ATTACHMENT G: 3-3-2010 COUNTY PLANNING COMMISSION MEMO

COUNTY OF SANTA BARBARA

PLANNING AND DEVELOPMENT

MEMORANDUM

Date: March 3, 2010

To: County Planning Commission

From: Pat Saley and Noel Langle

Subject: **Agricultural Permit Streamlining LUDC Ordinance Amendment – Additional information requested at February 17th hearing**

The Planning Commission held a public hearing on February 17, 2010 on the proposed Agricultural Permit Streamlining ordinance amendments. At that hearing, the public and Planning Commission raised several issues. The purpose of this memo is to summarize the issues and provide additional information and staff's responses to assist the Planning Commission in making a recommendation to the Board of Supervisors on the ordinance amendment package. Proposed changes to the ordinance are included in Attachment 1 to this report.

1. Overall effect of proposed amendments - Provide information about cost savings likely with implementation of these amendments.

Based on the current fee resolution adopted by the Board of Supervisors, the differences in County fees for the various applications included in the ordinance amendments are[1]:

a. **Agricultural accessory structures less than 3,000 sq. ft.** – Currently Land Use Permit ($912); proposed to shift to Zoning Clearance ($792).

b. **Entrance gates** – Currently LUP ($495); proposed to shift to exemption (no permit or fee required).

c. **Farm employee housing** – Currently a Minor Conditional Use Permit is required ($3,869), followed by a Zoning Clearance ($833); proposed to shift to LUP ($792).

d. **Detached residential second units** – Currently a Minor Conditional Use Permit is required ($4,063), followed by a Zoning Clearance ($833); proposed to shift to LUP ($1,113).

e. **Development Plans** – The change in threshold triggering a Development Plan would result in some agricultural improvements shifting from a Development Plan to a Land Use Permit. The DP application fee requires a deposit which is currently $15,195. Actual costs are based upon the number of staff hours spent and the department's hourly rate and are billed to applicants monthly, as well as hearing and noticing costs. According to Planning and Development Department records, the approved DPs listed in Attachment F to the Negative Declaration paid the following fees (includes Planning and Development Department fees and deposits paid for other departments' costs):

[1] All of these are fixed fees except for Development Plans.

- 01-DVP-17 $12,785.10 ($8,939.10 paid to P&D)
- 01-DVP-20 $8,640.40 ($4,619.40 to P&D)
- 01-DVP-43 $7,434.00 ($3,195.00 to P&D)
- 02-DVP-08 $14,976.50 ($10,955.50 to P&D)
- 03-DVP-26 $12,259.00 ($7,942.00 to P&D)
- 04-DVP-09 $16,673.90 ($12,652.90 to P&D)
- 05-DVP-20 $5,661.00 ($5,661.00 to P&D)
- 07-DVP-11 $16,733.90 ($10,300.90 to P&D)
- 07-DVP-30 $13,238.00 ($6,805.00 to P&D)

The Land Use Permit fee for agricultural improvements is $912 for comparison.

In addition to the permit costs above, appeals may be filed on Land Use Permit, MCUP and Development Plan applications. If the applicant appeals a decision to the Planning Commission, the fee is $603. If the appeal is to the Board, the fee is $643. If a third party appeals a permit, the applicant does not fund County staff time to review the permit, but the applicant incurs costs associated with their development team's time.

The costs outlined above do not include the applicant's costs to prepare the plans, costs to interact and provide additional information to County staff and costs associated with attending meetings of various boards and commissions.

2. What recommendations would lead to the preparation of an Environmental Impact Report rather than a Negative Declaration?

The Commission asked what additional recommendations would trigger the preparation of an EIR rather than Negative Declaration. One of the challenges of the California Environmental Quality Act (CEQA) that governs the preparation of environmental documents, is that it doesn't and can't provide "black and white" guidance on which projects require an EIR and which don't. Considerable judgment is involved on the part of staff preparing their recommendations and decision-makers in taking action on a project. The CEQA standard for when an EIR must be prepared is "if it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact."

Comment letters on the original draft Negative Declaration released in May of 2009, which included the maximum Development Plan threshold of 100,000 sq. ft., clearly stated that the commenters thought that an EIR needed to be prepared. When the threshold was lowered to 50,000 sq. ft. in the December ND, no one suggested that preparation of an EIR was required. Staff's judgment in reviewing the comment letters was that the threshold be lowered from 100,000 sq. ft. in order to appropriately prepare a Negative Declaration. Based on anecdotal input on "typical" farming and ranching operations and ten years of Development Plan history (see Attachment 2), 50,000 sq. ft. was determined to be an appropriate maximum threshold for the largest AG-II zoned lots.

3. Review development standards to allow exemptions for livestock loading ramps.

On April 1, 2009, the AAC requested that livestock loading ramps be designated as exempt structures in addition to the proposal to exempt entrance gates and gate posts with cross-members. At the February 17th hearing, questions were asked about the necessity of having a maximum height and width for loading ramps in order to be exempt from permit requirements. Staff is now proposing that the proposed height and width restrictions be deleted so that all livestock loading ramps would be exempt from planning permits. The revised standards are shown in SECTION 1 of the attached ordinance (Attachment 1).

4. **Review proposed development standards for exempt gate posts and cross-members.**

During public testimony at your last hearing, photographs of a variety of different gates and cross-members were shown, most of which apparently would not meet the proposed development standards. Staff was asked to consider revised development standards that would allow for gates and cross-members like many of those shown at the hearing including maintaining the existing exemption for gateposts less than eight feet tall, allowing for decorative features, and allowing for lighting for safety purposes. The revised standards are shown in SECTION 4 of the attached ordinance (Attachment 1).

5. Consider visual and biological resources development standards.

Comments were received on the Negative Declaration relating to potential impacts on visual and biological resources. Staff did not recommend that additional visual and biological standards be included because we believe that existing County policies and regulations adequately address these concerns. In the event the Commission decides that visual and biological resources standards should be included in the ordinance amendment, staff has provided language for inclusion in the ordinance as shown in Attachment 3.

6. Residential Second Units (RSUs) and Residential Agricultural Units (RAUs) - Why the name change? It takes away from the fact that this is connected to agricultural housing.

RSUs (Residential Second Units) are different than RAUs (Residential Agricultural Units). RAUs were included in the zoning ordinance to allow for additional dwellings on agricultural land subject to agricultural preserve contracts that otherwise could not have additional dwellings unless the occupancy of the dwellings was restricted to full-time agricultural employees. RAUs did not qualify as agricultural housing since the occupants were not required to have any connection with the agricultural operation. They did provide a means to allow the owner to gain some additional income. The provisions allowing for RAUs expired in June, 2008. For more information on the expired regulations pertaining to RAUs see Section 35.42.210 of the County Land Use and Development Code.

Unlike RAUs which were potentially allowed in both the AG-I and AG-II zones, RSUs are restricted to those lots that are zoned AG-I and have a minimum lot size for future subdivisions of five, 10 and 20 acres. Similar to RAUs, the occupancy of the RSU is not restricted to agricultural employees. For more information on the regulations pertaining to RAUs see Section 35.42.230 of the County Land Use and Development Code.

7. Why are Detached RSUs proposed only in the AG-I-5-, -10 and -20 zones?

The Board direction to staff in May 2005 and on several occasions since has been to address ways to streamline existing processes. DRSUs are currently only allowed in the AG-I-5, -10 and -20 zones and are not allowed in the AG-I-40 and the AG-II zones. On June 4, 2008, the Agricultural Advisory Committee voted to recommend to the Board that an ordinance amendment be processed to allow DRSUs in AG-II zones. Should this occur, it would be separate from these proposed agricultural streamlining ordinances.

8. What changes to the documentation of agricultural employee dwellings are proposed?

Comments varied on the need for monitoring and documentation of agricultural farm worker dwellings. Staff recommends that adequate monitoring of these units occur, particularly with the reduced level of initial permit oversight. The revised standards recommended by staff (shown in SECTION 6 of the attached ordinance, Attachment 1) include two new ordinance requirements:

a. That the applicant demonstrate the need for an additional dwelling(s) and provide documentation that the occupant of the dwelling is employed full-time in agriculture not

only when the permit for the dwelling is approved but every five years thereafter or when occupancy of the dwelling changes.

b. That the owner record a Notice to Property Owner prepared by the Planning and Development Department that outlines the restrictions on occupancy of the dwelling and the requirement to provide documentation regarding the need for the dwelling and employment status of the occupant every five years after the permit is approved or when the occupancy of the dwelling changes.

9. Provide more info about the proposed Development Plan thresholds and why specific maximum square footages were chosen.

a. Define structure, and agricultural and non-agricultural space.

The Commission asked for clarification of how agricultural structures are defined, especially in terms of horse shelters, one or two-sided pole barns, etc.

Structure is currently defined in the County Land Use and Development Code as:

> *Anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground, excluding trailers and, within the Inland area, sidewalks. Within the Coastal Zone this definition includes any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."*

Thus, horse shelters and other roofed structures, regardless of the number of walls, are included in this definition.

The ordinance presented to the Planning Commission on February 17th included the following definition of **Agricultural Structural Development**:

> *Any structure that is constructed, erected, or placed with or without a foundation, the use of which requires location on the ground and is covered by a roof, the use of which is restricted to those uses that are directly accessory, ancillary and secondary to the agricultural use of the property. Dwelling units are considered agricultural structural development only if they provide housing for agricultural employees of the owner or lessee of the land and are permitted in compliance with Section 35.42.030 (Agricultural Employee Dwellings) or Section 35.35.42.260 (Temporary Uses and Trailers).*

At the hearing on February 17th it was requested that a definition of **Non-agricultural structural development** be provided. The following definition is included in SECTION 9 of the attached ordinance, Attachment 1:

> *Any structure that is constructed, erected, or placed with or without a foundation, the use of which requires location on the ground and is covered by a roof, the use of which is not restricted to those uses that are directly accessory, ancillary and secondary to the agricultural use of the property.*

b. Compare current (maximum of 50,000 sq. ft.) v. earlier (100,000 sq. ft.) threshold.

The May 2009 Draft Negative Declaration evaluated the proposed Development Plan threshold of 100,000 sq. ft. for lots of 300 acres or more. The revised December 2009 ND evaluated a maximum threshold of 50,000 sq. ft. for lots of 320 acres or more. The reduction in the proposed maximum threshold was primarily a result of significant comments received on the May 2009 recommendations. Several people commenting on the 100,000 sq. ft. threshold said that they felt this would directly and indirectly lead to impacts on agricultural viability, aesthetics and biological resources. Staff reviewed the information

available about "typical" agricultural operations (see Attachment 2), and concluded that 50,000 sq. ft. would be a more appropriate maximum threshold and would reduce the potential impacts to agricultural, visual and biological resources.

c. Why was the new threshold for non-agricultural structures proposed?

If the maximum DP threshold is increased, new construction could occur on an AG-II zoned lot without requiring discretionary review. Some of this construction could be non-agricultural buildings including primary dwellings, DRSUs, pool houses, garages and the like. Comments received on the May Negative Declaration expressed great concern that large residential structures would be built without a DP and they could impact the agricultural operation as well as the area's aesthetics and biological resources onsite. As the goal of the streamlining effort is to "support typical agricultural activities and projects," staff believes it is necessary to introduce a new lower threshold for non-agricultural buildings to address the concerns expressed about environmental impacts.

d. Are there other approaches to allowing more structural area without triggering a Development Plan?

Staff recommends that structures that are currently exempt from planning permits (e.g., pole barns less than 500 square feet, buildings less than 120 square feet that do not contain any utilities, and structures that are valued at less than $2,000) not be included in determining if a Development Plan would be required. This recommendation is incorporated into the revised ordinance amendment in Attachment 1.

To summarize, staff is recommending the following changes to the ordinance amendment as discussed in this report:

- Revised development standards to allow exemptions for livestock loading ramps;
- Revised development standards for exempt gate posts and cross-members;
- Revised documentation of agricultural employee dwellings;
- Addition of a definition of Non-agricultural structural development; and
- Exclusion of exempt structures from the square footage trigger for a Development Plan.

Your Commission may also wish to incorporate the visual and biological resources standards included in Attachment 3 to this report.

Planning Commission action – Staff is recommending the Planning Commission make the following motion:

A. Recommend that the Board of Supervisors adopt the findings, including CEQA findings, for approval of the proposed amendment (Attachment A to February 17, 2010 report);

B. Recommend that the Board of Supervisors approve the Final Negative Declaration 09NGD-00000-00007 (Attachment B to February 17, 2010 report); and,

C. Recommend that the Board of Supervisors adopt Case No. 09ORD-00000-00009, an amendment to Section 35-1, the County Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment 1 to this report).

Attachments:

1. Revised Ordinance Amendment
2. "Typical" Agricultural Operations and Summary of Development Plans approved 2000 – 2009
3. Possible Visual and Biological Resources Development Standards