

# Board Of Supervisors

## Legal Nonconforming Workshop



February 5, 2013

# Workshop Agenda

- ☞ What is Legal Nonconforming?
  - Use
  - Structure
  - Lot
- ☞ Current Ordinance vs. Proposed Ordinance
- ☞ What Is the Role of the Board?
- ☞ Board's Objectives
- ☞ Draft Legal Nonconforming Ordinance
- ☞ Commonly Asked Questions
- ☞ Board Discussion Items
- ☞ Next Steps

# What is Nonconforming?

- ∞ Conforming = Meets zoning code requirements currently in effect
- ∞ Nonconforming = Does not meet zoning codes currently in effect
- ∞ Legal nonconforming = Met zoning codes in effect at the time it was established, however, does not meet subsequently adopted zoning code requirements
- ∞ General intent of nonconforming provisions of zoning codes are to phase out uses and structures that no longer conform to the long range plan.

# What is a Legal Nonconforming Use, Structure & Lot?

- ∞ Legal Nonconforming use - a use or activity that met the applicable zoning code requirements in effect at the time it was established.
  - No longer allowed in the zone district under the current code.
  - Nonconforming uses do not necessarily involve a structure, such as outdoor storage, which may become nonconforming when zoning is changed.
  
- ∞ Legal Nonconforming structure - a structure or building that met zoning code requirements when the structure was constructed.
  - No longer complies with the current size, setback, height, lot coverage, density, or building configuration regulations.
  
- ∞ Legal Nonconforming lot - a lot that met zoning code requirements when the lot was created.
  - No longer complies with the current lot area, width, depth or street frontage regulations of its zone district.

# Draft Ordinance Scenarios

## ∞ Scenario A

- 30 year old nursery established by right. 2013 Zoning prohibits nurseries in zone. = Legal Nonconforming
- Nursery sold to new owner who wants to expand. = Conditional Use Permit by Planning Commission

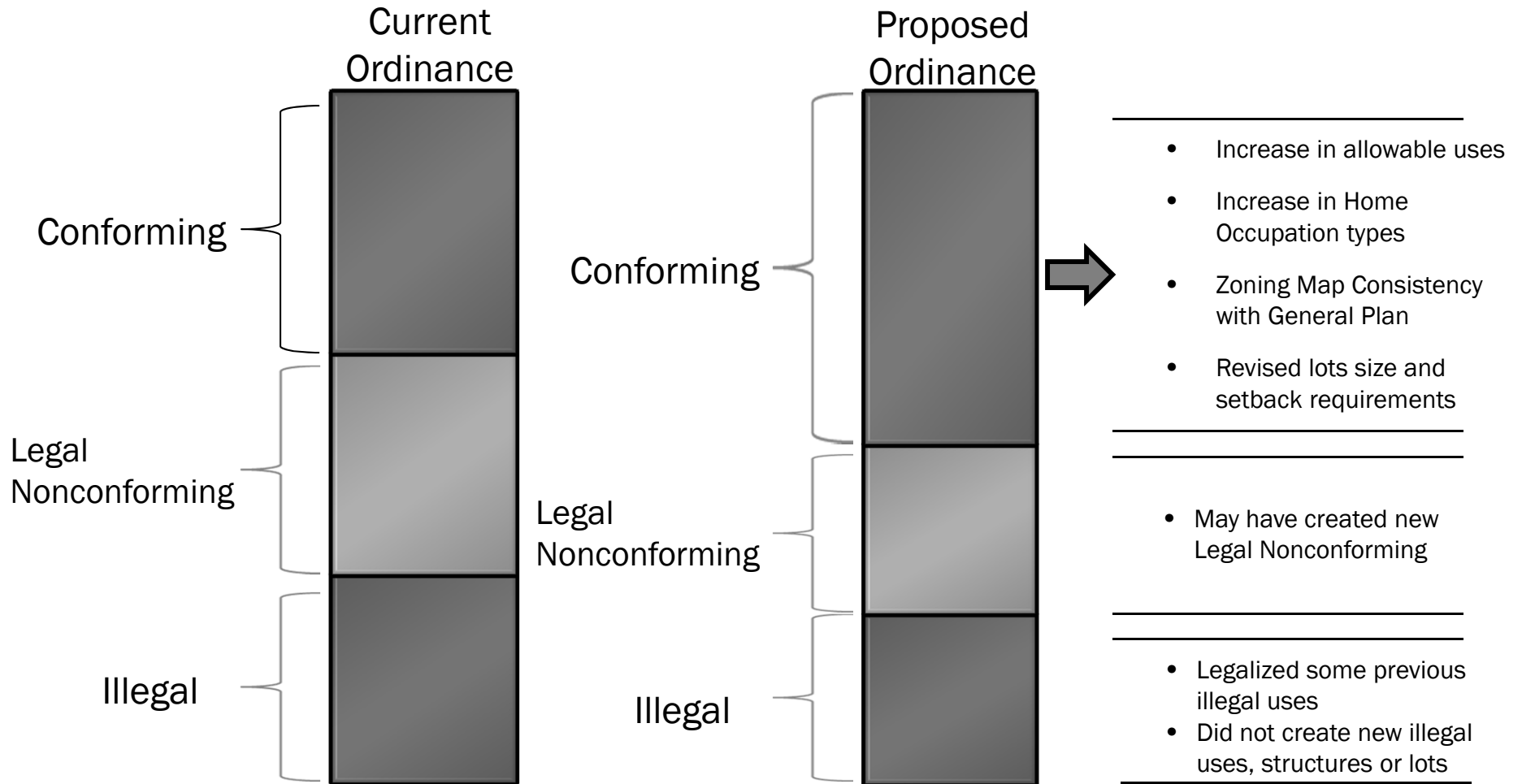
## ∞ Scenario B

- Automotive junk yard and pick and pull established 30 years ago. 2013 Draft Zone prohibits use in newly designated residential zone. = Legal Nonconforming
- Automotive junk yard and pick and pull closes due to owner illness for more than 3 years. = Use no longer legal nonconforming

# What is an Illegal Use, Structure or Lot?

- ∞ Illegal uses, structures and lots are those that:
  - Do not conform to the current zoning code *and*
  - Did not conform to the code when they were established.

# Current Ordinance vs. Proposed Ordinance



\*Illustrations are for discussion only and do not represent actuals\*

# What is the Role of the Board?

∞ Board Determines what is conforming

- Uses
- Structures
- Lots

**Table 17.21.030 Agricultural, Rural Lands and Resource Zones Development Standards**

	LA	PA	AG	TPZ	FR	RL
Minimum Lot Size <sup>1, 2</sup>	10 acres or as designated	10 acres or as designated	40 acres or as designated	160 acres	40 acres below 3,000 ft. elev. or as designated; 160 acres 3,000 ft. and higher	10 acres or as designated
Setbacks: (in feet) Agricultural (ag) structure, Front, secondary front, sides, rear	50	50	50	50	50	50
Non-ag structure, Front, secondary front, sides, rear	30	30	30	30	30	30
Building Height: (in feet) Ag structure	50	50	50	50	50	50
Non-ag structure	45	45	45	45	45	45
Lot Frontage (in feet)	200	150	200	200	200	150
Notes: <sup>1</sup> An agricultural preserve may consist of a lot or adjacent lots of between 10 and 20 acres in compliance with Section 17.40.060 (Agricultural Preserves and Zones, etc.) <sup>2</sup> Lots that are created for access road, parking areas, common area landscaping and open space purposes are exempt from the area and width standards of the respective zones						

**Table 17.21.020 Agricultural, Rural Lands and Resource Zone Districts Use Matrix**

LA: Limited Agricultural	P	Allowed use					
PA: Planned Agricultural	A	Administrative permit required (17.52.010)					
AG: Agricultural Grazing	TUP	Temporary use permit required (17.52.060)					
RL: Rural Lands	CUP	Conditional use permit required/					
FR: Forest Resource	MUP	Minor use permit required (17.52.020)					
TPZ: Timber Production Zone	TMA	Temporary mobile home permit (17.52.050)					
	—	Use not allowed in zone					
USE TYPE	LA	PA	AG	RL	FR	TPZ	
Agricultural							
Animal Raising and Keeping	P	P	P	P	P	P	17.40.080
Barn; Stable, private; Storage structure	P	P	P	P	P	P	17.40.030
Crop Production	P	P	P	P	P	—	

You (the Board) Decide...





# Board Objectives

	Proposed	How	Why
Conforming		<ul style="list-style-type: none"> <li>• Increase in allowable uses</li> <li>• Increase in Home Occupation types</li> <li>• Zoning Map Consistency with General Plan</li> <li>• Revised Lot Size and Setbacks</li> </ul>	<ul style="list-style-type: none"> <li>• Job Creation and Preservation</li> <li>• Increase in sales and property tax revenue</li> <li>• Development of Moderate Income Homes</li> <li>• Promote and Protect Agriculture and Natural Resources</li> <li>• State Compliance</li> <li>• General Plan Consistency</li> </ul>
Nonconforming		<ul style="list-style-type: none"> <li>• “Validate” use or structure</li> <li>• Revise Ordinance to include use type that meet Objectives</li> <li>• Allow to continue and expand legal nonconforming uses with CUP</li> </ul>	<ul style="list-style-type: none"> <li>• Existing legal nonconforming use or structure that meets objectives</li> <li>• Phase Out when does not meet long term vision</li> </ul>
Illegal		<ul style="list-style-type: none"> <li>• Create policy(s) for certain uses and structures with criteria based on Board Objectives</li> </ul>	<ul style="list-style-type: none"> <li>• Possibly “legalize” certain uses and structures based on Board Objectives</li> </ul>

\*Illustration are for discussion only and do not represent actuals\*

## Draft Ordinance

### Chapter 17.61 Nonconforming – Comprehensively rewritten

- ∞ Based on Board input following the July 2012 Zoning Ordinance Workshop, the draft was revised to address the following general concepts:
  - Allow one legal nonconforming use to be replaced with another nonconforming use when the new use is not more intensive
  - Allow the reconstruction or expansion of a nonconforming structure
  - Allow additional conforming uses on a property containing a nonconforming use, if it does not worsen the nonconformity or over burden the land
  - Provide a longer horizon for the determination that a legal use has been abandoned
  - Allow the extensions of those time frames by the Planning Commission.
  - Revise or remove specific nonconforming sections in Ordinance including Ranch Marketing, Landscaping, Lighting and Parking
- ∞ No final decision has been made. On September 25, 2012 the Board requested a workshop to further discuss these concepts.

# Commonly Asked Questions of the Draft Ordinance

- ☞ Can nonconformities legally continue to exist?
  - Yes. The draft zoning ordinance allows nonconformities to continue
  - If nonconformities are abandoned, damaged, or destroyed the draft zoning ordinance, in some instances, restricts their replacement or continuance.
- ☞ When can nonconformities be replaced as they currently exist?
  - Nonconformities can be replaced as they currently exist when they require repairs or alterations, become damaged, are destroyed by an act of nature or other unintentional events.
- ☞ Are there any exceptions to this rule?
  - Yes, The Planning Commission may grant a Conditional Use Permit (CUP) to allow for the continuation, enlargement, reestablishment or replacement of a nonconformity.

# Board Discussion Items

1. Provide for eventual elimination of the nonconformity.
  - The pace for this evolution is impacted, in part, by policies dealing with legal nonconformity. If the goal is to achieve change quickly and in the short term, policies regarding incompatibility need to be stringent, in favor of the planned future.
  - If the pace of change is not an issue, then legal nonconforming ordinance can be more liberal or flexible.
  - *Option:* allow for greater flexibility for a period of time immediately after the Zoning Ordinance is adopted. Following the initial time period reduce the time frame to one year.
2. What is a reasonable period of time to treat a use as “abandoned”...6 months, 1 year, 3 years or 5 years?
  - Santa Clara County – 6 months, Yuba County – 3 Years

## Board Discussion Items (cont.)

3. Prohibit or allow for the expansion of nonconforming uses and structures.
  - *Example* – if applicant does equipment repair on 10 acres, and wants to expand business to rent out equipment, should this be allowed or prohibited?
  - *Example* – if applicant has a legal nonconforming residence on a commercial site, and wants to add a second story, should this be allowed or prohibited?
4. What if nonconforming buildings or uses are involuntarily damaged or destroyed? Can they be re-established as before? What about intentional demolition?
  - *Note:* Buildings destroyed and rebuilt must generally comply with current building codes.

# Board Discussion Items (cont.)

5. Who has the burden of proof of legal nonconformity?
  - Generally, burden of proof falls on the applicant.
  - *Note:* Properties may have changed ownership since the “use” was initially established. Applicants are more likely to have access to documentation that may not be part of the public record.
  - *Example:* Ranch Marketing uses or structures...”who put in the initial berry stand?”
  
6. Should new uses locating in existing structures be required to update to meet current Parking, Lighting and Landscaping standards required by Ordinance?
  - *Example:* Neighborhood insurance office closes after 40 years. Neighborhood retail store opens in same location. Retail use requires additional parking spaces, and lighting and landscaping are not up to current code.
  - *Option:* Provide flexibility in meeting standards based on local vacancy rates? Require parking when on street or shared parking is not available? Others?

# Board Discussion Items (cont.)

## Options for “Validation” and “Due Process”

### ∞ Validation

- *Option:* Over the counter Certificate of Compliance or other type of documentation that the use or structure is Legal Nonconforming.

### ∞ Due Process to determine “Abandonment”

- *Option:* Define Abandonment specific to this Title
- *Example:* Existing tenant under a long term lease has abandoned the onsite activity that under the current County ordinance was not an allowed use. Owner wants to keep the legal nonconforming use status but under current lease agreement, the owner lacks the right to enter the property and maintain the use.

# Board Discussion Items (cont.)

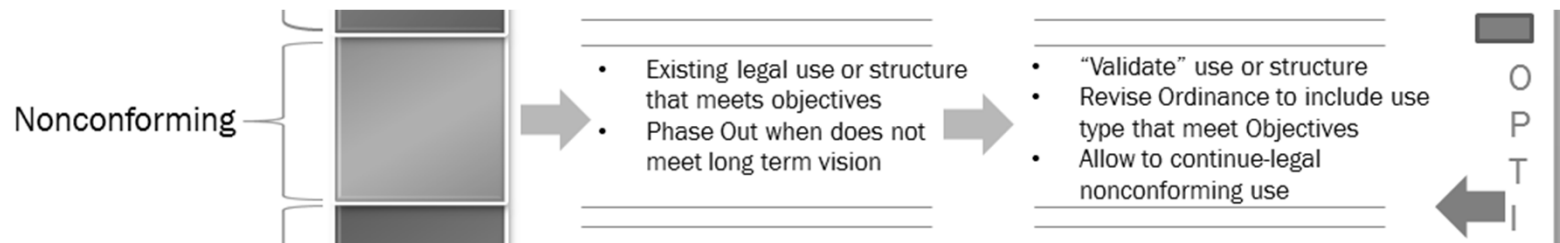
## Termination of Nonconforming Use

- ∞ Considerations for determination of an abandonment of a nonconforming use.
  - Option 1:
    - Notify owner, and if applicable the lessee, that staff has made a decision that the use has expired as a result of abandonment, and that the decision becomes final unless the owner (lessee) requests a hearing within a stated time period.
    - If hearing is requested, normal hearing procedures would apply.
    - Provide rights of administrative appeal if the hearing body determines there has been an abandonment.
  - Option 2:
    - Provide prior notice of a hearing before a decision maker such as the Planning Commission or Zoning Administrator makes a determination.
    - Notify owner, and if applicable the lessee, of hearing.
    - Provide rights of administrative appeal if the hearing body determines there has been an abandonment.



# Next Steps

## Legal Nonconforming Ordinance



1. Staff to revise draft Ordinance Chapter 17.61 based on Board discussion.
2. Create a process through the Zoning Ordinance to “validate” a use or structure as legal nonconforming.
3. Include due process procedures for determining “abandonment” of legal nonconformity in the Draft Zoning Ordinance.