director, it shall not be restored except in full compliance with the applicable zone regulations and other provisions of this Development Code.

- (1) Within the Toro Canyon Plan Area, where the reconstruction or structural repair allowed above does not commence within the specified 24 months or the extended time period that may be granted by the Director, the structure shall not be reconstructed or repaired except in full compliance with the regulations of the Toro Canyon Plan.

7. Applicability of permit requirements.

- a. Exempt from Development Code permit requirements.** The restoration of a nonconforming structure that is damaged by earthquake, fire, flood, vandalism or other calamity beyond the control of the owner of the structure shall be exempt from the permit requirements of this Development Code only if the structure complies with the provisions of this Section and if the structure conforms to the specifications documented to exist before the damage or destruction, as determined by the Director. Full compliance with applicable Building Code provisions is still required.
- b. Design Review required.** If the Director determines that the exterior design or specifications are proposed to be changed or the footprint of the structure is relocated, the restored structure shall be subject to the provisions of [Section 35.82.070 \(Design Review\)](#) if otherwise subject to review (e.g., the site is subject to [Section 35.28.080 \(Design Review \(D\) Overlay Zone\)](#), the project is subject to [Section 35.62.040 \(Ridgeline and Hillside Development Standards\)](#)) in compliance with this Development Code.
- c. Subject to Development Code permit requirements.** If the structure is proposed to be altered from the original specifications, as determined by the Department, the restoration shall be subject to all applicable permit requirements of this Development Code.

35.101.040 - Construction in Progress

- A. Chapter shall not require changes.** To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in the plans, construction, or designated use of any structure on which actual construction was lawfully begun before the effective date of adoption or any amendment of this Development Code rendering the structure or its use nonconforming and upon which actual construction has been carried on diligently.
- B. Construction defined.** Actual construction is defined to mean the placing of construction materials in permanent position and fastened in a permanent manner.

35.101.050 - Termination of Nonconforming Uses

In addition to the provisions for termination of certain nonconforming uses contained elsewhere in this Chapter, any nonconforming use or uses of either land or structures or both may be ordered terminated by the Board, after a public hearing, as provided in [Section 35.101.070 \(Termination Procedures\)](#), below, if one or more of the three following conditions is found to apply to any nonconforming use.

- A. Improvements can be used only for those uses allowed in the zone.** The condition of the improvements, if any, on the property exist in a manner that to require the property to be used only for those uses allowed in the zone where it is located would not impair the constitutional rights of any person;
- B. Improvements can be altered to be used with those uses allowed in the zone.** The nature of the improvements exist in a manner that they can be altered so as to be used in conformity with the uses allowed in the zone in which the property is located without impairing the constitutional rights of any person; or
- C. Use is detrimental or a public nuisance.** Except in the case of a dedicated cemetery, the nonconforming

use is detrimental to the public health or safety or is a public nuisance.

35.101.060 - Unpermitted Expansion of Nonconforming Uses

After a public hearing, as provided in [Section 35.101.070 \(Termination Procedures\)](#), below, any expansion of or change in a nonconforming use of structures or land, or both, not expressly allowed under and strictly in compliance with the provisions of this Development Code, and especially this Chapter, nor required by law, may be ordered terminated by the Board.

35.101.070 - Termination Procedures

A. Procedures for termination of nonconforming uses. All nonconforming uses to be terminated under the provisions of this Chapter may be ordered terminated by the Board in compliance with the following procedures.

1. Upon recommendation of the Commission, or upon petition by a person affected by a nonconforming use of structures or land or both, or on its own initiative, the Board may set a date for, and call for a public hearing to determine whether or not a nonconforming use of land or structures, or both, or an unpermitted expansion of or change in the use, should be ordered terminated.
2. Fifteen days notice of the hearing shall be given by publication once in a newspaper of general circulation within the County or in the area where the affected property is located, and by service upon the owner of the land and upon the person operating or maintaining the nonconforming use, if not the owner.
3. Service of the notice shall be either personal or by mail addressed to the last known address of the person to be served.
4. The notice shall specify the date, time, and place of the hearing and shall specify the grounds on which the nonconforming use or changes or expansion of the use is sought to be terminated.

B. Hearing procedures.

1. All hearings held in compliance with this Section by the Board shall be open to the general public, be presided over by the Chairperson, vice-chairperson, or acting chairperson of the Board, and the proceedings shall be recorded by an electronic recording device.
2. The owner, the party maintaining the nonconforming use, the Board, and all other interested persons may be represented by attorneys of their own choosing, may submit written and oral evidence; provided, oral evidence shall be taken only on oath or affirmation, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called the witness to testify, and to rebut the evidence against the witness.
3. If the person maintaining the nonconforming use does not testify in their own behalf they may be called and examined as if under cross-examination.

C. Rules of evidence. The hearing need not be conducted in compliance with technical rules relating to evidence and witnesses.

1. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions in courts.

2. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts.
3. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

D. Board's action on the termination, change, or expansion of use.

1. The Board shall render its decision in writing, containing findings of fact, within 30 days after the date on which the public hearing was completed and closed.
2. It shall deliver copies by mail or personally to the parties concerned in the hearing.
3. Failure to render the decision within 30 days, or any extension thereof stipulated to by the parties, shall be deemed to permit the continuance of the nonconforming use or the change or expansion thereof, which was the subject of the hearing.
4. The decision shall, if it ordered the nonconforming use, or change or expansion thereof terminated, specify the time within which the person maintaining the nonconforming use or change or expansion thereof, shall terminate, as the Board deems reasonable and proper under the circumstances.

E. Hearings may be continued. The hearings may be continued from time to time by the Board.

F. Judicial review. Judicial review of any order of the Board made in compliance with this Section may be had by filing a petition for a writ of mandate in compliance with the provisions of the California Code of Civil Procedure.

G. Failure to comply with order of termination. Any non-compliance with an order of termination of the Board made in compliance with this Section, as well as any continuance of any nonconforming use beyond the expressed period of time identified in this Section shall be deemed a violation of the terms of this Development Code.

35.101.080 - Nonconforming Due to Lack of a Discretionary Permit

A. Conformity of uses requiring a discretionary permit. A use lawfully existing without the approval of a discretionary permit that would be required by this Development Code, shall be deemed conforming only to the extent that it previously existed (e.g., maintain the same site area boundaries, hours of operation).

B. Previous permits in effect. A use that was authorized by a discretionary permit but is not allowed by this Development Code in its current location may continue, but only in compliance with the discretionary permit.

