

**LUDC  
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GARFIELD COUNTY, COLORADO

# Article 10: Nonconforming Land Uses and Structures



**ARTICLE 10**  
**NONCONFORMING LAND USES AND STRUCTURES**

TABLE OF CONTENTS

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<b>10-101. APPLICABILITY.....</b>	<b>1</b>
<b>10-102. NONCONFORMING STRUCTURES.....</b>	<b>1</b>
A. Enlargement, Alteration or Repairs.....	1
B. Permissible Alterations of Nonconforming Structures.....	1
C. Structure Deemed Destroyed.....	1
D. Restoration of Structure.....	1
<b>10-103. NONCONFORMING LAND USE.....</b>	<b>2</b>
A. Enlargement, Expansion, Extension or Alteration.....	2
B. Permissible Alterations of Nonconforming Land Uses.....	2
<b>10-104. ABANDONMENT, TERMINATION, AND ENFORCEMENT.....</b>	<b>2</b>
A. Abandonment.....	2
B. Written Notification.....	3
C. Determination in Error and Appeal.....	3
D. Right to Bring Enforcement Action.....	3

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# ARTICLE 10: NONCONFORMING LAND USES AND STRUCTURES

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## 10-101. APPLICABILITY.

This Article shall apply to all land uses, including divisions of land and signs, that do not conform to this Code as a result of either the adoption or amendment of this Code, or a final administrative or judicial decision precluding the County from enforcing this Code specific to a use on the basis of estoppels, laches, or waiver.

## 10-102. NONCONFORMING STRUCTURES.

A nonconforming structure may continue unless otherwise prohibited by the provisions of this Article.

### A. Enlargement, Alteration or Repairs.

A nonconforming structure may not be altered, repaired, or enlarged in any way that would increase the degree of nonconformity with respect to the Floor Area, setback, or height.

### B. Permissible Alterations of Nonconforming Structures.

Permissible alterations of nonconforming structures include:

1. Normal or routine maintenance.
2. Alteration or repairs to Historic Buildings so long as they are not judged by the Building Official to constitute a distinct life safety hazard.
3. An alteration or expansion that the Building Official determines to be necessary to rectify a hazardous health or safety situation, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure.
4. Any replacement of existing outmoded or worn equipment provided such activity does not create a hazard or nuisance as identified in section 10-103.A.4.
5. An alteration or expansion necessary to comply with applicable ADA accessibility codes and/or statutes.
6. The addition of a solar energy device to a nonconforming structure or a structure containing a nonconforming use.

### C. Structure Deemed Destroyed.

A nonconforming structure or structure containing a nonconforming use shall be deemed destroyed when either greater than 50% of its Floor Area, or greater than 50% of its actual value, as determined by the Garfield County Assessor, is destroyed. A destroyed nonconforming structure shall not be reconstructed. Any nonconforming use within a destroyed structure shall be discontinued.

### D. Restoration of Structure.

Unless deemed destroyed per section 10-102.C., a nonconforming structure may be restored and an existing nonconforming use may be reestablished, subject to the following:

1. Restoration shall be subject to Building Permit requirements.
2. Restoration must be commenced, as demonstrated by the receipt of a Building Permit, within 12 months after the date on which the structure was damaged or destroyed, and completed within the time granted by the

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Building Permit. Upon approval by the BOCC in a Public Meeting, these times may be extended for a reasonable period upon a showing of extraordinary circumstances by the property owner or the owner's agent.

### **10-103. NONCONFORMING LAND USE.**

#### **A. Enlargement, Expansion, Extension or Alteration.**

The right to continue a nonconforming land use terminates immediately when:

1. It is enlarged, expanded, extended, or altered.
2. An addition of a new structure is built that either contains, or is accessory to, the nonconforming land use.
3. A conforming structure containing, or accessory to a nonconforming land use, may not be enlarged, altered, or expanded in a manner that would increase the nonconformity of the land use.
4. Any change of a nonconforming land use to a different use, for any period of time, shall immediately terminate the right to continue the nonconforming land use.
5. It is determined abandoned pursuant to section 10-105.A.

#### **B. Permissible Alterations of Nonconforming Land Uses.**

The following are permissible alterations of a nonconforming land use:

1. Normal or routine maintenance of the structure containing the nonconforming use;
2. A change in ownership of the property upon which the nonconforming land use is located.
3. Owners of legal building lots containing agricultural uses which have become nonconforming as a result of adoption or amendment of this Code may restore, modify, and maintain existing conforming structures, and may construct new conforming structures, provided such structures are directly related to the agricultural use. The replacement of a Mobile Home that is also a nonconforming use by another Mobile Home on the same lot, provided that the replacement Mobile Home conforms to the Building Code.
4. A legal but nonconforming lot created prior to October 13, 2008, may be built upon with a conforming structure.

### **10-104. ABANDONMENT, TERMINATION, AND ENFORCEMENT.**

#### **A. Abandonment.**

The right to continue a nonconforming land use shall terminate if the land use is determined to be abandoned through either of the following actions:

1. A nonconforming land use shall be determined abandoned if the use is discontinued for an uninterrupted period of 2 years or more, as a result of causes within the control of the property owner or their agent, unless the use is governed by section 10-102.D.2.
2. A nonconforming land use may be determined abandoned if the property owner expressly states in writing to the Director the intent to abandon the land use, or engages in action which unambiguously expresses the intent to abandon.

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**B. Written Notification.**

In the event that the Director receives information that the right to continue a nonconforming land use has been or may have been terminated, excluding in the case of abandonment, the Director shall provide a written notification of this determination by certified mail, return receipt requested, to the property owner, and to the parcel address, all as shown on the records of the County Assessor.

**C. Determination in Error and Appeal.**

1. The property owner shall have 30 calendar days after the date of the notification within which to provide evidence satisfactory to the Director to show that the determination is in error, to abate the illegal enlargement or alteration, or to file an appeal of the Director's determination to the BOCC.
2. In any appeal, the property owner shall have the burden to show that the right to continue the nonconforming use was not terminated according to the applicable provisions of this Article, when judged in light of the history and nature of the use and the circumstances of the alleged termination.

**D. Right to Bring Enforcement Action.**

1. Nothing in this Code shall alter or diminish the County's right to take enforcement action pursuant to Article 12 against the unlawful continuation of a nonconforming land use.
2. Except in the case of an illegal enlargement or alteration for which the owner is provided with a 30-day opportunity to abate, any failure by the Director to provide notification of a determination of termination shall in no way entitle the property owner to continue or resume a nonconforming use terminated under provisions of this Code.