

**COMPILED POLICIES ADOPTED BY THE MARIN CO. BOARD OF SUPERVISORS
ON DEC. 11, 2018, REVISING CCC NOV. 2, 2016 SUGGESTED MODIFICATIONS
TO MARIN LCP AMENDMENTS 3 & 7**

Text in [blue](#) below shows the final revisions to the Nov. 2, 2016 CCC-adopted Suggested Modifications the Marin County Board of Supervisors (BOS) will be submitting to the Coastal Commission as new proposed Amendments. The BOS adopted this Submittal on December 11, 2018.

LCP AMENDMENT 3

3.1 Allowing Rancher/Farmer reimbursement for time providing Educational Tours

22.32.062 – Educational Tours

The Coastal Commission-modified provision initially left some uncertainty in defining “reimbursement costs” for educational tours. However, Commission staff subsequently stated that the specific details of interpreting that term should be left to the County’s discretion. A reasonable interpretation of the term includes payments to the operator or staff for their time (e.g. hourly rate charges), charges for the use of the farm or its facilities for the educational purpose, and revenues generated for non-profit organizations through tours, and the County will take these factors into account in making determinations under this provision. This clarification has been added to Section 22.32.062 as shown in the proposed text below.

Limitations on use. As defined in Section 22.130.030, educational tours are interactive excursions for groups and organizations for the purpose of informing them of the unique aspects of a property, including agricultural operations and environmental resources. In the C-APZ zoning district, educational tours operated by non-profit organizations or the owner/operator of the agricultural operation are a principal permitted use if no revenue is generated in excess of reimbursement costs related to the educational tour; educational tours require a Coastal Permit appealable to the Coastal Commission and a Use Permit if, [as determined by the CDA Director,](#) revenue is generated in excess of reimbursement costs related to the educational tour. [For the purpose of this code section, revenue does not include the collection of charitable donations by non-profit organizations in connection with an educational tour.](#)

3.2 “And Necessary for Operation of Agriculture”

Section 22.62.060 – Coastal Agricultural and Resource Related Districts The category of “Other Agricultural Uses,” particularly agricultural product sales and processing, was the subject of extensive discussion before the Planning Commission, the Board and the Community. This engagement resulted in the Board adopting strict development limitations for these uses. At the same time, the Board’s intent was that proposals that met these conditions should be able to be approved relatively quickly, as is the case outside the Coastal Zone. When the CCC-Modified policies added the words “*and necessary*” so that the phrase became “if appurtenant and necessary,” there was concern that the language could subject such agricultural facilities to a project-by-project test to evaluate and determine if such uses were or were not necessary to continue the overall agricultural use of the land.

The Commission's approved revised language clarifies the standard by removing the word "if" and stating positively that the listed uses are in fact "appurtenant and necessary to the operation of agriculture." Staff recommends the additional clarifying language in Section 22.62.060.B.1.d. below.

22.62.060 – Coastal Agricultural and Resource-Related Districts...

B. Purposes of zoning districts. The purposes of the individual zoning districts are as follows.

1. C-APZ (Coastal, Agricultural Production Zone) District...

d. Other Agricultural Uses, limited to the following uses that are appurtenant and necessary to the operation of agriculture, limited to:

1. Agricultural product sales and processing of products grown within the farmshed, provided that for sales, the building(s) or structure(s), or outdoor areas used for sales do not exceed an aggregate floor area of 500 square feet, and for processing, the building(s) or structure(s) used for processing activities do not exceed an aggregate floor area of 5,000 square feet;

3.3 Revisions to Table 5-1-a Allowed Uses and Permit Requirements for Coastal Agricultural and Resource-Related Districts.

Footnote "6" applied to the "agriculture accessory activities" and "agriculture accessory structure" currently provides that these land uses are "(6) Only allowed where an agricultural dwelling is first approved" in the C-APZ. However, the primary purpose of the C-APZ is protect and continue agricultural use, so making such agricultural use dependent on the presence of an agricultural dwelling does not further that purpose. It is quite reasonable to expect, and encourage, agricultural uses (such as barns and fences) on parcels that do not currently have a dwelling upon them. It would be counterproductive to make such agricultural use dependent on having a house, and could even create an incentive for an operator to seek construction of a house to meet the requirement. This provision was likely carried over from the traditional requirements in residential zones, where the principal use is placing a home on the lot, and not having the lot developed with an accessory structure as an independent use. In the C-APZ the opposite is true – its purpose is agriculture, and agricultural uses should not be dependent on the construction of a house. The removal of Footnote 6 corrects that problem. In addition, in order to add to clarify the relationship of C-APZ Land Use Tables 5-1 and ongoing agriculture, footnote "(11)" has been added to reference the definition of "Agriculture, Ongoing" and how it applies to the C-APZ land uses. (Exhibit 3). The excerpt of Table 5-1-a below shows how the Tables 5-1-"a" through "e" would be revised.

(EXCERPT)

TABLE 5-1-a - ALLOWED USES AND PERMIT REQUIREMENTS FOR COASTAL AGRICULTURAL & RESOURCE-RELATED DISTRICTS

	PERMIT REQUIREMENT BY DISTRICT	
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LAND USE (1)	C-APZ Agricultural Production (11)	C-ARP Agricultural Residential Planned (11)	C-OA Open Area (11)	See Standards in Section:
AGRICULTURE, MARICULTURE				
Agricultural accessory activities	PP (6)	PP(10), P	PP	22.32.021
Agricultural accessory structures	PP (6)	PP(10), P	PP	22.32.022

Notes:

- (1) Listed land uses must be consistent with definitions in Article VIII [Section 22.130.030](#) (Development Code Definitions).
- (2) Design review requirements are contained in Chapter 22.42 rather than in the LCP and such design review requirements apply independent of, and in addition to, coastal permit requirements.
- (4) Dairy operations allowed only on a site of 50 acres or larger.
- ~~(5) Permit requirements are determined by Section 22.32.030 (Animal Keeping).~~
- ~~(6) Only allowed where an agricultural dwelling is first approved.~~
- (10) Only allowed as a principally permitted use when the legal lot is zoned C-ARP-10 to C-ARP-60, which provide that the principally permitted use of the property shall be for agriculture.
- [\(11\) Agricultural uses and activities that meet the definition of “Agriculture, Ongoing” in Chapter 22.130 and “Coastal Permit Not Required: Exempt Development” in Section 22.68.050.A.12. shall be processed consistent with those sections.](#)

Development shall also be consistent, as applicable, with Chapters 22.130 (Definitions), 22.32 (Standards for Specific Land Uses), 22.64 (Coastal Zone Development and Resource Management Standards), 22.65 (Coastal Zone Planned District Development Standards), 22.66 (Coastal Zone Community Standards), and 22.68 (Coastal Permit Requirements).

3.4 Cross-referencing “Agriculture, Ongoing” definition in Land Use Table and sec 22.68

Footnote “(11)” above has been added to cross-reference the definition of “Agriculture, Ongoing” and applicable IP sections to clarify how those apply to the C-APZ land use tables.

3.3 Definition of Ongoing Agriculture

The question of whether changes in agricultural production activities should require coastal permits, and if so, what the parameters of such requirements should be, was extensively discussed and debated in public workshops, meetings and hearings over a long period during the development of the LCP’s agricultural policies and implementing provisions. Among the fundamental objectives of the revised language below is to provide farmers and ranchers with clarity and predictability in operating under the LCP. The definition of “ongoing agriculture” specifies coastal permitting exemptions for enumerated routine agricultural operations that do not extend into “areas never before used for agriculture.” The definition includes certain activities that would not be considered ongoing agriculture (and thereby may require a Coastal Permit if not otherwise Categorical Excluded, Exempt per previously certified, or determined to be de minimis),

Agriculture, ongoing

Agricultural production activities (including crop rotation, plowing, tilling, [carbon sequestration](#), planting, harvesting, ~~and~~ seeding, [grazing](#), [raising of animals](#), and [other production activities the Director of CDA determines are similar in nature and intensity](#)) which have not been expanded into [areas](#) never before used [areas](#) for agriculture. Determinations of such ongoing activities may be supported by

Marin County Department of Agriculture, Weights and Measures information on such past activities.

The following types of activities are not considered ongoing agriculture.

- Development of new water sources (such as construction of a new or expanded well or surface impoundment),
- Installation of new or extension of irrigation systems, or the extension of existing irrigation systems
- Terracing of land for agricultural production,
- Preparation or planting of land for viticulture,
- Preparation or planting of land for cannabis,
- Preparation or planting of land with an average slope exceeding 15%
- Other agricultural production activities that the Director of CDA determines will have significant impacts to coastal resources.

A Coastal Development Permit will not be required if the County determines the activity qualifies for a de minimis waiver pursuant to the requirements Section 22.68.070 or is categorically excluded pursuant to Categorical Exclusion Order 81-2 or 81-6.

AMENDMENT 7

7.1 Lowest density/FAR required for widespread hazard areas (Section 22.62.070)

The addition of “all hazardous areas and setbacks” to the restrictions limiting residential density and commercial floor area to the lowest end of the density range for the zoning district (**Footnotes to Tables 5-4-a & 5-4-b (Coastal Zoning Development Standards) and Table 5-5 (Coastal –B Combining District Development Standards)**) would severely limit allowable floor area and density throughout the coastal zone due to the broad and overlapping hazard zones. Instead, as shown below in Footnote 6 as recommended by staff, the appropriate development standards and mitigating measures are set out in the ESHA and Hazard policies, consistent with the basic framework of the LCP.

(Footnote 6) The maximum residential density for proposed divisions of land for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for projects that provide significant public benefits, as determined by the Review Authority, or lots proposed for affordable housing, and if it can be demonstrated that the development is consistent with applicable ESHA and hazard policies, will avoid and protect all ESHA and ESHA buffers and will avoid all hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.

Staff is also recommending removal of Footnote 7 (pertaining to commercial development) in its entirety since most commercial properties, particularly in coastal village areas, are already developed with floor area ratios well above the “lowest end” of the designated floor area ratio range and consideration of the issues noted in Footnote 7, such as adequate public services, potential ESHA impacts, and environmental hazards are already addressed elsewhere in the LCP and through the Coastal Permit process. Revised Tables are included in Attachment 1.

~~**(Footnote 7)** The maximum non-residential and non-agricultural floor area for that portion or portions of properties with Environmentally Sensitive Habitat Areas and buffers, hazardous areas and setbacks, and properties that lack public water or sewer systems, shall be calculated at the lowest end of the density range as established by the governing Land Use Category, except for~~

~~projects that provide significant public benefits, as determined by the Review Authority, and where it can be demonstrated that the development will avoid and protect all ESHA and ESHA buffers and will avoid all hazardous areas and hazard setbacks, and will be served by on-site water and sewage disposal systems.~~

7.2 Service capacity analysis for private wells (Section 22.64.140)

(Commission staff requested the change in the findings shown in blue in the following paragraph).

The County has expressed concerns that the Modifications to the domestic water standards would create a new rule subjecting even small projects to demanding and expensive studies out of scale with any potential impacts. Requiring evaluation of “streams, riparian habitats, and wetlands that are located on ... neighboring lots” could create an untenable situation where access is not granted by the neighboring land owner. Setting thresholds for the size or intensity of projects subject to the requirements makes the policy more equitable, workable and enforceable. The proposed amendment would clarify that the requirement for the additional report would apply to projects served by a public water supply, including projects where there will be an increase in the amount of water used by more than 50%. public water supply projects, private/public projects proposing the subdivision or rezoning of land that would increase the intensity of use, and private/public projects on develop lots that would increase the amount of water use by more than 50%.

22.64.140.A.1.b. An application for new or increased well production shall include a report prepared by State Licensed Well Drilling Contractors, General (Class A License) Engineering Contractors, Civil Engineers, or Geologists which demonstrates, to the satisfaction of the Director, that:

- 1) The sustainable yield of the well meets the LCP-required sustained pumping rate (minimum of 1.5 gallons per minute) and must be equal to or exceed the project's estimated water demand.
- 2) The water quality meets safe drinking water standards.
- 3) For public water supply projects, projects proposing the subdivision or rezoning of land that would increase the intensity of use, and or projects on developed lots that would increase the amount of water use by more than 50%, the extraction will not adversely impact other wells located within 300 feet of the proposed well; adversely impact adjacent biological and hydrogeologically-connected resources including streams, riparian habitats, and wetlands that are located on the subject lot or neighboring lots; and will not adversely impact water supply available for existing and continued agricultural production or for other priority land uses that are located on the subject parcel or served by the same water source.

7.3 C-PK-3 & Parks, Recreation, and Visitor-Serving Uses (Section 22.64.170)

The BOS 12/11/18 action brings Land Use Policy C-PK-3 and its implementing provision, Section 22.64.170(A)(3), into conformity with one another while simultaneously editing them for clarity in response to the public comments and feedback received through the local workshops and meetings held this summer.

Land Use Policy C-PK-3 was still under discussion at the time that the other policies in Amendment 1 were ready to submit to the Coastal Commission. In consultation with Commission staff, it was determined that this one LUP policy should not hold up the certification of the entirety of Amendment 1; rather that it could be brought back to the Commission as part

of a subsequent amendment. The Commission-modified version of C-PK-3 was therefore certified, and changes to it need to be processed as an LUP Amendment, as this submittal now does.

Both additional public meetings and continued discussions with Commission staff supported the need for clarifying revisions to C-PK-3 and more closely conforming the language of C-PK-3 and its implementing measure IPA Section 22.64.170. The recommended amendments below are intended to achieve these objectives through (1) an Amendment to the certified LUP Policy C-PK-3 and (2) submittal of revisions to the modified Implementing Plan Amendment 7.

The intent of changes to C-PK-3 is to ensure commercial uses remain the primary use in the C-VCR zone's commercial core and that residential will only be allowed consistent with the requirements of Section 30222., which states:

“lands suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.”

Additionally, Coastal Commission staff have maintained that a zoning district should not have more than a single “principal permitted use” based upon Coastal Act Section 30603(a)(4). That Section says that “in coastal counties, development not designated in a zoning district as the principally permitted use is appealable to the Coastal Commission.” The Commission interprets this provision to mean that unless a zoning district identifies one single type of use as principally permitted, all development proposed in that zoning district is subject to appeal to the Commission. Currently in the existing certified LCP, both commercial and residential uses are designated principal permitted, and therefore Commission staff considers all development within the C-VCR zoning district to currently be appealable to the Commission.

To distinguish areas for commercial use for existing residential areas, the BOS-adopted Policy C-PK-3 and the C-VCR zoning district reference a set of maps delineating the commercial core areas for the downtown areas within the communities of Stinson Beach, Bolinas, Olema, Point Reyes Station, East Shore / Marshall, and Tomales (Attachment 2). Revisions to the LUPA and IPA language below clarify that within this commercial core area, commercial would be the principal permitted use, and outside the commercial core, residential would be the principal permitted use.

This change has been the subject of discussions between County and Commission staffs, and as noted, in a in the May 9, 2017 letter, Commission staff support this approach. Further, Coastal Commission findings state: “it is appropriate to limit the required finding that ground-floor residential uses enhance the established character of village commercial core areas to development within the village commercial core.”

The revisions to Land Use Policy C-PK-3 and Implementation Plan Section 22.64.170(B)(3) are shown below. The language is also incorporated into the Land Use Tables. See Attachment 1 for proposed amendments to Tables 5-3-c, 5-3-d, 5-3-e and 5-3-f in Section 22.62.080.

C-PK-3 Mixed Uses in the Coastal Village Commercial/Residential Zone (Revised).

Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas.

Within the mapped village commercial core area ~~Principal permitted use~~ of the C-VCR zone ~~Commercial~~ shall be ~~commercial~~ the principal permitted use and Residential shall be a permitted use. In this area residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing-side of the property. Within the commercial core area (i.e. the central portion of each village that is predominantly commercial) residential uses on the ground floor of a new or existing structure on the road-facing side of the property shall only be allowed provided that the development maintains and/or enhances the established character of village commercial areas

Outside of the village commercial core area of the C-VCR zone, Residential shall be the principal permitted use, and Commercial shall be a permitted use.

Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

The revisions to the Coastal Commission Suggested Modification to the Implementation Plan for the C-VCR zoning district are identical and are shown below.

Implementation Plan Section 22.64.170(A)(3)

3. Mixed uses in coastal village commercial/residential zones.

Continue to permit a mixture of residential and commercial uses in the C-VCR zoning district to maintain the established character of village commercial areas.

Within the mapped village commercial core area ~~Principal permitted use~~ of the C-VCR zone ~~Commercial~~ shall be ~~commercial~~ the principal permitted use and Residential shall be a permitted use. In this area residential uses shall be limited to: (a) the upper floors, and/or (b) the lower floors if not located on the road-facing-side of the property. Within the commercial core area (i.e. the central portion of each village that is predominantly commercial) residential uses on the ground floor of a new or existing structure on the road-facing side of the property shall only be allowed provided that the development maintains and/or enhances the established character of village commercial areas.

Outside of the village commercial core area of the C-VCR zone, Residential shall be the principal permitted use, and Commercial shall be a permitted use.

Maintenance and repair of any legal existing residential use shall be exempt from the above provision and shall be permitted.

7.4 Definitions of Existing Structure.

As modified by Coastal Commission, the IPA contained conflicting and confusing definitions of “existing” and “existing structure,” referencing two different dates, and using an ambiguous phrase “on or after” in the definition of those dates. The proposed revised definition of “Existing” corrects those problems, while the definition of “Existing Structure” (which includes references to shoreline

protective devices) is proposed to be deleted as it is more appropriately addressed through the Hazards Amendment.

Existing Extant ~~on or after February 1, 1973 at the time an application is filed with the County.~~

Existing Structure ~~A structure that is legal or legal non-conforming extant at the time a permit application is filed with the County. For the purpose of implementing LCP policies regarding shoreline protective devices, a structure in existence since January 1, 1977.~~

7.5 Definitions of Legal Lot and Legal Lot of Record.

The Modified “Legal Lot” language required a lot to have a Coastal Permit to be legal, which is impossible for lots created before the Coastal Act, as Coastal Permits had not yet come in to existence. The Modified definition implies that lots created prior to the Coastal Act are not legal, a factual inaccuracy. Moreover “Legal Lot” as Modified excludes lots created prior to the Coastal Act. However, the term “Legal Lot” appears literally hundreds of times in the LCP Amendment to describe lots legally created both before and after the Coastal Act. Retaining the Modified language would require going through the entire LCP and replacing “Legal Lot” with “Legal Lot of Record” which would entail a massive Amendment, including but not limited to the parts of the LCP just recently certified by the Coastal Commission. The proposed revised text rectifies these problems, and in section “D” addresses the Coastal Permits requirement for lots created after the effective date of the Coastal Act.

Legal Lot. ~~A lot that was lawfully created under both the Subdivision Map Act and the Coastal Act and has received the necessary Map Act approval and a Coastal Permit. See “Legal Lot of Record”~~

Legal Lot of Record. A parcel is considered to be a legal lot of record under the Subdivision Map Act if it was created in conformance with any of the following criteria:

- A. Recorded subdivision. The lot was created through a subdivision Final Map or Parcel Map recorded on or after January 1, 1930. Antiquated subdivisions shall not be deemed to have created lots. A lot depicted on a subdivision Final Map or Parcel Map recorded before January 1, 1930 may be considered a legal lot only if it has been re-conveyed subsequently to January 1, 1930 with references made to the original subdivision Final Map or Parcel Map.

Note that in instances when a deed that created a lot by conveyance listed multiple antiquated lot numbers consistent with the original Parcel Map or Final Map, the entirety of the areas covered by such lot numbers is considered a single legal lot of record, except for those individual antiquated lots that met the zoning and subdivision standards that were in effect at the time the initial conveyance legally created them.

- B. Individual lot legally created by deed. The lot was legally created by deed conveyance into separate ownership and was in compliance with the zoning and subdivision requirements that applied at the time of creation.

C. Merged lots. Notwithstanding A through B above, when historic lots were merged by agency action or pursuant to applicable State law, the merged historic lots comprise a single legal lot of record.

C. Lot created after the effective date of the Coastal Act. After the effective date of Coastal Act regulation, a lot located within the Coastal Zone, lawfully created, and consistent with the requirements prescribed under A, B, or C above and also pursuant to an applicable Coastal Permit.

7.6 Definition of Shoreline Protection Device – “Piers and Caissons.”

With the concurrence of Coastal Commission staff, action on the definition of “Shoreline Protection Device” and its reference to “Piers and Caissons” is being set aside and proposed for deletion until the Hazards Amendment is considered. This definition is central to hazards policies addressing how best to regulate construction for future sea level rise, and should be considered in context with other hazards policies

~~**Shoreline Protective Device.** (coastal). A device (such as a seawall, revetment, riprap, bulkhead, piers/caissons, or bluff retention device) built for the purpose of serving a coastal dependent use, or protecting an existing structure or public beach in danger from erosion.~~

7.7 Definition of Grading

County staff had previously expressed concern that Coastal Commission approved modifications to the definition of grading (to remove the 50-cubic yard threshold) could be problematic from the implementation standpoint. The Coastal Commission Modifications removed the quantitative amount of earth movement that would trigger a Coastal Permit. Instead, in their May 9, 2017 letter (pg. 6) Coastal Commission staff acknowledges it is appropriate to afford local planning staff discretion to “evaluate project circumstances on a case-by-case basis, given specific site characteristics and unique project elements, to make a factual determination if an activity meets the definition of grading” and is subject to a Coastal Development Permit.” For example, mulching activities recommended by the Marin Carbon Project to sequester carbon dioxide as a means to reduce greenhouse gas emissions, laying rock at water troughs to reduce erosion, and digging holes to plant trees and native vegetation may not be considered grading. This addresses staff’s original concern.

Grading. Any excavation, stripping, cutting, filling, or stockpiling of soil material, or any combination thereof ~~that exceeds 50 cubic yards of material.~~ As used in this Development Code, grading does not include plowing, tilling, harrowing, aerating, disking, planting, seeding, weeding, fertilizing or other similar routine agricultural cultivation practices for ongoing agricultural operations (see “Agricultural Production Activities, Ongoing”).

8. “Moonrise Kingdom” Land Use and Zoning Maps Clean-up

A recent Amendment to the LCP Maps needs to be implemented. The LCP Land Use and Zoning Maps that are part of this current set of Amendments were submitted to the Coastal Commission

prior to the separate consideration of the “Moonrise Kingdom” Redesignation Amendment (LCP-2-MAR-18-0027-1), which was certified by the Coastal Commission on July 12, 2018. The current LCP map amendments are updated consistent with the “Moonrise Kingdom” Redesignation and are shown in Attachment 3.

Attachments

1. LCPA 7 Revised Tables 5-3
2. Maps Delineating Commercial Core Areas
3. Updated to Previously submitted Maps Consistent With “Moonrise Kingdom” Redesignation