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de la Guerra, Sheila

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**From:** Karen D. Stewart <kstewart@ppplaw.com>  
**Sent:** Friday, March 8, 2019 2:43 PM  
**To:** sbcob  
**Cc:** Chip Wullbrandt  
**Subject:** Hoop Structure Ordinance Amendment  
**Attachments:** Wullbrandt to Board of Supervisors re Hoop Structure Ordinance.pdf

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

Good afternoon,

Please find attached correspondence from Mr. Wullbrandt.

Thank you,



PRICE, POSTEL & PARMA LLP

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Assistant to Todd A. Amspoker, Shereef Moharram,  
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Our File Number:  
23775-01

March 8, 2019

**VIA EMAIL ONLY**

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street, #406  
Santa Barbara, CA 93101

Re: Hoop Structure Ordinance Amendment

Dear Board of Supervisors:

Attached for your hearing on March 12, 2019, please find copies of correspondence we have previously provided to the Planning Commission during its consideration of recommendations to you to provide clarification of the exemption in the County Land Use Development Code (LUDC) for Agricultural Hoop and Shade Structures of 20' or less in height on Agriculturally zoned land.

As I have pointed out several times, the LUDC already clearly provides that in the "Inland area ... Agricultural improvements as defined are not considered as development within this Development Code."

The LUDC also provides a clear definition of "Agricultural Improvement":

"Agricultural activities or structures on agriculturally designated lands which are not subject to building, grading or brush clearing permits. These activities and structures may be subject to special agricultural building, agricultural grading, or agricultural brush-clearing permits."

The LUDC also defines "Agricultural Development", which then is subject to LUDC regulation:

Santa Barbara County Board of Supervisors  
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"Any agricultural structure, practice, or operation that a) requires a building, grading, or brush clearing permit on land designated for agriculture; b) is located on land which has no history of cultivation; and/or c) is on land not designated for agriculture. A permit solely for plumbing or electricity shall not constitute a standard building permit."

In 2016, the County amended the provisions of the Uniform Building Code applicable for Santa Barbara County to exempt "Readily removable plastic covered hoop structures without in ground footings or foundations that are not more than 20' in height." Any CEQA challenge period for that action has long since passed.

Neither County Staff nor the Planning Commission have recommended any change to the above referenced language of the LUDC or County Building Code. No environmental analysis has been done of eliminating that language, which elimination would have the effect of imposing additional impacts on traditional agriculture. Such language therefore is proposed to continue, and must be recognized by the County to have meaning. Otherwise, the County effort to "clarify" the exemption for such traditional hoop structures for traditional agriculture (cultivation not otherwise subject to LUDC regulation) will have failed.

I suggest that the Board of Supervisors can provide such clarification through a simple "footnote" in the allowable use table for Agriculture which cross-references these relevant continuing provisions of the LUDC. Attached please find a mark-up of that table from the current Staff Report, with my suggested additions shown in green. As you can see, there are already several footnotes to that table, and so this approach is consistent and provides "one stop" clarification in the appropriate table.

Thank you.

Very truly yours,



C.E. Chip Wullbrandt  
for PRICE, POSTEL & PARMA LLP

CEW:ks  
Attachments

cc: Chase Renois  
Soren Bjorn  
Tom O'Brien  
John Weisz

# ATTACHMENT 1

**Table Markup from current Staff Report**

Table 2-1 Allowed Land Uses and Permit Requirements for Agricultural Zones	E	Allowed use, no permit required (Exempt)	
	P	Permitted use, Land Use Permit required (2)	
	MCUP	Minor Conditional Use Permit required	
CUP	Conditional Use Permit required		
ZC	Zoning Clearance		
S	Permit determined by Specific Use Regulations		
—	Use Not Allowed		
LAND USE (1)	PERMIT REQUIRED BY ZONE		Specific Use Regulations
	AG-I	AG-II	
<b>AGRICULTURAL, MINING, &amp; ENERGY FACILITIES</b>			
Agricultural accessory structure	P	P	35.42.020
Agricultural processing - On-premise products	P	P (3)	35.42.040
Agricultural processing - Off-premise products	—	CUP (3)	35.42.040
Agricultural processing - Extensive	—	CUP (4)	35.42.040
Animal keeping (except equestrian facilities, see RECREATION)	S	S	35.42.060
Aquaculture	—	CUP	35.42.070
Aquaponics	—	S (5)	35.42.060
Cultivated agriculture, orchard, vineyard	E (7)	E (7)	
Grazing	E	E	
Greenhouse	P	P (6)	35.42.140
Hoop structure and shade structure	S (7)	S (7)	35.42.140
Mining - Agricultural soil export	—	MCUP	35.82.160
Mining, extracting & quarrying of natural resources, not including gas, oil & other hydrocarbons	CUP	CUP	35.82.160
Mining- Surface, less than 1,000 cubic yards (7)	P	P	35.82.160
Mining- Surface, 1,000 cubic yards or more	CUP	CUP	35.82.160
Oil and gas uses	S	S	35.5
Utility-scale photovoltaic facilities	—	CUP	35.59
Winery	S	S	35.42.280

**SECTION 3:**

ARTICLE 35.4, Standards for Specific Land Uses, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Section 35.42.140, Greenhouses, of Chapter 35.42, Standards for Specific Land Uses, to read as follows:

**35.42.140 – Greenhouses, Hoop Structures, and Shade Structures**

A. **Purpose and applicability.** This Section provides standards for the establishment of greenhouses, hoop structures, and shade structures where allowed by Article 35.2 (Zones and Allowable Land Uses).

(7) In the Inland area, an agricultural activity or structure for agriculture which is not otherwise subject to regulation under this LUDC and which meets the definition of Agricultural Improvement in Section 35.110.020 is not considered as “development” within this Development Code and so no permit is required.

# **ATTACHMENT 2**

**August 27, 2018 Letter to Santa Barbara County  
Planning Commission**

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Susan M. Basham  
Kristen M. R. Blabey  
Shannon D. Boyd  
Timothy M. Cary  
Melissa J. Fassett  
Ian M. Fisher  
Arthur R. Gaudi  
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Christopher E. Haskell  
James H. Hurley, Jr.  
Eric P. Hvolbøll  
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Steven K. McGuire

Our File Number:  
23775-01



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August 27, 2018

### VIA HAND DELIVERY AND EMAIL

Santa Barbara County Planning Commission     [dvillalo@co.santa-barbara.ca.us](mailto:dvillalo@co.santa-barbara.ca.us)  
Attn: David Villalobos  
123 East Anapamu Street  
Santa Barbara, Ca 93101

Re: Hoop Structure Ordinance Amendment

Dear Commissioners:

We represent Driscoll's, Inc., an international seller of premium berries. In my comment letter to the Planning Commission dated July 9, 2018 (attached hereto for your reference), and during my testimony at the July 11, 2018 Planning Commission hearing, I explained that hoop structures and shade structures under 20 feet in height are exempt from building permit requirements (*see* County Code § 10-1.6.), and are therefore also not subject to the requirement for Land Use Permits as is clearly set forth in the existing County Land Use and Development Code (LUDC) in the Glossary at Article 35.11, a highlighted copy of which is attached hereto for your reference.

Therefore as a preliminary matter, we urge the Planning Commission to reject any new ordinance imposing permit requirements for hoop and shade structures under 20 feet in height, given the clear language in the existing LUDC that such Agricultural Improvements are exempt from permit requirements, as well as direction from the Board of Supervisors that all such structures shall continue to be exempt from permit requirements. These structures meet the definition of "Agricultural Improvement" per LUDC 35.11, and there is no lack of clarity regarding whether these structures are subject to permitting requirements.

**Santa Barbara County Planning Commission**

Re: Hoop Structure Ordinance Amendment

August 27, 2018

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Furthermore, we would like to reiterate the fundamental flaw in the EIR's baseline that existing hoop and shade structures have been "unlawful" and should have been permitted as "greenhouses." By creating an exemption for structures that were already not subject to LUDC permitting requirements, the EIR incorrectly assumes that these existing structures will result in new impacts. For this reason the EIR should be rejected, and for any new regulations of hoop and shade structures over 20 feet in height, the environmental analysis should instead address the significant impacts to agricultural resources that will result from limiting the ability of farmers to use hoop and shade structures to increase agricultural production, a baseline that will be severely impacted by the unnecessary burden of completing the permitting process. Staff's most recent proposal to reject some but not all of the mitigation measures in the EIR fails to address this underlying fundamental flaw. Failing to update the EIR with the proper baseline and environmental impacts analysis leaves the County vulnerable to litigation over the adequacy of the EIR.

Thank you for your consideration of this important matter. We will be present at the August 29, 2018 Planning Commission hearing to provide additional oral testimony and answer any questions you may have.

Very truly yours,



C.E. Chip Wullbrandt  
for PRICE, POSTEL & PARMA LLP

CEW:cg

Enclosures

cc: Chase Renois  
Soren Bjorn  
Tom O'Brien  
John Weisz



# Attachment 1

7/9/2018 Letter to PC

Todd A. Amspoker  
Susan M. Basham  
Kristen M. R. Blabey  
Shannon D. Boyd  
Timothy M. Cary  
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Our File Number:  
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July 9, 2018

### VIA HAND DELIVERY AND EMAIL

Santa Barbara County Planning Commission  
c/o Planning and Development, Hearing Support  
123 East Anapamu Street  
Santa Barbara, Ca 93101

Re: Hoop Structure Ordinance Amendment

Dear Commissioners:

We represent Driscoll's, Inc., a premier international grower, packer, shipper and world-wide marketer of premium berries. The Driscoll's family has been growing berries in California for over 100 years, including in the Santa Maria area since the 1940's. In the 1960's, Driscoll Strawberry Associates, Inc. merged with the Strawberry Institute to create a combined company dedicated to research, breeding, production, sales and distribution of the highest quality California berry. Driscoll's also partners with independent farmers to grow Driscoll's unique variety of berries, sharing its generations of farming experience, expertise and research. Currently Driscoll's and its farming partners represent about 2,700 acres in Santa Barbara County alone.

For many years, hoop and shade structures have been an important part of Driscoll's cultivation strategy and much of their berry production is dependent on their use. In fact, Driscoll's has been lawfully using hoop structures in Santa Barbara County for two decades without any County expressed concern. It has always been clear for them that, like other similar agricultural improvements and cultivation practices, hoop structures and shade structures exempt from building permit requirements are also not subject to the requirement for Land Use Permits.

In fact, the provisions in the existing County Land Use and Development Code (LUDC) which provide exception (beyond exemption) for such agricultural activities and structures are express and very clear in the Glossary at Article 35.11:

**Agricultural Improvement.** Agricultural activities or structures on agriculturally designated lands which are not subject to building, grading or brush clearing permits. These activities and structures may be subject to special agricultural building, agricultural grading, or agricultural brush-clearing permits.

**Development.** The definition of “Development” differs within the Coastal Zone and Inland, as follows:

2. **Inland area.** A change made by a person to unimproved or improved real property, including the placement, the moving, construction, reconstruction, enlarging, demolition, or alteration of buildings or structures, landscaping improvements, mining excavation, or drilling operations. Agricultural improvements as defined are not considered as development within this Development Code. [Emphasis added].

**Development Code.** The Santa Barbara County Land Use & Development Code, Section 35-1 of Chapter 35 Zoning of the Santa Barbara County Code.

Clearly, agricultural activities or structures, on agriculturally designated lands which are not subject to building, grading, or brush clearing permits are simply not subject to the regulations and permit requirements under the LUDC. On April 19, 2016, the Board of Supervisors adopted by Ordinance an amendment to the County Building Code to expressly exempt hoop structures of 20 feet in height or less from requiring a building permit. Shade structures were already exempt by clear provision of the State Building Code. With that action, the Board adopted a Notice of Exemption (NOE). No challenge was timely filed to the Ordinance or NOE. As such structures are exempt from Building Permits, they are not subject to any permit requirement under the LUDC. No further express “exemption” is required.

Unfortunately, on June 6, 2017, the Board of Supervisor was presented by Planning & Development in the Long Range Planning Division’s 2017 – 2018 Annual Work Program with a proposal for funding an ordinance amendment to “clarify” what it claimed was “the lack of clarity” in the County LUDC regarding the permitting of hoop structures in the Inland area. The above quoted LUDC exception language was not included in that presentation, and the Board was instead advised that there was a long-running flaw in the LUDC, which also created the inference that the County and Agricultural community was open to legal challenge by hoop structure opponents. While the Board initially directed Planning & Development to provide a Director’s determination that such structures are exempt (and so create an appeal opportunity at

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the Planning Commission), at a following hearing on July 25, 2017, the Board was presented with a more strident threat of legal challenge and so directed Planning and Development to pursue “Option 4” of the June 6, 2017 Hoop Structure Ordinance Amendment Board Letter. Option 4 was to “consider permit requirements for all hoop structures regardless of size and height for the inland area.” The Board also very specifically directed staff that any new ordinance as a result of Option 4 would exempt *all* hoop structures of 20 feet or less.

Instead, and based on the faulty reading of the current LUDC by Long Range Planning staff and the EIR preparer, the ordinance before the Commission now sets forth conditions that must be met for hoop structures 20 feet or less in height to be found “exempt,” including; 1) that they must not be located in a floodway, 2) they must be setback 50 or 100 feet from riparian corridors, 3) they cannot be located in the Design Control Overlay, 4) they must be located on recently cultivated soils, 4) cannot exceed 12 feet in height within 75 feet of any public road or scenic highway, and 5) be setback a minimum of 400 feet from any urban boundary line. Adding these criteria for hoop structures to qualify for an exemption is in direct conflict with the direction given to staff by the Board.

These conditions are the result of “mitigation measures” identified by the Draft EIR to address impacts related to the new regulations. However, the EIR analysis is erroneously based on a false baseline that the hoop structures and shade structures openly erected for the past decade or more have been “unlawful” and should have been permitted as “greenhouses.” The analysis simply ignores the fact that under the existing Land Use and Development Code (LUDC) for the Inland area, hoop and shade structures less than 20 in height are by definition an “Agricultural Improvement” rather than “Agricultural Structural Development.” Agricultural improvements are clearly not to be treated as development under the LUDC and therefore by definition are not subject to LUDC permit requirements. (See again Article 35.11 Glossary at pages 11 – 16).

The EIR clearly misapplied the baseline for the project and has misidentified the “No Project” alternative. The project as analyzed is not the clarification directed by the Board to specify permit regulations for only those hoop and shade structures over 20 feet in height, but instead assumes that a “new allowance” on already exempt Agricultural Improvements will result in new impacts. Instead of analyzing the impacts of “allowing” development of an already fully exempt activity, the EIR should instead analyze the significant impacts on agricultural resources associated with limiting the ability of farmers to use hoop and shade structures to increase agricultural production. The EIR also fails to analyze the inconsistency with the County’s Right to Farm ordinance which exempts farmers from having to comply with otherwise stringent visual and aesthetic resource mitigations. Clearly the EIR is woefully inadequate and should be rejected.

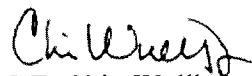
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Even the County's own Agricultural Advisory Committee (AAC) in its letter dated March 15, 2018, raised these deficiencies with staff, but was summarily dismissed. In its comment on the DEIR, AAC noted that the EIR is fundamentally flawed and inaccurately describes hoop houses as development instead of temporary agricultural implements (as defined in the LUCD as Agricultural Improvements), and that the analysis is prejudiced with respect to the stated impacts associated with aesthetic and visual resources. The AAC concludes that "labeling a hoop house as development is as absurd as labeling a tent a home", and that "applying that same standards as would be applied to a permanent building belies reason, is unfair, and represents undue hardship to the agricultural industry." The AAC is established and appointed by the Board of Supervisors specifically to advise County staff on agriculture-related issues.

Given the profound impact these new regulations will have on the County's agricultural industry, we urge the Planning Commission to require that staff follow the clear direction given to staff by the Board of Supervisors along with the existing clear language and definitions in the LUDC, and reject all new permit regulations for hoop and shade structures under 20 feet in height. We have attached a revised truly "streamlined" version of Staff's Attachment F showing how simple and clear the process for Hoop Structures is already in the Inland area, and the more limited scope of an ordinance amendment following Board direction. For any new regulations on such Agricultural Improvements of over 20 feet in height, the EIR should be revised and recirculated to address the potentially significant impacts on agricultural viability and production, and the County Agricultural Advisory Committee should be consulted.

Thank you for your consideration of this important matter. I will be present at the July 11th Commission hearing to provide addition oral testimony and answer any questions you may have.

Very truly yours,



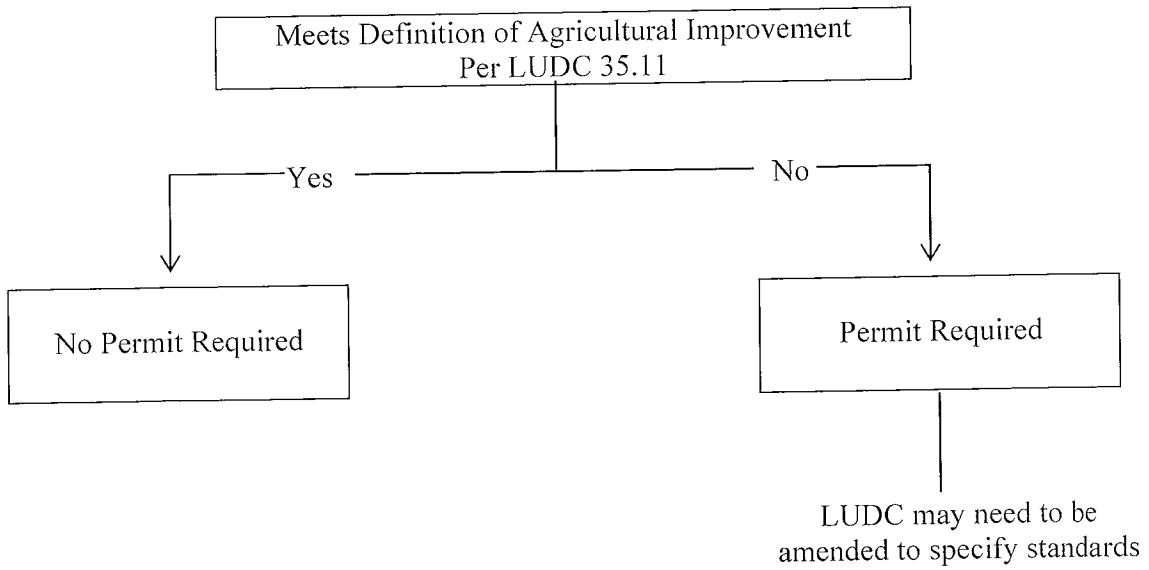
C.E. Chip Wullbrandt  
for PRICE, POSTEL & PARMA LLP

CEW:ks  
Enclosure

cc: Chase Renois  
Soren Bjorn  
Tom O'Brien  
John Weisz

# ATTACHMENT F

## Inland Area Hoop Structures and Shade Structures Permit Exception or Requirement Flowchart



# Attachment 2

Excerpts from LUDC

**Aerial Approach Zone.** An area at ground level that begins at the end of each runway and extends under the path of landing or departing aircraft to a distance determined by the characteristics of the runway.

**Affordable Housing.** The State defines affordable housing as housing that can be purchased or rented by households whose gross annual household income does not exceed 120 percent of area median income, adjusted for household size. Santa Barbara County expands this to include households with income up to 200 percent of area median income. This housing may be subject to a covenant or deed restriction that restricts sales price or rent for a given period of time. Certain types of housing such as homeless shelters, dormitories, farm labor camps, and housing for people with disabilities may not require price controls because they generally provide housing for a special needs group.

**Agent.** A person authorized in writing by the property owner to represent and act for a property owner in contacts with County employees, committees, Commissions, and the Board, regarding matters regulated by this Development Code.

**Aggrieved Person.** A person who, in person or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the County of the nature of their concerns, or who for good cause was unable to do either.

**Agricultural and Natural Resource Educational Experience.** An instructional program that integrates academic and technical preparation and includes real-world relevant experiences in areas such as agricultural business, agricultural mechanics, agriscience, animal science, forestry and natural resources, ornamental horticulture, and plant and soil science. Program components may include classroom and laboratory instruction, and supervised agricultural experience projects.

**Agricultural Development.** Any agricultural structure, practice, or operation that a) requires a building, grading, or brush-clearing permit on land designated for agriculture; b) is located on land which has had no history of cultivation; and/or c) is on land not designated for agriculture. A permit solely for plumbing or electricity shall not constitute a standard building permit.

**Agricultural Employee Housing.** A dwelling occupied by one or more agricultural employees including family members.

**Agricultural Improvement.** Agricultural activities or structures on agriculturally designated lands which are not subject to building, grading, or brush clearing permits. These activities and structures may be subject to special agricultural building, agricultural grading, or agricultural brush-clearing permits.

**Agricultural Preserve Contract.** A contract complying with the Land Conservation (Williamson) Act (Government Code Section 51200 et seq.) between the County and a landowner in which the landowner restricts development of lands devoted to agricultural uses in return for a reduction in property taxes.

**Agricultural Processing.** The initial processing or preparation for shipping of agricultural products, including milling by simple mechanical process without additives, chemical reactions, changes in ambient temperatures and/or hazardous materials produced on the same site ("on-premise products") or from other properties ("off-premise products"), for onsite marketing or for additional processing and/or packaging elsewhere. Examples of this land use include the following:

drying of corn, rice, hay, fruits and vegetables	pressing olives to create olive oil
flower growing	sorting, grading and packing of fruits and vegetables
pre-cooling and packaging of fresh or farm dried fruits and vegetables	

Does not include "wineries" which are defined separately.

**Agricultural Processing - Extensive.** The refinement or other processing of agricultural products to substantially change them from their raw form, which involves machinery, chemical reactions, and/or hazardous or highly odiferous materials or products. Examples of this land use include the following:

corn shelling	grist mills
cotton ginning	milling of flour, feed and grain
ethanol production	sugar mills
grain cleaning and custom grinding	



**Detached Structure.** A structure, no part of which is attached by any means to any other structure.

**Detached Residential Second Unit.** See “Residential Second Unit.”

**Determination, Use.** An action by the Commission determining and/or finding that a use not identified as an permitted use in a specific zone is similar in nature and/or character to the other permitted uses in that zone and is not more injurious to the health, safety, or welfare of the neighborhood because of noise, odor, dust, vibration, traffic congestion, danger to life and property, or other similar causes, and is therefore also considered a permitted use.

**Development.** The definition of "Development" differs within the Coastal Zone and Inland, as follows:

1. **Coastal Zone.** On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including subdivision in compliance with the Subdivision Map Act (Government Code Section 66410 et seq.), and any other division of land, except where the land division is in connection with the purchase of the land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). Also includes a change in the land use of a site and/or the change in the intensity of an existing land use, and Lot Line Adjustments.
2. **Inland area.** A change made by a person to unimproved or improved real property, including the placement, the moving, construction, reconstruction, enlarging, demolition, or alteration of buildings or structures, landscaping improvements, mining excavation, or drilling operations. Agricultural improvements as defined are not considered as development within this Development Code.

**Development Code.** The Santa Barbara County Land Use & Development Code, Section 35-1 of Chapter 35, Zoning, of the Santa Barbara County Code.

**Dining Commons.** A facility accessory to a residence hall and used primarily for preparing and serving food to residence hall occupants and which excludes service to the general public.

**Director.** The Director of the Santa Barbara County Planning and Development Department, including designees of the Director, referred to in this Development Code as “the Director.”

**Direct Sale.** A transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers’ markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

**Distillation Column or Tower.** A tall, cylindrical vessel in which a liquid or vapor mixture of two or more substances is separated into its component fractions of desired purity, by the application and removal of heat.

**Drainage Channel.** A channel, either natural or manmade, that conveys water.

**Drive-through Facility.** A facility where customers wait in line in their vehicles to progress to a service point at which they briefly transact business from their vehicles and then leave the premises. Includes banks (motor banks, drive-through banks, drive-up banks), fast food establishments, and film deposit and pickup establishments. Does not include drive-in movies, drive-in car washes through which the vehicles do not travel on their own power, drive-in food establishments where customers do not wait in line in their vehicles for service, or gas stations.