

Termination of Nonconforming Use

Opening Comments

Why Is This Important?

- Changes to LUDC create nonconforming uses (Goleta Coast Plan and Winery Ordinance)
- Owners, Buyers, Sellers and neighbors need and deserve a clear and consistent message and action from the County.
- Enforcement should be based on written regulations and not individual interpretation
- Process should not overwhelm application of rules and common sense.

Description of Structure

- Turn of the Century Farm House (late 1880's)
- Approximately 2000 sq. ft.
- Two story, 20 feet in height
- Remodeled in 1978/79 for use as Farm Employee Dwelling and Ranch Headquarters
- Never "Permitted"

Description of Original Property

- 300 acre cattle ranch
- Built 2 residences for family members (1978/79)
- Three Farm Employee Dwellings – Two trailers and Old Farm House (1978-79)
- Zoned 100 AG (Ordinance 661)

Key Sections of LUCD

1. Purpose and Intent of Regulations

- **Discourage long-term continuance, provide for elimination**
- **Administer in a manner that encourages termination of nonconformities**

2. Change of Nonconforming Use

- **May only change to conforming use**

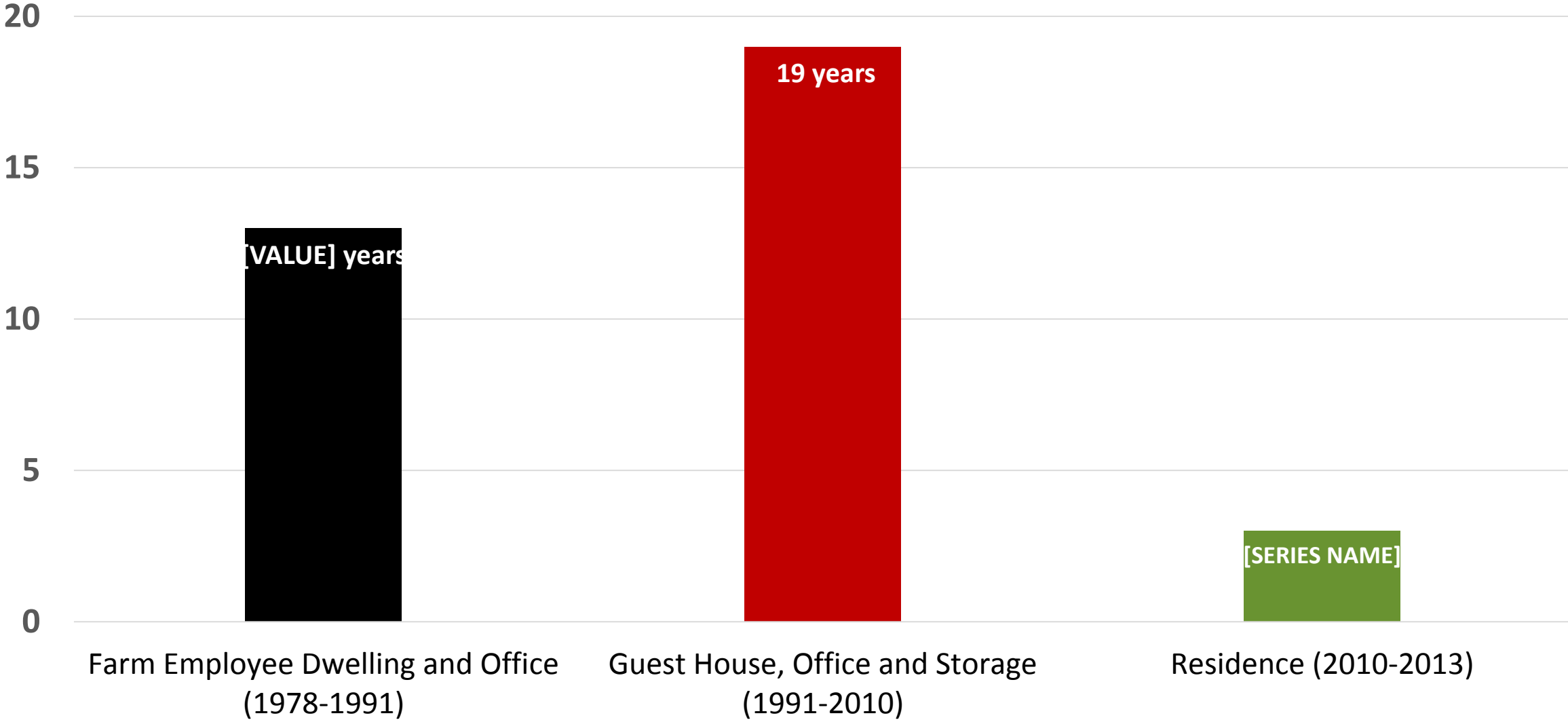
3. Discontinuance/Abandonment

- **Nonconforming uses discontinued for 12 consecutive months are terminated**
- **“Use it or lose it Rule”**

Historical Nonconforming Use

- 1978 – Farm Employee Dwelling & Ranch Headquarters
- 1991 – Guest house, office, storage
- 2010 – Farm Employee Dwelling (or residence in support of agricultural operations - per Planning and Development Staff)

Timeline of Nonconforming Use



Determinations to Date

2004 – Director of Planning and Development

- **Requires a Conditional Use Permit if used as a Farm Employee Dwelling**

2011 – Deputy Director of Planning and Development

- **Continuously used as Farm Employee Dwelling since 1979**

2012 – Deputy Director of Planning and Development

- **Farm Office and Farm Employee Dwelling/Bunk House since 1979**

2012 – Assistant Director of Planning and Development

- **Farm Office and Residence in support of a legal nonconforming horse operation since 1991**

2013 – Director of Planning and Development

- **Declined to make a determination “due to the fact-specific nature of this case.”**

Requested Actions from Board

- Do not need to change any regulations or take any drastic actions
- Send clear and consistent message as to how The Board wants nonconformities treated
- Find that the Grove legal nonconforming use of the Old Farm has been abandoned and changed. Require a Conditional Use Permit for use as a Farm Employee Dwelling
- Provide guidance to Planning and Development regarding administration, application and enforcement of the nonconforming use regulations

Termination of Nonconforming Use

LUDC Regulations

Board Termination of Nonconforming Uses

35.101.050 – 35.101.070 (Exhibit 12)

- Board may terminate a nonconforming use under the provisions set forth in 35.101 (e.g. 35.101.020D)
- Board may terminate a nonconforming use because of any change in a nonconforming use not expressly allowed under and in strict compliance with the provisions at this Development Code, and especially Chapter 35.101 (e.g. 35.101.020C)

Nonconforming Use

35-11 Glossary (Exhibit 12)

- “A use of land, or structure that was lawful prior to the effective date of this Development Code or any amendments, or previously adopted County Zoning Ordinances, and that does not conform to the present regulations on use of this Development Code”
- “A land use established where the use is not identified as a permitted use by the zone applicable to the lot on which the use is located.”
- “A land use that was lawfully established without the planning permit or other entitlement (e.g., Conditional Use Permit, Development Plan) now required by this Development Code.
- “A land use that is operated or conducted in a manner that does not now conform with the standards of this Development Code.”

Key Rules on Nonconforming Uses

35.101.010 – Purpose and Intent (Exhibit 12)

- **(a) “It is the intent of this Development Code to discourage the long-term continuance of these nonconformities, providing for their eventual elimination”**
- **(b) “This chapter is intended to be administered in a manner which encourages the eventual abatement of these nonconformities”**

Key Rules on Nonconforming Uses

35.101.020 C. Allowed Changes of Use (Exhibit 12)

- “A nonconforming use may only be changed to a conforming use.”

Key Rules on Nonconforming Uses

35.101.020 D. Abandonment/Discontinuance (Exhibit 12)

- “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.”

Key Rules on Nonconforming Uses

35.12.030 – Rules of Interpretation (Exhibit 12)

- “A. Language, when used in this Development Code, the words “**shall**,” “must,” “will,” “is to,” and “are to” are always mandatory.

Counties with Abandonment Rules the same as Santa Barbara County

Santa Clara

Ventura

Orange

Riverside

San Bernardino

San Diego

Monterey

Sonoma

Kern

Humbolt

Definitions and Restrictions on Structures

35.42.030 – Agricultural Employee Dwelling (Exhibit 12)

- The applicant can demonstrate a need for additional dwellings to house agricultural employees in support of the agricultural use of the land.
- The agricultural employees are engaged full time in agriculture on the farm or ranch upon which the dwelling is located.
- The applicant is required to provide proof of the full time employment of the employee.

Definitions and Restrictions on Structures

35.42.150 – Guesthouses (Exhibit 12)

- “E. Floor area. The net floor area of **a guest house shall not exceed 800 square feet.**”
- “F. Height limitations. **A guest house shall not exceed a height of 16 feet or contain more than one story.**”
- “G. **Kitchen and cooking facilities prohibited.** There shall not be a kitchen or cooking facilities (e.g., ovens, including microwave ovens, hot plates) within a guesthouse.”
- “K. **A guest house shall be used on a temporary basis only** by the occupants of the principal dwelling or their nonpaying guests or employees and is not intended to be rented, whether the compensations is paid directly or indirectly in money, goods, wares, merchandise or services. Temporary is defined as occupying the guesthouse for **not more than 120 days in any 12-month period.**”

Definitions and Restrictions on Structures

35.42.210 – Residential Agricultural Units (Exhibit 12)

- **“These standards are intended to ensure that the dwellings are incidental and supportive of the primary agricultural use of the land....”**
- **“The Residential Agricultural Unit program shall expire nine years from July 6, 1999 (i.e., July 6, 2008) and this section 35.42.210 (Residential Agricultural Units) shall be of no further force and effect.”**
- “A residential agricultural dwelling shall not exceed 16 feet in height.”

Definitions and Restrictions on Structures

35.42.210 – Residential Agricultural Units (Exhibit 12)

- “A residential agricultural dwelling shall not be allowed on a lot in addition to a guest house.”
- “A residential agricultural dwelling shall not be allowed on a lot if other structures are present that are determined to be nonconforming as to their use.
- “The lot on which the residential agricultural dwelling is located shall be subject to an Agricultural Preserve Contract or Conservation or Open Space Easement.”

Ordinance 661

Section 25.1 – Uses Permitted (Exhibit 12)

- **“All noncommercial residential uses including farm labor camps and boarding and lodging houses providing housing only for employees working on the premises on which such structures are located.”**

Abandoned versus Idled

35.11 – Glossary (Exhibit 12)

“Energy Facility. The following definitions **apply only** to those facilities subject to Chapter 35.56 (Oil/Gas Land Uses – Abandonment and Removal Procedures).”

- “Abandoned (or Abandonment). **The discontinuation of a permitted land use, or any independent business function of a permitted land use, and there is no evidence of a clear intent on the part of the owner to restart operations of the permitted land use.**”
- “Idled (or Idle). A **permitted land use** or an independent business function of a permitted land use has had zero throughput (enter and exit) for a period of one continuous year.”
- “**Permitted Land Use.** Any land use, facility, activity or site subject to Chapter 35.56 (Oil/Gas Land Uses).”

Idle

35.11 – Glossary (Exhibit 12)

- “Mining. The extraction of mineral resources through surface or underground mining operations.”
- “The following terms and phrases are defined for the purposes of section 35.82.160 (Reclamation and Surface Mining Permits).”
- “Idle. To curtail for a period of 12 months or more surface mining operations by more than 90 percent of the operation’s previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.”

Termination of Nonconforming Use

Evidence

Historical Use/Zoning (Exhibit 30)

- Purchased in 1978 by Stewart Land and Cattle Company
- 300 acre cattle operation; horse breeding and training
- Zoned 100 AG under Ordinance 661
- Zoning changed in 1984 by Stewarts to AG II 100 under Article III
- Zoning changed in 1990/1991 by Stewarts to AG I 20 in connection with subdividing the ranch into 20 acre properties

Minutes of July 14, 1978 Meeting of the Agricultural Preserve Advisory Committee (Exhibit 1)

- **“The Stewarts would like to restore an old civil war house and use it for an office and headquarters for the ranch and possibly for some ranch hands.”**

Minutes of July 14, 1978 Meeting of the Agricultural Preserve Advisory Committee (Exhibit 1)

- **“with 296 acres, two main residences would be allowed on separate parcels. Residences for full time workers could be allowed also.”**

Minutes of the July 14, 1978 Meeting of the Agricultural Preserve Advisory Committee (Exhibit 1)

- **“The Committee agreed that they would not oppose two residence for the owners and three residences for bonafide workers.”**

Housing Allowed under 100 AG (Ordinance 661) (Exhibit 1)

- One residence per 100 acres
- Total of two residences approved for Stewart Family (total of 296 acres)
- Other residences for bonafide workers

Letter from Dwight Stewart Ranch Company dated June 28, 1979 to Planning Department, County of Santa Barbara (Exhibit 1)

- “Additional ranch hands, presently Edwardo Rodriguez and Jose Jimenez will be moving into the old house which is to be restored as a **bunkhouse and ranch headquarters.**”

Letter from Schramm & Raddus, attorneys representing The Stewart Land & Cattle Company, dated June 9, 1987 to Mr. Britt Johnson, Zoning Administrator, County of Santa Barbara (Exhibit 2)

- “Existing Structures – **The original ranch house** which was built in the 1880’s and which has been restored by the Stewarts. **It is used as the ranch office and as a dwelling for seasonal, full time employees.**”
- Total of 5 structures – two permanent houses; two farm employee trailers; **ranch office/full-time farm employee dwelling**

Attachment to Schramm & Raddus June 9, 1987 Letter:
(Exhibit 2)

| Existing or Proposed Improvement | Use | Height | Sq. ft. |
|--|--|----------------|--------------|
| Existing orig. old house | Ranch office and seasonal full time employee dwelling | 20 feet | 2,000 |

Permit Compliance Case Form for CUP 87-CP-069 (July 22, 1987) (Exhibit 3)

- Listing of existing structures – Description of existing original “Old Farm House,” including use, identical to Schramm & Raddus attachment previously shown.

Environmental Impact Report, dated August 1988, for the County of Santa Barbara prepared by Planning and Use Services (Santa Barbara) (Exhibit 4)

- “Environmental setting... **one home built in the 1880’s used as the office and to house employees.**”
- Total structures – two permanent residences; two trailers for farm employees; Old Farm House (**employee housing**)

Letter from Martin, Northart & Spencer, Inc., Civil Engineers, dated September 1993 to the Department of Corporations, State of California (Exhibit 5)

- “On the date of our inspection (December 11, 1992) water was being served to four connections on two lots, namely a single family dwelling on lot 7 and a single family dwelling plus two farm worker trailers on lot 6.”

Letter from William Stewart, president of Cuerno Largo Mutual Water Company, dated January 1, 1995 to members and prospective members (Exhibit 6)

- “Our water company has been serving this development since its formation on June 16, 1992”
- Electricity Budget for 1995 reduced to \$400; only two properties are currently developed.
- The electric bill for 4 homes, (two permanent residences and two farm employee trailers) plus **a guest house/office** and 14 horses averaged less than \$34.00 per month.

Bylaws of Cuerno Largo Mutual Water Company dated January 25, 1994, Section 12.1.3C&D (Exhibit 7)

- Existing connections. Lots 6 and 7 have previously been developed, each with a principal dwelling. In addition, Lot 6 has two (2) full time farm worker dwelling trailers approved by the County.”
- Future Employee Service Connections of the six (6) permitted farm worker dwelling connections, two (2) have been connected on Lot 6 (for the two farm employee trailers), leaving four (4) connections for the other lots.

Staff Report and Recommendation to Santa Barbara County Planning Commission (dated June 16, 1991 and June 24, 1992) – (Staff-Karamitsos) re. LA 91-LA-010 and TM 14, 162 (Exhibit 10)

- “Site Information – 4. Present Use/Existing Development – The subject property is developed with two single family residences, a **guest house/office building**, two permitted farmworker trailers, and numerous structures accessory to the ranching operation.”

Conditional Use Permit Application (98-CP-044) dated May 11, 1998 prepared and submitted by Grove (Exhibit 10)

- “V. Development and Use – A. Existing: Describe the existing structures and/or improvements on the site.

| <u>Use</u> | <u>Size (sq. ft.)</u> | <u>Height</u> |
|-----------------------|-----------------------|----------------|
| Guest House | 1,500 | 2 story |
| Residence | 3,000 | 1 story |
| Farm Employee Trailer | 1,000 | 1 story |
| Farm Employee Trailer | 500 | 1 story |

Cuerno Largo Mutual Water Company Annual Meeting minutes dated May 25, 2002 prepared by Bill Grove, Secretary/Treasurer (Exhibit 10)

- “Meeting called to order at 3pm by John Jones at **The Grove’s Guest House**, 3110 Corral de Quati Road.”

Staff Report for Grove Farm Employee Trailers dated February 20, 2004; 03 CUP–00000– 00057 (Exhibit 10)

- “Section 4.2 Site Information – Present Use & Development. The site is currently developed with a single family dwelling, wood bard, hay barn, horse barn, **ranch office (old house).**”

Chronological Activity with Notes and Hours of B. Walshon for Application Number 05 ZEV–00000–00255, Use of Guest House as Living Unit (Exhibit 10)

- **“02/15/2006 Researched microfiche regarding the structured referred to sometimes as “a guest house” and sometimes as a “ranch office.” I called Mrs. Grove for clarification. She states that they refer to it as a guest house because that is where their guests stay when they visit.”**

Santa Barbara Board Agenda Letter from Valentin Alexeff, Director Planning and Development dated October 6, 2004 (Exhibit 11)

- “On a site visit conducted by staff, **Mr. Gove indicated that the existing ranch office was not occupied and was used as an office and storage only** at the present time. **Mr. Grove would be required to submit a conditional use permit application for the ranch house/office if he chooses to use this as a full time farm employee dwelling.”**

California Division of Labor Standards Enforcement

2006 Enforcement Review – David Cano, Deputy Commissioner (Exhibit 28)

- **Grove claimed two employees living on property** and provided David Cano with two Ranch Worker Agreements.
- Agreements dated September 2004 (Melissa Todd, niece) and March 2005 (Betty Craig).
- Per Agreements, Todd lives in double wide trailer and Craig lives in single wide trailer.
- Cano determined that Craig was an employee and Todd was not an employee.
- **No other employees were living on Grove property.**

Communication from Doug Anthony, Deputy Director of Planning and Development Regarding “Intent to Abandon” (Exhibit 15)

Email dated July 14, 2011 to Kelly Rose:

- “I am not seeing any evidence in your letter that establishes an **intent to abandon**, which is different than being idle.”

Letter Dated December 22, 2011 from Doug Anthony to Kelly Rose (Exhibit 16)

- **“The previously existing house was approved for use as an office and bunk house. My understanding is that it has been maintained and used in that capacity since then, albeit the use as agricultural employee housing may have been intermittent. This alone does not establish intent to abandon a legal nonconforming use.”**

Letter dated January 11, 2012 from Doug Anthony to Kelly Rose (Exhibit 18)

- “Your third item requests departmental policy statements, procedural guidance, etc. regarding my statement(s) about **‘intent to abandon.’** I refer you to the **Glossary of the LUDC** where it defines abandoned under the line item **‘Energy Facility.’”**

Communications from Doug Anthony to Kelly Rose regarding Nonconforming Use (Exhibit 16 and 18)

- Letter dated December 22, 2011: **“The previously existing house was approved for use as an office and bunk house.” The use as agricultural employee housing may have been intermittent.**
- Letter dated January 11, 2012: “I have determined that the old farm office/bunk house is a legal nonconforming use. The permit redefined what we now refer to as The Old Farm office **as an office/bunk house.**”

Planning and Development Board of Supervisors Agenda

Letter dated December 10, 2013

- **“Development Onsite. Since that time, the structure has been used for various purposes, including as a bunk house, farm employee dwelling, guest house, and storage.”**
- **“Previous staff determinations regarding the old farm house confirm that the current use of the structure as an office and residence in support of a legal nonconforming horse operation was never abandoned or unlawfully expanded/changed.”**
- **Missing from the description of the historical uses of the old farm house was “residence in support of a legal nonconforming horse-operation.”**

Positions Taken by Planning & Development

October 6, 2004 – Valentin Alexeeff, Director of Planning and Development (Exhibit 11)

- **“Mr. Grove would be required to submit a Conditional Use Permit application for the ranch house/office if he chooses to use this as a fulltime farm employee dwelling.”**

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December 22, 2011 – Doug Anthony, Deputy Director (Exhibit 16)

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January 11, 2012 – Doug Anthony, Deputy Director (Exhibit 18)

- **“I have determined that the old farm office/bunk house is a legal nonconforming use. The permit redefined what we now refer to as the Old Farm as an office/bunk hosue.”**

Positions Taken by Planning & Development

July 3, 2012 – Dianne Black, Assistant Director (Exhibit 24)

- **“I do not believe that the evidence clearly indicates that the legal nonconforming use of the structure has ceased and been abandoned.** Rather, the evidence indicates to me that the structure has been used both as an office and residence (although not always at the same time)”

Positions Taken by Planning & Development

- October 30, 2012 – Glenn Russell, Director (Exhibit 26)
 - “You requested that I make a Director’s Determination on the applicability of the provisions of the land use and Development Code as they pertain to the legal nonconforming status of the current use of the Old Farm House/office. After carefully considering your request **I am declining to issue such a determination due to the fact specific nature of this case.**”

Termination of Nonconforming Use

Closing Comments

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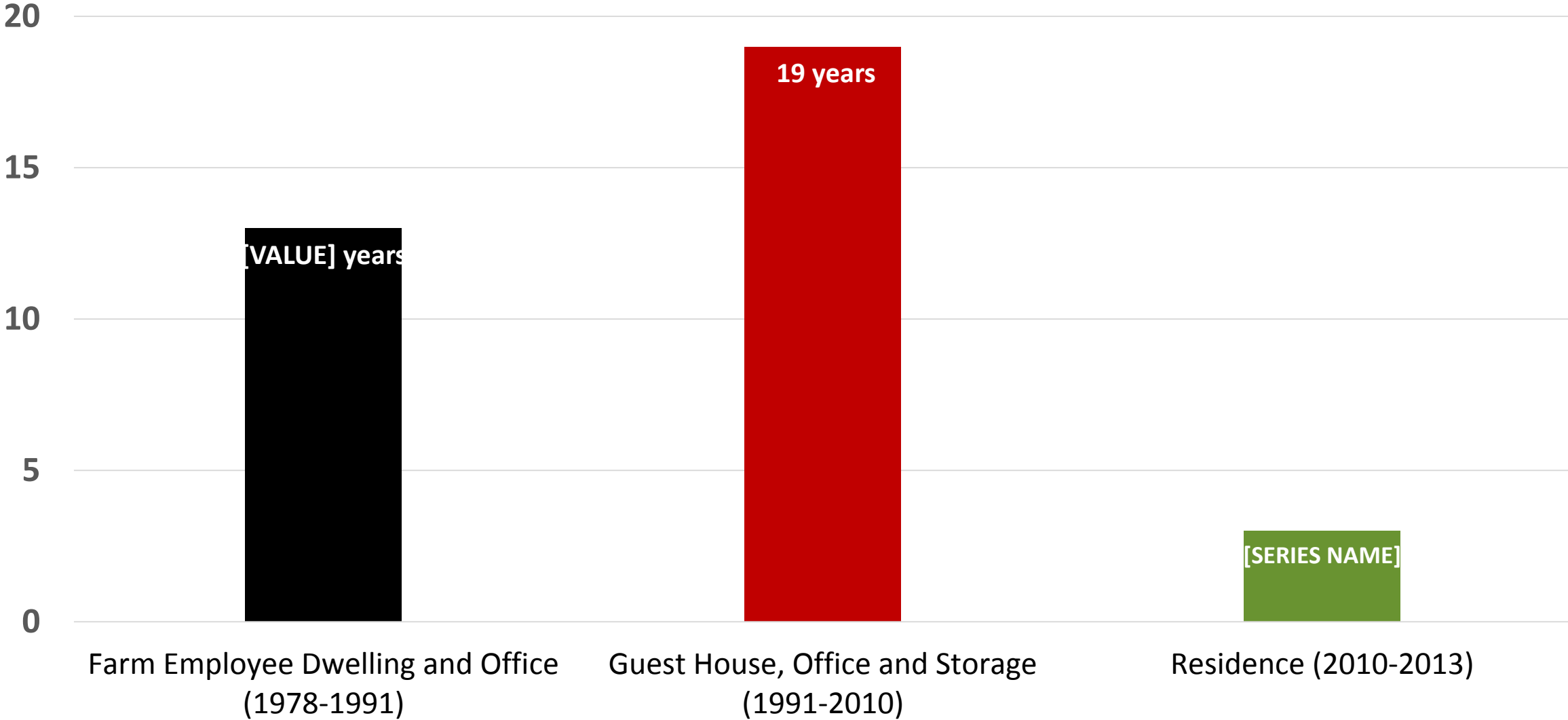
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- Find that the Grove legal nonconforming use of the Old Farm has been abandoned and changed. Require a Conditional Use Permit for use as a Farm Employee Dwelling
- Provide guidance to Planning and Development regarding administration, application and enforcement of the nonconforming use regulations

Questions