

COUNTY OF NAPA
PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES

CERTIFICATE OF THE EXTENT

OF LEGAL NONCONFORMITY

APPLICATION PACKET

1. Application Completeness Checklist
2. Application Form
3. Indemnification Agreement
4. Adjoining Property Owner List Requirements
5. Excerpt from Zoning Ordinance - "Legal Nonconformities"

PRE-SUBMISSION REQUIREMENTS

Prior to the submission of your application materials, you must schedule a pre-submittal application review meeting (See Completeness Checklist). The purpose of the meeting is to review your application to make it complete for initial processing. Please call the Planning Division to request an appointment (707) 253-4417.

CERTIFICATE OF NONCONFORMITY

APPLICATION CHECKLIST

1. ___ Completed and **signed** application
2. ___ Four (4) copies of the site plan to scale, showing the structure(s) for which Certificate is sought as well as any new construction since establishment of the use/structure. Site plan shall also include any other improvements to parcel, including, but not limited to, septic system, leach fields, wells, etc.,
3. ___ Elevations to scale or photographs showing the structure(s) for which Certificate is sought.
4. ___ Elevations to scale or photographs showing the extent of any new construction since establishment of the use/structure.
5. ___ Documentation showing that the use/structure was legal at the time of the establishment.
6. ___ Documentation demonstrating continuous use.
7. ___ Signed Indemnification Agreement.
8. ___ List of Property Owners within 1000 feet of parcel boundaries certified by Title Company (including names, mailing addresses, parcel numbers and assessor's pages used in compiling the list.
9. ___ **Digital copies**-Submit digital copies (Adobe PDF format) of all submitted information, including all forms, reports, plans, elevations, and/or photos. ***Digital copies must also be submitted with any and all revisions or re-submittals.***
10. ___ Application fee will be determined at the time of the Pre-Application meeting. Please bring a check *payable to the County of Napa.*



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY
PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
1195 Third Street, Suite 210, Napa, California, 94559 • (707) 253-4417

APPLICATION FOR CERTIFICATE OF THE EXTENT OF LEGAL
NONCONFORMITY

FOR OFFICE USE ONLY

ZONING DISTRICT: _____ Date Submitted: _____
TYPE OF APPLICATION: _____ Date Published: _____
REQUEST: _____ Date Complete: _____

TO BE COMPLETED BY APPLICANT

(Please type or print legibly)

PROJECT NAME: _____

Assessor's Parcel #: _____ Existing Parcel Size: _____

Site Address/Location: _____
No. Street City State Zip

Property Owner's Name: _____

Mailing Address: _____
No. Street City State Zip

Telephone #: (____) _____ - _____ Fax #: (____) _____ - _____ E-Mail: _____

Applicant's Name: _____

Mailing Address: _____
No. Street City State Zip

Telephone #: (____) _____ - _____ Fax #: (____) _____ - _____ E-Mail: _____

Status of Applicant's Interest in property: _____

Representative Name: _____

Mailing Address: _____
No. Street City State Zip

Telephone # (____) _____ Fax #: (____) _____ E-Mail: _____

If Nonconforming structure, type of nonconformity:

- Structure does not conform to issued permits
- Structure does not conform to zoning requirements (e.g. setbacks)

When was the non conforming use established? (year, month, if known): _____

When was the nonconforming structure build? (year, month if known): _____

**PLEASE ATTACH DOCUMENTATION OF CONTUOUS USE and/or CONTINUOUS EXISTENCE OF THE
NONCONFORMING STRUCTURE from the date of establishment.**

I certify that all the information contained in this application is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

Signature of Property Owner Date Signature of Applicant Date

Print Name Print Name

TO BE COMPLETED BY PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
Application Fee \$ _____ Receipt No. _____ Received by: _____ Date: _____

INDEMNIFICATION AGREEMENT

Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

Applicant

Property Owner (if other than Applicant)

Date

Project Identification

ADJOINING PROPERTY OWNER LIST REQUIREMENTS

All applications shall include a list of the current owners of all the properties whose outer perimeters are within **1000** feet of the property boundary of the project site. The list shall include the property owner's names, their addresses and the assessor's parcel numbers of the property owned.

Preparation, verification and submission of this list of property owners is the responsibility of the applicant. Lists of the property owners appearing on County tax rolls in the form required are available from all local title insurance companies. Each such list must be certified by a title insurance company as reflecting the most recent County tax roll information.

INSTRUCTIONS TO TITLE COMPANY

Please prepare the property owners' list as follows:

1. Type the property owners' names, parcel numbers and mailing addresses on an 8½"x11" sheet of Avery #5160 Laser Labels so that this information can be readily used in mailing by Planning, Building, and Environmental Services.
2. Submit a full page copy of the assessors' parcel book page(s) and a copy of the latest equalized assessment roll used to compile the property owners' list. Please indicate the location of all parcels listed, by check mark or colored parcel number circled on the pages.

If you should have any questions, please contact Planning, Building, and Environmental Services at (707)253-4417.

Title 18 ZONING*

Chapter 18.132 LEGAL NONCONFORMITIES*

18.132.010 - Definition.

Within the zoning districts established by this title, as it may be amended, there exist lots, structures and uses which were legal prior to the effective date of the provisions codified in this title or future amendments thereof, but which would be prohibited, regulated or restricted by the terms of such provisions on the effective date thereof. Such lots, structures and uses are herein called "legal nonconformities." Legal nonconformities may be continued notwithstanding the prohibition, regulation or restriction of those provisions subject to the provisions of this chapter or, in the case of signs, the provisions of [Chapter 18.116](#).

18.132.020 - Nonconforming lot as a permitted use when.

In any district in which a single-family dwelling is a permitted use, a single-family dwelling and accessory buildings may be constructed on any legally created lot notwithstanding that such lot may have become substandard by the later imposition of minimum width or minimum area regulations which it does not meet as long as such construction complies with all state and federal laws and regulations and all other regulations of this code.

18.132.030 - Conditions for continuance.

A legal nonconformity may continue notwithstanding any other provisions of this title and may be repaired, maintained, restored, rebuilt following destruction regardless of the extent of the destruction, rehabilitated, remodeled, redesigned or rearranged as long as all of the following conditions are observed:

- A. The repair, maintenance, restoration, rebuilding, rehabilitation, remodeling, redesign or rearrangement does not enlarge, increase or extend the area of land occupied by the legal nonconformity or cubic content of any structures involved or the square footage of any structure other than a primary residence: does not relocate the legal nonconformity from the location it occupied on the date it first became a legal nonconformity; does not result in the construction of any additional structures, other than those otherwise permitted by the code, on the parcel or parcels occupied by the legal nonconformity; and does not increase the degree of the nonconformity as to volume of business or production, hours of operation, volume of traffic generated, or volume of waste produced or natural resources consumed. Notwithstanding the above, minor expansions of structures as determined by the director may be allowed for (i) accessory storage use added after November 1, 2008 and constituting no more than five hundred square feet of surface area cumulatively, and only for those legal nonconforming parcels in existence on July 1, 1993 which were used primarily for restaurant operations, (ii) uses solely to meet the minimum requirements of the Americans with Disabilities Act (ADA) requirements (such as adding access ramps or ADA compliant restroom facilities), and (iii) minor relocations of structures may occur where such movement decreases the nonconformity in questions (such as moving a structure further outside of a required setback).
- B. The legal nonconformity has not been determined by the director, the board of supervisors, the district attorney, or any other governmental official authorized by law to do so, to be conducted in such a manner as to constitute a public nuisance as defined in Penal Code Section 370 or any future amendment thereof;
- C. A certificate of the present extent of the legal nonconformity is obtained in accordance with [Section 18.132.050](#) prior to application for any building or other permits required in connection with the repair, maintenance, restoration, rebuilding, rehabilitation, remodeling, redesign or rearrangement of the legal nonconformity;
- D. The legal nonconformity has not lost its legal nonconforming status through abandonment as defined in [Section 18.132.040](#)

18.132.040 - Loss of legal nonconforming status.

A legal nonconformity or portion thereof shall lose that status and thereafter the land and all structures involved therein shall be used only in conformity with the regulations then in effect for the zoning district where the legal nonconformity is located if either of the following occurs:

- A. The legal nonconformity or portion thereof has been determined by the director, the board of supervisors, the district attorney, or any other governmental official authorized by law to do so, to be conducted in such a manner as to constitute a public nuisance as defined in Penal Code Section 370 or any future amendment thereof and such nuisance has not been abated by the owner within the period prescribed by such officials, entities or the courts pursuant to administrative or judicial abatement proceedings;
- B. The legal nonconformity or portion thereof has been voluntarily abandoned. For purposes of this subsection, "voluntary abandonment" shall mean cessation of the use or portion thereof for six consecutive months or twelve nonconsecutive months in any two-year period or, if the use is seasonal, for more than one season; except, that if the cessation is caused by the destruction in whole or in part of conforming or legal nonconforming facilities or structures which are essential to continuation of the use, and that destruction is by fire, lightning, riot, explosion, earthquake, accident, or any Act of God other than by a flood occurring within a floodway as defined in [Title 16](#), then the use shall be deemed voluntarily abandoned only if not recommenced within two years of the date of the destruction if no building permit is required to repair the structure or facility, or within two years of final inspection if a building permit is required for repair of the facility or structure and such permit is obtained within one year of the date of the destruction.

18.132.050 - Certificate of present extent of legal nonconformity—Application—Procedure.

- A. The owner of a legal nonconformity:
 - 1. At any time may apply for a certificate determining the present extent of the legal nonconformity; or
 - 2. Upon notification by the director in the event of a dispute over voluntary abandonment, entitlement to issuance of a building or other permit, or intensity and/or scope of the nonconformity, shall apply for a certificate determining the present extent of the legal nonconformity.
- B. Such application shall be filed with the department in the form prescribed by the department, and shall be accompanied by that fee adopted by resolution of the board of supervisors.
- C. In the capacity as zoning administrator, the director shall hold a public hearing to determine the present extent of the legal nonconformity. Such hearing shall be held in accordance with the procedures set forth in [Section 18.124.040](#). The owner shall have the burden of proof to establish the original legal nonconforming status of the use, structure or combination thereof; the extent of any repair, maintenance, restoration, rebuilding, rehabilitation, remodeling, redesign or rearrangement which has occurred which conforms to the standards set forth in [Section 18.132.030](#); and the extent of any voluntary abandonment of the legal nonconformity since originally established.
 - 1. For residential projects, the public hearing may be waived and the director is authorized to render an administrative decision if, after providing notice of the intended decision and right to request a public hearing to property owners within three hundred feet of the project parcel, the director finds that no member of the public has requested said hearing, and that no additional information is required to render a decision.
 - 2. For residential projects, where the sole question raised is the existence of a residential structure within required yards, road setbacks, or stream setbacks, the director is authorized to render an administrative decision without notice or public hearing if the director finds that no additional information is required to render a decision.
- D. At the conclusion of the hearing, the zoning administrator shall determine the present extent of the legal nonconformity and issue a certificate setting forth such determination.
- E. The determination of the zoning administrator may be appealed to the board of supervisors in accordance with the procedures set forth in [Chapter 2.88](#)

F. Within thirty calendar days of issuance of the certificate or, in the event of appeal, within thirty calendar days of the final decision of the board of supervisors on appeal, the zoning administrator shall file a true and correct copy of the certificate with the Napa County assessor.

G. The procedure set forth in this section shall also be used to determine the present extent of those certain winery and winery-related uses permitted without a use permit pursuant to subsection (G) of [Section 18.16.020](#) or subsection (H) of [Section 18.20.020](#). For purposes of such determination, all references in this section to "legal nonconformity" shall be replaced by the term "uses permitted pursuant to subsection (G) of [Section 18.16.020](#) or subsection (H) of Section 18.20.020."

APPEALS

Following action on the project, there is a 10 working day appeal period before the Administrative Permit becomes effective. During this period, the decision of the Department may be appealed to the Board of Supervisors by a County department, the applicant, or project opponents by filing a written appeal on a form provided by the Clerk of the Board of Supervisors, including payment of an appeal fee. Once a proper appeal has been filed, a public hearing on the appeal will be set within 90 days. At the conclusion of the public hearing, the Board will approve, deny, or modify the decision or action being appealed. Reconsideration of the Board's action can be sought if a request for reconsideration is filed within 30 days of the Board's decision.