



## STAFF REPORT

**TO: PLANNING COMMISSION**

**PREPARED BY: Anjana Mevani, Assistant Planner**

**REVIEWED BY: Terry Blount, AICP, Planning Manager**

### GENERAL INFORMATION

**APPLICANT/OWNER:** Jerome R. Klima, ABC Tree Farms, LLC

**LOCATION:** 1047 Arnold Drive, vacant lot (APN: 377-120-014)

**GENERAL PLAN:** John Muir Specific Area Plan, Mixed Use – C/Residential  
(Commercial/Residential up to 29 Units/Acre)

**ZONING:** M – R-1.5/CC (Mixed Use District – Multi-Family Residential:  
1500 sq. ft. per dwelling unit/ Central Commercial)

**ENVIRONMENTAL REVIEW:** Staff proposes that the Planning Commission find that this permit be categorically exempt (Section 15304 – Minor Alterations to Land) from the requirements of CEQA. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

**PROPOSAL:** Public hearing to consider approval of Use Permit #09-04 to amend existing Use Permit #05-18, which allows seasonal pumpkin and Christmas tree sales, to additionally allow for a seasonal produce stand and children's inflatable games play area on a vacant lot during the months of July and August annually.

### RECOMMENDATION

Approve Use Permit #09-04, subject to the attached conditions of approval.

### BACKGROUND/PROJECT DESCRIPTION

The applicant is proposing to operate a seasonal produce stand and children's inflatable game/play area during the months of July and August, annually at 1047 Arnold Drive. The applicant is requesting to amend UP #05-18 to allow the seasonal produce stand and children's game area, in addition to the seasonal pumpkin and Christmas tree sales at the project site (see attachments for Use Permit #05-18 approvals). The applicant is also requesting to amend the operating time periods of the pumpkin patch, to October

1<sup>st</sup> through October 31<sup>st</sup> annually, and the Christmas tree sales, to the day after Thanksgiving through December 22<sup>nd</sup> annually, with the hours remaining the same as before, 9:00am-9:30pm daily. The subject lot is currently vacant and located to the east of a shopping center that includes Wal-Mart and Home Depot.

The sales of pumpkins and Christmas trees during the winter/holiday times have occurred at the project site for a number of years through design review and use permit applications. City records show design review applications dating back to the early 1990's. The applicant has also operated a children's game area at times, during these winter/holiday uses. It is quite common for cities to have such pumpkin and tree sales during the winter/holiday times. However, the proposed seasonal produce stand would be an atypical seasonal use that is not similar to any other uses within the City. Thus, the applicant has worked closely with Staff to put forward a proposal that would be suitable for the site, given the applicants situation and the current economic times.

Based on the site plan submitted by the applicant, the seasonal produce stand would be located under a 50'x75' tent on the project site. Further, the children's game area would consist of eight games, which include three play areas, three jumpers, and two air slides (see attached Site Plan). Attached is noise information that the applicant has provided regarding the games. The applicant would have two to three employees on-site during the seasonal sales period and would provide three portable toilets with hand washing facilities for their use and public use. Additionally, a total of 43 parking spaces would be provided for on-site parking, two of which would be handicapped parking spaces. These parking spaces are independent from the Home Depot leased parking area on-site. The applicant is also proposing to install a two-sided sign near Arnold Drive, which would have an 8x8 wide surface area (see Sign Graphic exhibit).

The applicant has provided letters, which include information about the requested amendment to the existing conditional use permit, method of operation, and a statement of compliance regarding the use permit issued in 2005 (see Applicant's Attachments). The applicant has also conducted his own neighborhood outreach to the adjacent residential neighbors on Shadow Falls Drive and Shadow Falls Court by going door-to-door and by e-mail. These neighbors were provided a letter explaining the proposal and other corresponding information, and thus far three neighbors have provided their support for the project (see attached Applicant's Neighborhood Outreach).

## **DISCUSSION**

Originally, the applicant provided the City with an amendment that consisted of using the site for the seasonal produce stand and children's game area from the beginning of May to early September, which would have brought the total site usage to 7 months, when added to the annual pumpkin and trees time period. Staff discussed the initial proposal in detail and found that they could not support it because the use of the site would be going from temporary to permanent, if used for 7 months and development and infrastructure improvements would be required. Staff worked with the applicant to come to a compromise, where if only one additional month was added to the use of the site then Staff would consider the use as temporary and support the application. Thus, the applicant changed their request to include a change to the dates of the pumpkin and

trees sales time period to accommodate the produce stand for two months during the summer.

In addition, Staff worked with the applicant to make changes to items in the initial site plan so that the inflatable games area would be the furthest away from the residences along the eastern portion of the property as possible. Staff requested that the applicant provide a permanent fence enclosure on-site with adjacent landscaping and irrigation system to provide visual interest and screening of the sales and games area (see Fence Example Pictures). Other compromises have included the hours of operation, for which the Police Department has requested that the children's game area cease at 8:00pm daily. However, the applicant is asking for hours that end at 8:30pm on Fridays and Saturdays. Staff is recommending adhering to the requests from the Police Department, which have been reflected in the hours of operations stated in the conditions of approval (see attached Draft Conditions of Approval).

Staff is recommending the implementation of a number of conditions for the approval of this project, some of which include:

- No lights directed toward neighboring residential properties
- Annual compliance investigation and site clean-up deposit
- Providing parking blocks to prevent vehicles from parking and overhanging into the sidewalk
- Providing compact gravel in the parking area and paving the entrance to prevent gravel from entering the street
- Continued maintenance of the landscaping and irrigation system
- Meeting the City's noise ordinance and standards
- Obtaining a water meter

### **SUMMARY**

With the changes the applicant has made to the proposal, Staff recommends approval of the project with the implementation of the conditions of approval. The attached draft conditions of approval and resolution containing the necessary findings have been prepared for Planning Commission approval.

### **ATTACHMENTS**

Site Context Map  
Resolution PC 09-04 [DRAFT]  
Conditions of Approval [DRAFT]  
Use Permit #05-18 Approval Letter, Conditions of Approval, Resolution, Staff Report  
Applicant's Letter Regarding Requested Amendment to Existing Conditional Use Permit  
Applicant's Method of Operation  
Applicant's Statement of Compliance for Use Permit Issued in 2005  
Applicant's Neighborhood Outreach and corresponding information  
Noise Information for the Inflatable Games

### **EXHIBITS**

Site Plan  
Fence Example Pictures

## Sign Graphic

F:\Community Development\All Projects\Non-Residential-Commercial\Arnold Dr, 1047 - Seasonal Produce Stand\ABC Tree Farms - ZA Report.doc

**DRAFT RESOLUTION NO. PC 09-04**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MARTINEZ,  
APPROVING THE AMENDMENT OF EXISTING USE PERMIT #05-18, TO  
ADDITIONALLY ALLOW FOR A SEASONAL PRODUCE STAND AND CHILDREN'S  
INFLATABLE GAMES AREA DURING THE MONTHS OF JULY AND AUGUST  
ANNUALLY LOCATED AT 1047 ARNOLD DRIVE  
(APN: 377-120-014)  
UP #09-04**

**WHEREAS**, pursuant to Martinez Municipal Code Sections 22.40; Use Permits, Jerome R. Klima, ABC Tree Farms, LLC applied for Use Permit #09-04 to amend existing Use Permit #05-18, which allows seasonal pumpkin and Christmas tree sales, to additionally allow for a seasonal produce stand and children's inflatable games play area on a vacant lot during the months of July and August annually.

**WHEREAS**, the applicant is also requesting to amend the operating time periods of the pumpkin patch, to October 1<sup>st</sup> through October 31<sup>st</sup> annually, and the Christmas tree sales, to the day after Thanksgiving through December 22<sup>nd</sup> annually, with the hours remaining the same as before, 9:00am-9:30pm daily.

**WHEREAS**, the proposal is consistent with the General Plan policies and the John Muir Specific Area Plan, Mixed Use – C/Residential (Commercial/Residential up to 29 Units/Acre); and

**WHEREAS**, the zoning applicable to the property is M – R-1.5/CC (Mixed Use District: Multi-Family Residential: 1500 sq. ft. per dwelling unit/ Central Commercial), which allows commercial and residential uses; and

**WHEREAS**, the project is categorically exempt from the requirements of CEQA, under Class 15304, Minor Alterations to Land; and

**WHEREAS**, the Planning Commission of Martinez held a public hearing on June 23, 2009, and listened to testimony from the public.

**NOW, THEREFORE**, the Planning Commission of the City of Martinez resolves as follows:

1. The above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. In order to approve the Use Permit application, the Planning Commission must make the following findings, which it hereby does:
  - (a) **The proposed location of the conditional use is in accord with the**

**objectives of this title, and the purposes of the district in which the site is located.** The seasonal produce stand and children's inflatable games area, with a limited duration of two months per year, is in accord with the objectives of this title, and the large vacant site is appropriate for the temporary annual use. The zoning district that the site is located in allows a mix of uses and the seasonal produce stand and children's game area is in accord with those purposes. The proposed use is located adjacent to a shopping center where many of the businesses remain open until late hours of the evening. With the conditions of approval implemented, the proposed use will end at 8:00pm daily. The use is proposed for July and August, for a total site usage of four months with the pumpkin and Christmas tree sales. Additionally, the proposed use is seasonal and the site will be vacated and cleaned at the end of each of the sales periods in accordance with the conditions of approval.

- (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The location of the seasonal produce stand and children's inflatable games area, based on the site plan configuration and with the implemented conditions of approval will reduce impacts on adjacent residential properties. The applicant will also be required to post a deposit with the City each year to ensure proper clean up and maintenance of the project site. The use is proposed to fit in, rather than conflict, with the uses in the immediate area, with the conditions of approval implemented for hours of use, parking, lighting, utilities, trash/debris, and noise. The location of the conditional use and the manner in which it will operate will not be detrimental to public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- (c) **The proposed conditional use will comply with each of the applicable provisions of this title.** The proposed use complies with each of the applicable provisions of this title, including the M – R-1.5/CC zoning requirements.

- 3. All the findings contained above are part and parcel of this Resolution and are incorporated herein by this reference.

**NOW, BE IT FURTHER RESOLVED** that the Planning Commission approves Use Permit #09-04, allowing a seasonal produce stand and children's summer fun zone to operate at 1047 Arnold Drive, subject to conditions of approval, incorporated herein by this reference.

\*\*\*\*\*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Administrator held on the 23<sup>rd</sup> day of June, 2009:

AYES:

NOES:

ABSENT:

BY: \_\_\_\_\_  
Frank Kluber  
Planning Commission Chair

\_\_\_\_\_  
Anjana Mepani  
Assistant Planner

F:\Community Development\All Projects\Non-Residential-Commercial\Arnold Dr, 1047 - Seasonal Produce Stand\ABC Tree Farms - Resolution.doc

DRAFT CONDITIONS OF APPROVAL

AS APPROVED BY PLANNING COMMISSION

Project Name: **Jerome R. Klima, ABC Tree Farms, LLC**

Location: **1047 Arnold Drive, vacant lot (APN: 377-120-014)**

I. Description of Permit

These conditions apply to and constitute the approval of Use Permit #09-04 on a request to amend existing Use Permit #05-18, which allows seasonal pumpkin and Christmas tree sales, to additionally allow for a seasonal produce and children's inflatable games play area on a vacant lot during the months of July and August annually.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	RECEIVED ON	PREPARED BY	PAGES
Site Plan	June 17, 2009	Applicant	1
Applicant Letters	June 4, 2009 and June 5, 2009	Applicant	7
Sign Graphic	June 5, 2009	Applicant	1
Fence Example Pictures	June 4, 2009	Applicant	2

All plans shall conform to these exhibits. Building permit plans shall include a checklist of these conditions for staff review and verification that the conditions have been met. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Building Division and/or Engineering Division as noted.

III. Conditions for Use Permit #09-04

- A. **The applicant shall attach a copy of the conditions of approval with the plans submitted for building permits.**
- B. **The applicant shall comply with these conditions for the use, functions, and operations at the project site. The applicant shall submit site development and construction plans for approval by the City prior to construction. The applicant shall notify the City in writing of any future changes to scope of work, type of sales or any other functions/operations at the project site and shall obtain City approval prior to such change.**
- C. **The applicant shall conduct a compliance investigation and evaluation of the conditions of approval, parking, traffic, circulation,**

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**maintenance, and use of the site at the end of each operation period in August, October, and December, and annually thereafter. Results of the investigation shall be provided to the City annually. Should there be violations, the applicant shall be responsible to correct those items. The applicant will be required to temporarily cease all operations on site until full compliance is achieved. Failure of compliance will be subject to enforcement action and will result in administrative civil penalties and would set the grounds for a public hearing to consider revocation of the conditional use permit until full compliance is achieved. Any changes to the site use and operation in order to achieve compliance will be subject to review and approval by the City.**

- D. The hours of operation for the seasonal produce stand and children's inflatable games/play area shall be from July 1<sup>st</sup> through August 31<sup>st</sup> annually and hours from 10:30am until 8:00pm Sunday through Thursday and 10:00am until 8:00pm Friday and Saturday, unless prior permission is granted by the Police Department and Planning Division. The operating time periods of the Halloween pumpkin patch will be October 1<sup>st</sup> through October 31<sup>st</sup> annually, and the Christmas tree sales, from the day after Thanksgiving through December 22<sup>nd</sup> annually, with the hours remaining the same as before, 9:00am-9:30pm daily, unless prior permission is granted by the Planning Division.**
- E. The applicant shall continue to post and maintain a minimum \$500 clean up cash deposit. The City shall hold this to assure that the site is appropriately cleaned up after the sales have been completed. The site must be completely vacated when not in operation, except for the fence enclosure, landscaping, gravel and parking blocks. The applicant shall continue to maintain the upkeep of the site by removing weeds, removing trash/debris, maintaining the landscaping and irrigation, etc. No equipment and materials, such as tent items, inflatable games, trash receptacles, and storage containers shall be stored on the site when not in operation.**
- F. A City Business License is required annually for the proposed use and shall be obtained from the City's Finance Division.**
- G. The applicant shall continue to provide Home Depot with parking spaces per the agreement between those parties.**
- H. The maximum height for all fencing shall be 6 feet. The fence shall be metal/wood as indicated on the site plan and as shown in the fence example pictures. Alternate materials will be subject to staff review and approval. The applicant shall provide the City with access codes or access methods of entry for the fence/gates at both ends of the easement, located over the 20' storm drain easement.**

The gates shall be located over the easement and span the entire width of the easement.

- I. The applicant shall provide a landscaping and irrigation system, and use plant materials and flowers adjacent to the fence enclosure for screening and visual interest.
- J. The applicant shall direct all lighting away from the residential properties to the east.
- K. The applicant shall compact the existing gravel parking lot. In addition, the applicant shall construct an asphalt pavement area adjacent to the entrance to the parking lot to prevent gravel from entering into the street. The location and size of the asphalt pavement shall be shown on the plans and it shall be constructed to the satisfaction of the City Engineer. The plans shall be submitted to the City Engineer for approval prior to construction.
- L. Applicant shall provide parking blocks to prevent vehicles from overhanging onto the sidewalk.
- M. The applicant shall provide the site with domestic water supply by obtaining a water meter from the City of Martinez Water System prior to commencing business activity. All connection and installation fees shall be paid per the fee schedule at the time of payment.
- N. A building permit shall be obtained for the temporary PG&E power pole prior to electrical hook up. The applicant shall remove the temporary pole prior to on-site development in the future. All utilities and wires shall be placed underground.
- O. The applicant must obtain all appropriate permits and approvals from the City's Building Division, Contra Costa County Fire Protection District, Contra Costa Health Services - Environmental Health Division, Mt. View Sanitary District, and any other applicable agencies on an annual basis.
- P. The applicant shall receive trucks and merchandise loads in areas that do not disrupt traffic, shopping center activities, and adjacent residences. Operation vehicles, customers vehicles, and equipment entering street paved areas shall be free of mud and other debris. If such materials are tracked on the street, they shall be removed immediately.
- Q. The applicant shall comply with all City noise ordinances. A day-night level (Ldn) of 60 dB is the standard for exterior noise. An Ldn of 60 dBA is a maximum noise level of 50 dBA between 10 p.m. – 7 a.m. and 60 dBA between 7 a.m. – 10 p.m.

- R. **The applicant shall keep the adjoining sites and streets free and clean of project gravel, dirt, mud, materials, vehicles, trash and debris during the operational period. Adequate dust control measures shall be employed throughout permit periods. This may include watering areas that are exposed and causing dust.**
- S. **Overnight stays or a manager's trailer will not be allowed on the site.**
- T. **The easements shall remain clear of items. The applicant shall not place any items, such as structures, trash receptacles, storage containers, inflatable games, etc. in the easement unless otherwise approved by the City Engineer. No structures, objects, or landscaping shall be constructed or placed over existing easements that will obstruct the full enjoyment and use of such easements. The temporary tent may be placed over the existing 10' wide storm drain easement (City easement), subject to the approval of the City Engineer. In the event that the City determines that the tent and any other encroachments on the existing easement should be removed, the City shall notify the owner in writing. Said tent and encroachment shall be immediately removed. The City reserves the right to remove the temporary tent and any other encroachments on said easement. Whether or not and when said removal is required, it shall be left to the unfettered discretion of the City. Applicant/owner shall bear all costs and expenses of removing the tent and encroachments. Applicant/owner shall also waive any claims or rights s/he may have for inverse condemnation, damages, or loss of income or business resulting from said removal.**
- U. **A City Encroachment Permit is required for any work within the City Right-of-Way.**
- V. **The property owner/applicant shall merge all parcels into one lot prior to approval of the plans or issuing any permits for this site, unless otherwise approved by the City Engineer. Additional chain of title and deed restriction research will be required of the property owner/applicant.**
- W. **Planning Commission approval is subject to appeal to the City Council within ten calendar days of the approval.**
- X. **The permit and approval shall expire in one year from the date on which they became effective (unless extended under Y) unless a building permit and business license is obtained and business activity commences within the one year time period. The effective date of the permit and approval is **June 23, 2009.****
- Y. **The time extension of the expiration date, **June 23, 2010**, of a permit or**

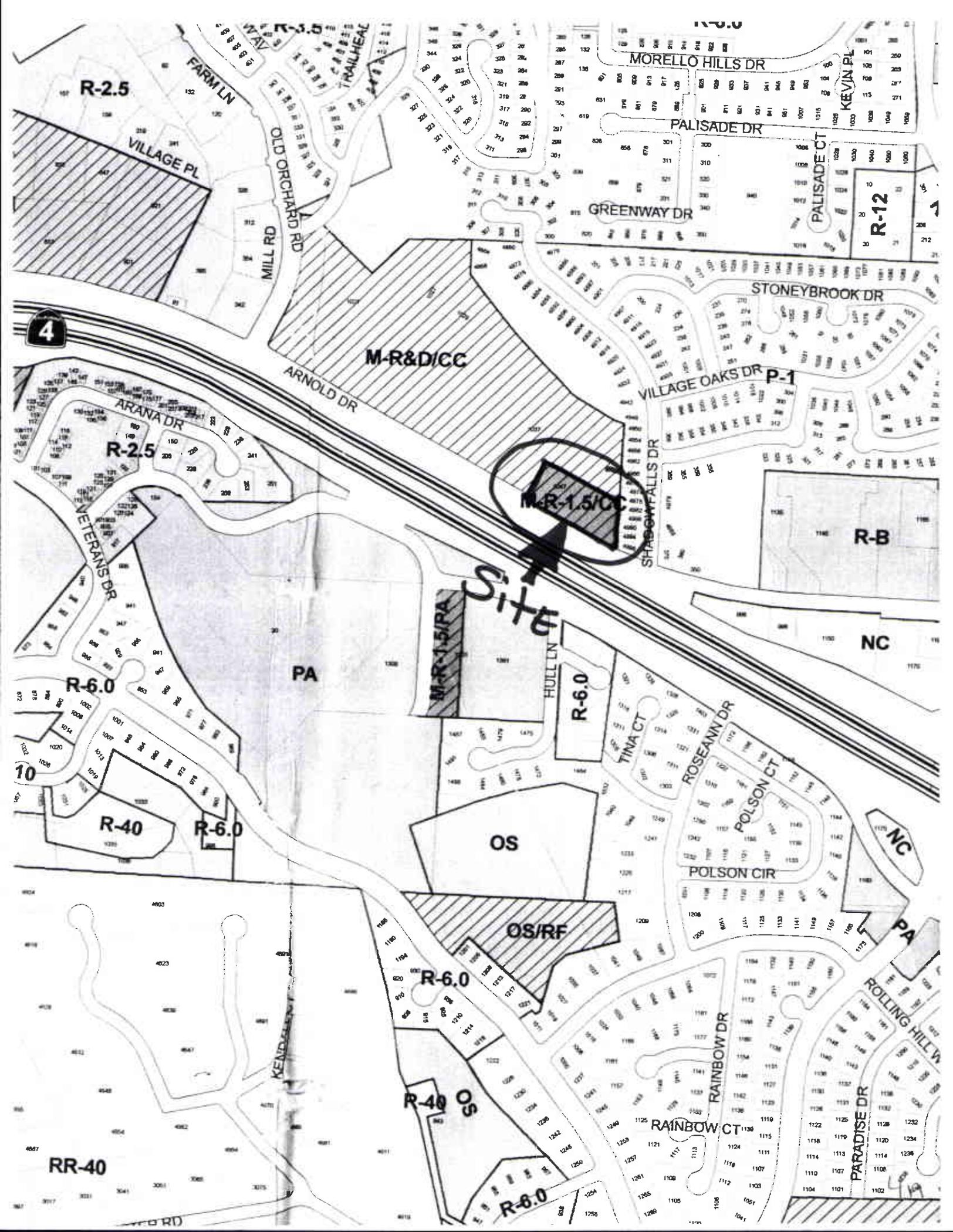
approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.

- Z. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- AA. The permittee, Jerome R. Klima, ABC Tree Farms, LLC shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to approve Use Permit #09-04, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Jerome R. Klima, ABC Tree Farms, LLC, the City, and/or the parties initiating or bringing such action.
- BB. Jerome R. Klima, ABC Tree Farms, LLC shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Jerome R. Klima, ABC Tree Farms, LLC desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- CC. In the event that a claim, action or proceeding described in Subsection AA, above, is brought, the City shall promptly notify Jerome R. Klima, ABC Tree Farms, LLC of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Jerome R. Klima, ABC Tree Farms, LLC is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with Jerome R. Klima, ABC Tree Farms, LLC in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Jerome R. Klima, ABC Tree Farms, LLC has already retained counsel to defend the

City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

- DD. Jerome R. Klima, ABC Tree Farms, LLC shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
  
- EE. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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R-2.5

VILLAGE PL

FARM LN

MILL RD  
OLD ORCHARD RD

MORELLO HILLS DR

PALISADE DR

PALISADE CT

R-12

GREENWAY DR

M-R&D/CC

ARNOLD DR

STONEYBROOK DR

VILLAGE OAKS DR

P-1

R-2.5

ARANA DR

M-R-1.5/CC

R-B

NC

SITE

PA

R-6.0

M-R-1.5/PA

R-6.0

OS

OS/RF

NC

R-40

R-6.0

R-6.0

R-40

OS

R-6.0

RAINBOW CT

PARADISE DR

ROLLING HILL WAY

RR-40





City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

[925] 372-3515

October 6, 2005

ABC Tree Farms  
2464 El Camino Real #934  
Santa Clara, CA 95051

**SUBJECT: USE PERMIT #05-18 APPROVAL – RETAIL PUMPKIN PATCH &  
CHRISTMAS TREE FARM – 1047 ARNOLD DRIVE**

Dear Mr. Klima:

On Wednesday, October 5, 2005, acting as Zoning Administrator, I approved the request for a use permit to allow the sales of pumpkins and Christmas trees from October through December each year. This property is a vacant lot located at 1047 Arnold Drive, in Martinez.

The conditions of approval are attached.

This decision may be appealed to the Planning Commission by yourself or any interested person. There is a 10-day appeal period which ends on Friday, October 14, 2005.

You may proceed in applying for your building permit after the appeal period has expired. For more information on obtaining a building permit, please contact Jeff Taylor, Building Permit Technician, at 372-3550.

Sincerely,

Richard Pearson  
Community Development Director

Attachment

cc: Jeff Taylor, Building Permit Technician  
Engineering  
Project File ✓  
Chron  
Binder

## CONDITIONS OF APPROVAL

## APPROVED BY ZONING ADMINSTRATOR

Project Name: ABC Tree Farms, LLC

Location: 1047 Arnold Drive, vacant lot APN: 377-120-014)

I. Description of Permit

- A. These conditions apply to and constitute the approval of Use Permit #05-18 on a request to allow the sales of pumpkins and trees on a vacant lot during the months of October through December

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Applicant Letters	August 15, 2005/Septemer 1, 2005	Applicant	2
Site Plan	August 15, 2006	Applicant	1

All construction plans shall conform to these exhibits. Building permit plans shall include a checklist of these conditions for staff review and verification that the conditions have been met. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Building Division or Engineering Division as noted.

III. Conditions

- A. **The hours of operation shall be from 9:00am until 9:30p.m., daily, unless prior permission is granted by the Planning Department.**
- B. **The application shall apply for Design Review and submit a site, design, and schedule plan each year prior to sales. A City Business License and sign off from the fire department is also required.**
- C. **The applicant shall provide a post a bond of \$500/annually to assure that the site is appropriately cleaned up after the sales have completed.**

APPROVED BY ZONING ADMINSTRATOR

October 5, 2005

- D. The applicant shall obtain a temporary power pole from P.G. & E. to supply the electrical power to the lot. The pole shall not be permitted for more than 90 days. A letter shall be submitted to the City from P.G. & E. acknowledging this requirement. The pole shall be removed by the applicant by December 31, 2005. A building permit shall be obtained for the power pole prior to electrical hook up.**
- E. The applicant shall direct all lighting away from the residential properties to the east.**
- F. The applicant must receive trucks and merchandise loads in areas that do not disrupt traffic or shopping center activities.**
- G. The applicant shall comply with all city noise ordinances.**
- H. The applicant must notify the city of any changes to scope of work, type of sales or any other functions/operations.**
- I. A City Encroachment Permit is required for any work within the City Right-of-Way.**
- J. Zoning Administrator approval is subject to appeal to the Planning Commission within ten calendar days of the approval.**
- K. The permit and approval shall expire in one year from the date on which they became effective (unless extended under I) unless a building permit is obtained and construction begun within the one year time period. The effective date of the permit and approval is October 5, 2005.**
- L. The time extension of the expiration date, October 6, 2006, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.**
- M. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.**
- N. The permittee, ABC Tree Farms shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim,**

action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Zoning Administrator's decision to approve Use Permit #05-18, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by ABC Tree Farms, the City, and/or the parties initiating or bringing such action.

- O. ABC Tree Farms shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if ABC Tree Farms desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- P. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify ABC Tree Farms of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that ABC Tree Farms is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with ABC Tree Farms in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where ABC Tree Farms have already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- Q. ABC Tree Farms shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- R. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are

hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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**RESOLUTION NO. ZA 05-32**

**MAKING FINDINGS FOR THE APPROVAL OF  
USE PERMIT #05-18 TO ALLOW THE USE OF A VACANT LOT FOR A PUMPKIN  
SALES LOT AND TREE SALES LOT DURING THE MONTHS OF OCTOBER  
THROUGH DECEMBER LOCATED AT 1047 ARNOLD DRIVE  
(APN: 377-120-014)**

**WHEREAS**, pursuant to Martinez Municipal Code Sections 22.40; Use Permits, , ABC Tree Farms applied for Use Permit #05-18 to allow the sales of pumpkins and tress on a vacant lot during the months of October through December; and

**WHEREAS**, the proposal is consistent with General Plan policies and with the land use designation which is Commercial; and

**WHEREAS**, the zoning applicable to the property is R&D/CC (Mixed Use: Research & Development & Central Commercial), which allows the use of commercial and restaurant services; and

**WHEREAS**, the project is categorically exempt from the requirements of CEQA, under Class 15303, Existing Facilities; and

**WHEREAS**, the Zoning Administrator of Martinez held a public hearing on October 5, 2005, and listened to testimony from the public.

**NOW, THEREFORE**, the Zoning Administrator of the City of Martinez resolves as follows:

1. The above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. In order to approve the Use Permit application, the Zoning Administrator must make the following findings, which it hereby does:
  - (a) **The use will not be detrimental to the business in the area;** The proposed business is located an existing shopping area that has a large number of parking spaces and commercial businesses. It is also proposed for only a quarter of a year, which means that it is only seasonal and will be fully vacated and cleaned at the end of the sales period. Therefore, it will not be detrimental to business in the area.
  - (b) **The use will not create a safety hazard;** The applicant will be required to load and unload delivery trucks as required by the shopping center. They will also be required to put down a deposit each year to ensure proper clean up and maintenance of the site.
  - (c) **The use will meet the Design Review Criteria and Standards, Chapter**

**22.34.045;** The applicant will be required to submit a Design Review application each year prior to beginning sales. A site, design and schedule plan shall be required as part of the application and is subject to staff approval.

(d) **The use will not be a nuisance to neighboring properties especially residences;** The business is located in a shopping center where many of the businesses stay open until later hours of the evening. A condition of approval has been added requiring that sales end at 9:30p.m. unless prior permission is granted by the Planning Department.

3. All the findings contained above are part and parcel of this Resolution and are incorporated herein by this reference.

**NOW, BE IT FURTHER RESOLVED** that the Zoning Administrator approves Use Permit #05-18, allowing a hot dog cart to operate at 1047 Arnold Drive, subject to conditions of approval, incorporated herein by this reference.

\*\*\*\*\*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Zoning Administrator of the City of Martinez at a regular meeting of said Administrator held on the 5<sup>th</sup> day of October, 2005:

BY: Richard Pearson  
Richard Pearson  
Zoning Administrator

Amber Curl  
Amber Curl,  
Planning Technician



## STAFF REPORT

**TO: ZONING ADMINISTRATOR**

**PREPARED BY: Amber Curl, Planning Technician**

### GENERAL INFORMATION

**OWNER/APPLICANT:** ABC Tree Farms, LLC

**LOCATION:** 1047 Arnold Drive (APN: 377-120-014)

**PROPOSAL:** Hearing on a request to allow the use of a vacant lot for a pumpkin sales lot and tree sales lot during the months of October through December.

**GENERAL PLAN:** Commercial

**ZONING:** R&D/CC (Mixed Zoning: Research and Development/Central Commercial)

**ENVIRONMENTAL REVIEW:** This project is categorically exempt ("CLASS 1- Existing Facilities") from CEQA'S requirements for the preparation of environmental documents. No further environmental review is required by State law.

### RECOMMEDATION

Approve Use Permit #05-18 subject to the attached conditions of approval.

### PROJECT BACKGROUND

The applicant is proposing to run a pumpkin patch (sales of pumpkins) and tree sales from the months of October through December at 1047 Arnold Drive. The subject lot is currently vacant located to the east of a large shopping center that includes Wal-Mart and is located adjacent to Yardbirds. The sales of pumpkins and trees for the holidays have occurred at the site for a number of years; however, it was found that a conditional use permit was never issued. The applicant has, however, applied for Design Review

yearly prior to beginning sales. Sales on the lot will begin in October, with some possible preparation in September and commence at the end of December. It is located in an area with a number of other retail business that have later hours of operation; two of which stays open later in the evenings.

### **STAFF ANALYSIS**

This business has occurred on the lot seasonally for a number of years. It is quite common for cities to have such sales during winter/holiday times. There is also plenty of parking available for the site since it is located adjacent to a major shopping center. Staff is recommending a few special conditions of approval for the project:

- 1) The applicant shall apply for Design Review yearly, providing a site plan and layout of the pumpkins/trees.
- 2) The applicant shall provide and post a bond of \$500/annually to assure that the site is appropriately cleaned up after the sales have completed.
- 3) The applicant shall direct all lighting away from the residential properties to the east.

### **ATTACHMENTS**

Site Context Map  
Applicant's Statement  
Resolution ZA 05-2 [DRAFT]  
Conditions of approval [DRAFT]

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**Letter Regarding Requested Amendment to Existing  
Conditional Use for ABC Tree Farms, LLC  
Seasonal Sales Located at 1047 Arnold Dr., Martinez, California**

ABC Tree Farms, LLC is requesting an amendment to the existing Conditional Use Permit for Seasonal Sales at the site located at 1047 Arnold Dr., Martinez, California. The current permit allows ABC Tree Farms, LLC to use the site for Seasonal Sales for a Halloween Pumpkin Patch and Christmas Tree Sales area. ABC Tree Farms is requesting an amendment be made to this permit to allow them to sell fresh seasonal produce and to have inflatable games for children's entertainment for the period starting July 1st annually and then continuing through to August 31<sup>st</sup> annually. We are further requesting to operate our Halloween Pumpkin Patch from October 1<sup>st</sup> annually through October 31<sup>st</sup> annually. We are also requesting to operate our Christmas Tree sales from the day after Thanksgiving to the 22<sup>nd</sup> of December annually. We are voluntarily restricting the total sales period use of the location to four months annually per recommendations from Martinez Planning Department staff. ABC Tree Farms, LLC has been operating a Seasonal Sales site at the property for over fifteen years. I, Jerome R Klima Jr. am the sole LLC member of ABC Tree farms, LLC and I am also the owner of the property. I have been the property owner since 1997.

During April/ May of 2007 and 2008 I volunteered the use of the property for a spring carnival run in conjunction with the Martinez Chamber of Commerce. Unfortunately this carnival was not well accepted by the neighbors due to numerous problems. As an out of state owner of the property I first learned of the problems with this carnival in late 2008. When I was approached again in 2009 to allow the carnival use of the property I approached the local neighbors for their input and to see if they were in support of this use. The neighbors came back with an overwhelming disapproval of the use and based on this I chose not to allow the future use of the site for this purpose. I wish to make it clear to the City Planning Department that the proposed amendment is not for a high impact use such as a carnival on the site. It is for an extension of the time period for the current allowed use and a slight modification of the use. Anticipated attendance at the site for the fresh seasonal produce sales is less than that for both the Christmas and Halloween sales seasons due to the fact that it is a non Holiday event. For this reason we anticipate lower impact on the community than for during Halloween and Christmas. In conversations with neighbors they have been accepting of the current seasonal sales use and appear to support it. I am attempting to meet with the neighbors on an individual basis to discuss this proposed Amendment with them and will be circulating a copy of a letter attempting to get there support for the Amendment. I will provide this package to the Planner assigned once I am aware who it is and as far in advance of the Planning Commission Meeting as possible.

Other further points that I wish to have Planning consider when they review this amendment with regards to impact and the Amendment follow.

Our inflatable games area is for preteen children. Further as an operational policy ABC Tree Farms, LLC does not allow persons over 4' 11" in height or over the age of twelve to use the inflatable games. Parents, teenagers and adults are not allowed to use the games for several reasons. We operate a safe environment for preteen children to enjoy as their parents supervise them. We do not want larger more active teenagers to disrupt the safety of the preteens. We require parents be present to supervise their children at all times but do not allow them on the games for safety reasons as we do not want to mix people with large body weight on the same games as people with small body weight. For this reason we anticipate a different group of attendees than the Carnival attracted.

We are providing adequate parking space for this use during the July to August season. Since this is a non Holiday event we are anticipating a much smaller overall attendance. Further since school is on summer holiday we are anticipating that the attendance will be spread out during weekdays as well as weekends which should keep our usual peak traffic time customer count at a lower rate than during our Holiday sales season when our peak times are on weekends and evenings. We do not anticipate any overflow parking issues as occurred during the carnival.

This proposed Amendment for use of the expanded use of the property is intended to be a neighborhood use primarily and as such is targeted to service the local community of grandparents, parents and children. As in the past some of the traffic will be pedestrian in nature from the local community.

The usage of the site for this summer amended use is approximately one third less in size than during the Holiday Seasonal Sales period. HomeDepot leases one third of the property as required per their Lease Agreement with the adjacent shopping center for use as overflow parking. Per ABC Tree Farms, LLC lease Agreement with HomeDepot, ABC Tree Farms, LLC will be utilizing and operating a smaller portion of the property and operating a smaller sized business than during the Holiday Sales Season. The new proposed Amendment will not have any greater visual impact on the site as the same improvements used during the Seasonal Sales period are being proposed to be used during the extended time period. Hence the visual impact will be less. Further this extended use of the property will have shorter hours of operation and will have less impact for that reason as well. All tenant improvements will be removed and the site completely cleaned annually upon completion of the term of the Conditional Use Permit.

The community will have several benefits from the Amendment if Planning and the Community approve this Amendment.

The project is unique. I cannot think of any other business like this in an East San Francisco Bay community that I am aware of. It blends the availability of fresh locally grown produce together with an opportunity to entertain your preteen children while purchasing it together at one site. I believe that the local shoppers in the area will find that very appealing as produce shopping can become a fun family outing.

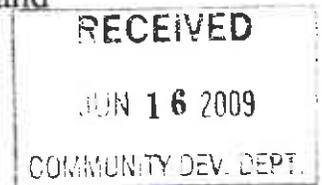
We will be offering locally grown fresh produce some of which will be supplied from Larry's Fruit Market in Suisun California and some from our own farms at competitive prices to the community. Many of the items will be organically grown offering the local area an alternative to what is currently on the market.

The Summer Fun Zone for preteen children will operate the same inflatable games which are operated during the Halloween Seasonal Sales period. The area will offer the community another inexpensive option for inexpensive child entertainment during the summer vacation period when children can become bored and have little to do.

I look forward to this Amendment to the existing Conditional Use Permit receiving both Community and Planning staff support and am available to answer any questions regarding it by either telephone at 503 975 8733 or by email at [abctreefarms@yahoo.com](mailto:abctreefarms@yahoo.com).

Jerome R. Klima Jr.  
ABC Tree Farms, LLC

Method of Operations Proposed Seasonal Produce Stand  
And Summer Fun Zone  
ABC Tree Farms, LLC  
1047 Arnold DR., Martinez, CA  
2009



ABC Tree farms, LLC is proposing to operate a temporary seasonal children's entertainment area or Summer Fun Zone in conjunction with a seasonal fresh fruit and locally grown produce market at the referenced site. The applicant proposes to operate multiple inflatable games and attractions at the site during this period and to utilize the fifty foot wide by seventy five foot long tent to sell fresh fruit and locally grown produce. It has been brought your attention during the permit process that there is a storm drainage easement which sits underneath a part of the subject property upon which we are requesting to erect the temporary tent structure. We have discussed this with the City of Martinez Engineering staff and are requesting that in the event that it becomes necessary to access the storm drainage easement and our tent is obstructing the access we agree to take responsibility to remove the tent immediately and give unobstructed access to the easement. Further we have discussed with Martinez City Engineering Department how to proceed in having the City abandon this easement. We intend to take action to have the easement abandoned in the near future. The inflatable games during the summer would be similar to the inflatable games operated at the site during the Halloween Pumpkin Patch. These inflatable games are operated by cold air blowers which are powered by electricity. I have attached a copy of the specifications sheet showing the noise ratings for these cold air blowers. They are very quiet and cannot be heard when you are over fifty feet away from them. Proposed days of operation are beginning July 1<sup>st</sup> and terminating on August 31<sup>st</sup> annually. Hours of operation will be seven days a week, Sunday through Thursday we will open at 10:30 AM and close at 8:00 PM. Friday and Saturday we will open at 10:00 AM and remain open until 8:30 PM. We are voluntarily restricting the total sales period use of the location to four months annually per recommendations from Martinez Planning Department staff. The operation would be temporary in nature but would operate during this period on an annual basis until an acceptable offer to develop the property materializes. Currently with the depressed economy all prior development proposals for the property have been cancelled.

The area will be as diagrammed in the attached Proposed Seasonal Produce Stand And Kid's Summer Fun Zone Plot Plan. All necessary permits, Business License and approvals will be acquired from the City of Martinez. Storage and trash enclosures are proposed to be placed as diagrammed in the site plan. We will have no hazardous chemicals on our site. Temporary Portable toilets and hand washing facilities with running potable water will be provided as diagrammed. Water service will be provided through a connection to public water from the local water district.

We are requesting to gravel the parking area as diagrammed in the site plan. We are requesting to install a six foot tall metal fence as diagrammed in the site plan. We are proposing to leave the fence installed on a year round basis and have provided drawings of the fence for reference. In addition we are requesting to install a five foot wide walkway and three foot wide landscape area to provide screening and visual interest as

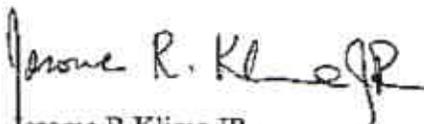
diagrammed on the site plan. We are proposing to install drip irrigation, hire a landscape maintenance caretaker and make the landscape area a year round fully maintained installation.

Electricity will be provided by connection to PGE through two service main over head power poles which will be located as diagrammed on the site plan. Connections across the parking area will be underground. Signs will be located as diagrammed and will consist of two sign board faces one facing to the east and one to the west. They will be over fifteen feet away from the entrance and will not block oncoming traffic visibility. Each will be at a forty five degree angle to oncoming traffic as diagrammed and each will be eight foot tall by eight foot wide surface area. Sign designs will be submitted to Planning staff for approval prior to installation.

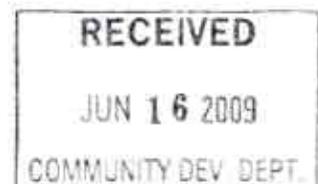
As diagrammed we are requesting the use of a fifty foot wide by seventy five foot long tent that is flame retarded with a seal on the panels from the State of California Fire Marshal. This tent installation will be compliant with the requirements of the County of Contra Costa Fire Department. Parking and traffic flows are diagrammed on the site plan. Parking spaces will not encroach the Public right of way. They will be set back a minimum of ten feet from the curb and we are proposing a to install parking wheel blocks two feet back from the forward edge of the parking stalls so that the vehicles will not be able to overhang beyond the forward edge of the parking stall and will be located entirely within the stall. Parking spaces diagrammed are standard size nine feet wide by twenty feet deep with a twenty five foot maneuvering area between them. Located on the property is a twenty foot wide sewer easement which is diagrammed along the Eastern portion of the property. It is necessary that this area not have any structures encroach it. With the current design there is a fence which limits accessibility to the easement. We have consulted with the City of Martinez Engineering Department and have agreed to locate a service entrance gate for access to this easement and to provide the appropriate authorities with the combination to this gate so they will have unlimited access to the easement.

Our application is similar to the operations we have operated for Halloween and Christmas in the past several years. The inflatable games would be removed at the end of the sales period and the site will be completely cleaned up at that time. All improvements will be temporary in nature.

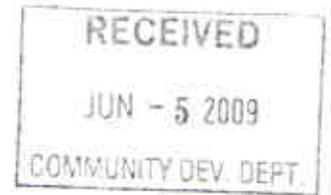
An additional letter is attached to this Application which further explains a history of the property and more details regarding the proposed Amendment. If you require further information please contact me, Jerome R Klima Jr., at 503 975 8733 or via email at [abctreefarms@yahoo.com](mailto:abctreefarms@yahoo.com).



Jerome R Klima JR  
ABC Tree Farms, LLC



**Statement of Compliance for Use Permit  
Issued in 2005 for the Seasonal Sales Location  
At 1047 Arnold Dr., Martinez, California**



In review of our current authorized Use Permit #05-18 I would like to address our compliance with our Conditions of Approval for this Permit.

Currently we are compliant with the Conditions of Approval as listed in the Use Permit.

We show a current deposit of \$500.00 posted with City of Martinez filed when we made application on 08/12/2005 for the Use Permit. Our records show that the City of Martinez still holds that deposit. A copy of our quicken records is attached. In addition when we have made our application on an annual basis we have also made clean up deposits for the site whenever requested. This deposit has been inconsistent and has varied from amounts of \$60.00 to \$100.00 each year depending on the request of the clerk we were dealing with. We have a current business license. We have been inspected and paid annually permits for fire and electricity.

We have spoken to officials at the Building Department and they have allowed us to leave up our temporary power poles provided we get them inspected on an annual basis and that there are not any complaints that are registered against us doing this. The reason behind this is that the poles are over 100 feet away from their transformer connection and they must go across Arnold Dr. to connect to the grid. This reconnection is an expensive service that requires long scheduling and temporary short term shutdown of Arnold Dr.. The Building Department has shown foresight in allowing us to do this and in the event we are granted our Amendment to this Use Permit I would appreciate it being written into the Amendment that we be allowed to keep the electrical Service Mains and the connection on a permanent basis.

All of our lighting is directed away from the residential homes to the east of the property as it will be in the future and we have been compliant with not disturbing our neighbors both commercial and residential with merchandise unloading or our noise.

We currently insure and indemnify the City of Martinez under our insurance policy beyond the insurance limits they require.

If I can provide any further information please contact me by telephone at 503 975 8733 or by email at [abctreefarms@yahoo.com](mailto:abctreefarms@yahoo.com).

Jerry Klima  
ABC Tree Farms, LLC

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Quicken Find

Date	Acct	Num	Payee	Cat	Memo	Clr	Amount
8/13/2003	ABC Tree Farms ...	15009	City Of Martinez	Permits			
7/21/2003	ABC Tree Farms ...	14981	City Of Martinez	Refundable Deposit	Clean up deposit		-872.00
7/21/2003	ABC Tree Farms ...	14980	City Of Martinez	Permits	quarterly Business...		-66.00
5/8/2009	ABC Tree Farms ...	24993	City Of Martinez	Permit	Conditional Use P...		-73.00
1/23/2009	ABC Tree Farms ...	24805	City Of Martinez	Business Licence F...	Business License ...		-1,100.00
8/11/2008	ABC Tree Farms ...	23747	City Of Martinez Buildin...	License	Short paid on origi...	c	-191.59
7/7/2008	ABC Tree Farms ...	23655	City Of Martinez Buildin...	License	Building Permit 20...	c	-212.96
5/19/2008	ABC Tree Farms ...	23585	City Of Martinez	Refundable Deposit	Clean Up Deposit ...	c	-142.00
5/19/2008	ABC Tree Farms ...	23584	City Of Martinez	Permits	2008 4th Quarter ...	c	-100.00
7/27/2007	ABC Tree Farms ...	22319	City Of Martinez Busine...	Permits	2007 4th Quarter ...	c	-88.07
7/27/2007	ABC Tree Farms ...	22318	City Of Martinez	Refundable Secur...	Refundable Securi...		-85.50
12/11/2006	ABC Tree Farms ...	21107	City Of Martinez Buildin...	Permits		c	-84.90
8/9/2006	ABC Tree Farms ...	20809	City Of Martinez Buildin...	Permits	Electrical Permit 1...	c	-85.50
5/19/2006	ABC Tree Farms ...	20672	City Of Martinez	Security Deposit	Refundable Depo...		-140.03
5/19/2006	ABC Tree Farms ...	20671	City Of Martinez	Permits	2006 Pumpkins &...	c	-80.00
*8/12/2006	ABC Tree Farms ...	19700	City Of Martinez	Permits	Refundable Depo...		-73.00
8/12/2005	ABC Tree Farms ...	19699	City Of Martinez	Permits	Use Permit Fee	c	-500.00
8/2/2005	ABC Tree Farms ...	19682	City Of Martinez	Permits	Clean Up Deposit ...	c	-445.00
8/2/2005	ABC Tree Farms ...	19681	City Of Martinez	Permits	Business License	c	-81.80
8/9/2004	ABC Tree Farms ...	16398	City Of Martinez	Permits	Business License	c	-81.40
8/9/2004	ABC Tree Farms ...	16397	City Of Martinez	Permits	Deposit		-80.60
8/9/2004	ABC Tree Farms ...	16396	City Of Martinez	Permits	Trees		-500.00
8/9/2004	ABC Tree Farms ...	16395	City Of Martinez	Permits	Pumpkins		-160.00

100<sup>00</sup> S.D. 2009  
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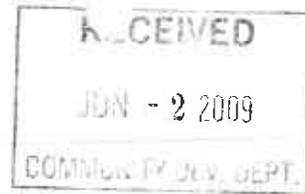
Every year pay  
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Business  
 Electric

No Longer  
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NEVER REFUNDED  
 BELIEVED TO  
 STILL BE ON  
 DEPOSIT.

ALSO THE CITY REQUESTS AN  
 ADDITIONAL DEPOSIT EACH YEAR FOR  
 CLEANUP IT HAS VARIED BETWEEN  
 50<sup>00</sup> TO \$100<sup>00</sup> EACH YEAR DEPENDING ON  
 THE CLERK YOU DEAL WITH.



**Anjana Mepani**

**From:** abctreefarms@yahoo.com  
**Sent:** Monday, June 01, 2009 9:45 PM  
**To:** Darrin and Kelly Debout; Ivelisse Lopez; Bob Padilla; Michell Price; Karen Reuter  
**Cc:** Anjana Mepani  
**Subject:** 1047 Arnold Drive Use Permit Follow up Email

Dear Neighbor,

I would like to take this opportunity to say thank you for taking the time to meet with me when I went door to door in our neighborhood two weeks ago. The time that you took to speak with me regarding the amendment of my Use Permit for 1047 Arnold Drive as well as the time you spent reviewing the letter I gave you is appreciated. I hope that you will be able to support us in our application to amend our Use Permit.

If you have any questions or if I can be of any assistance in any way please contact me by email at [abctreefarms@yahoo.com](mailto:abctreefarms@yahoo.com) or call me at 503 975 8733. I will also be back in the Martinez neighborhood going door to door again this weekend of June 6th and 7th to answer questions and to meet the neighbors that I missed on my first visit.

In conversations with the Martinez Planning Department they have indicated that if it is easier and you and you do support our application it is agreeable with them if you send me a simple email in support of our Amendment. For your convenience I have prepared a template which you can fill in and return by replying to me in by email. Please go to reply mode in this email and fill in the blanks on this email and return to me at my email.

Signature in Support of Amendment to ABC Tree Farms, LLC Use Permit

I, \_\_\_\_\_, who lives  
at \_\_\_\_\_

Have reviewed the amendment to ABC Tree Farms, LLC Use Permit to allow an extended period of seasonal sales to include a fresh produce sales outlet and a children's entertainment area and I am in support of the amendment.

Once again thank you for your assistance and I am available to answer any questions you may have and/or speak with you for any other reason if you need me. I can be reached via email at [abctreefarms@yahoo.com](mailto:abctreefarms@yahoo.com) or by telephone at 503-975-8733.

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**Signature in Support of Amendment to ABC Tree Farms, LLC Use Permit**

**Allowing an Extended Period of Seasonal Sales to Include A Fresh Produce Outlet**

**And**

**Children's Entertainment Area**

I, \_\_\_\_\_, who lives at \_\_\_\_\_

Have reviewed the amendment to ABC Tree Farms, LLC Use Permit to allow an extended period of seasonal sales to include a fresh produce sales outlet and a children's entertainment area and I am in support of the amendment.

Signed: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

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1047 Arnold Amendment Use Permit - Contact List					
NAME	ADDRESS	EMAIL / PHONE	NOTES / STATUS	DATE OF CONTACT	
Darrin & Kelly Bebout	4998 Shadow Falls	dhdebout@packbell.net	Spoke with and left paperwork Seemed in support	5/16/2009	
Bob Padilla	4994 Shadow Falls	408-829-4749 usolucky@yahoo.com	Spoke with and left paperwork Seemed in support	5/16/2009	
Ivelisse Lopez	4990 Shadow Falls	925-372-7477 ive-lopez@comcast.net	Just purchased 2 mos. ago not familiar Spoke with and left paperwork	5/16/2009	
	4986 Shadow Falls		No Answer		
	4982 Shadow Falls		No Answer		
	4978 Shadow Falls		No Answer		
Melinda Dahms	4974 Shadow Falls	229-5174	Has lived there 12 years. Spoke with and left paperwork Seemed in support	5/16/2009	
Darryl Campbell	4970 Shadow Falls	925-408-5893 Cell 925-685-2852 Home	Spoke with and signed paperwork Owner of property	5/16/2009	
Reuter Karen Winter	4970 Shadow Falls	925-957-6650 Karen@thehumanequation.biz	Spoke with and left paperwork Tenant not owner	5/16/2009	
Michael Fulton	4966 Shadow Falls		Spoke with and signed paperwork Owner of property		
Ken Mattingly	4962 Shadow Falls		Sent email in support		
Nina Davis	4958 Shadow Falls	925-228-7001	Spoke with daughter and left paperwork	5/16/2009	
	4978 Shadow Falls		No Answer		
	4989 Shadow Falls		No Answer		
	370 Shadow Falls Court		No Answer		
	360 Shadow Falls Court		No Answer		
Michelle Price	350 Shadow Falls Court	pettyfreak@comcast.net	Spoke with and left paperwork Seemed in support	5/16/2009	

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Signature in Support of Amendment to ABC Tree Farms, LLC Use Permit  
Allowing an Extended Period of Seasonal Sales to Include A Fresh Produce Outlet  
And  
Children's Entertainment Area

I, Michael Fulton, who lives at  
4966 Shaddock Falls Dr. Martinez

Have reviewed the amendment to ABC Tree Farms, LLC Use Permit to allow an extended period of seasonal sales to include a fresh produce sales outlet and a children's entertainment area and I am in support of the amendment.

Signed: Michael Fulton

Date: 5/16/09

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JUN - 3 2009

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Signature In Support of Amendment to ABC Tree Farms, LLC Use Permit

Allowing an Extended Period of Seasonal Sales to Include A Fresh Produce Outlet

And

Children's Entertainment Area

I, Paul Campbell, who lives at  
4970 Shadowfally Dr.

Have reviewed the amendment to ABC Tree Farms, LLC Use Permit to allow an extended period of seasonal sales to include a fresh produce sales outlet and a children's entertainment area and I am in support of the amendment.

Signed:

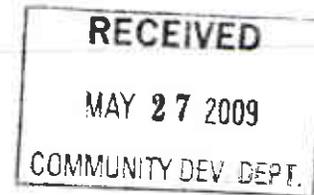
Paul Campbell

Date:

5/16/09

**Anjana Mepani**

**From:** ABC Tree Farms, LLC [abctreefarms@yahoo.com]  
**Sent:** Monday, May 25, 2009 5:51 AM  
**To:** Anjana Mepani  
**Subject:** Fw: Re: Email from Jerry Klima regarding 1047 Arnold Dr., Martinez, CA...Mattingly Email



Anjana,

Please find following the email I received from Mr. mattingly in support of our proposed Amendment to the Use Permit.

Jerry Klima

--- On Fri, 5/15/09, **william mattingly** <ken.teresa@sbcglobal.net> wrote:

**From:** william mattingly <ken.teresa@sbcglobal.net>  
**Subject:** Re: Email from Jerry Klima regarding 1047 Arnold Dr., Martinez, CA  
**To:** abctreefarms@yahoo.com  
**Cc:** ken.mattingly@chsugar.com  
**Date:** Friday, May 15, 2009, 2:41 PM

Jerry, Thank you for the update. I am in favor of your endeavor. I think this use of the lot will be an asset to our community. I'm dashing off to work so if there is anything I can do to help you just let me know. You talking to the other neighbors will be a plus also. When Yardbirds took over the now Homedepot building that is what they did. Yardbirds were really good neighbors. I can not say the same about Homedepot, but that is another story. Thanks again and good luck. Ken Mattingly

**From:** "abctreefarms@yahoo.com" <abctreefarms@yahoo.com>  
**To:** ken.teresa@sbcglobal.net  
**Sent:** Friday, May 15, 2009 1:59:48 PM  
**Subject:** Email from Jerry Klima regarding 1047 Arnold Dr., Martinez, CA

Ken,

Thank you for taking the time to speak with me about ten days ago regarding ABC Tree Farms, LLC amendment to our Conditional Use permit with the City of Martinez. I would like to take this opportunity to explain to you and hopefully the local community what we are attempting to accomplish and the services we will be bringing to the community. I intend to go door to door to explain to the neighbors of the property what we are proposing and will hopefully get that opportunity over this weekend and into early next week. I look forward to meeting you while I am in the area if you are at home.

The current Conditional Use Permit allows use of the property for a Pumpkin Patch and Christmas Tree Sales Area during the months from September through December. We are

requesting to extend the time period for the Conditional Use Permit so that we can operate a Seasonal Fresh Produce Market for the period from May through September. In addition we are also requesting to operate in conjunction with the Seasonal Fresh Produce Market a Children's Entertainment Area. This area will be operated using the same inflatable games and entertainment principles as the Halloween Pumpkin Patch. It will be an entertainment for preteen children and it's will be limited to children twelve and under. We intend to operate it in the same responsible fashion that we operate our other business and want to assure the community that we will not condone on street parking in the neighborhood, excessive noise or litter and trash in the adjacent areas. If there are any issues that arise from the operation of our business I and the staff will be available at any time to correct these issues to the satisfaction of our neighbors.

I have attached a letter which I sent to the Martinez City Planning Department for their review along with our Permit Amendment Application. Please review the letter at your convenience and if I can be of further assistance with regard to this please feel free to call me at 503 975 8733. Thank you for taking the time to review this and thank you for being my liaison with the community. I appreciate that you have been willing to help me and I apologize for the inconvenience that the Carnival had caused you and the community in the past.

Jerry Klima

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**noise level and manual**

**From:** "Steve Gray" <steve@inflatable2000.com>  
**To:** abctreefarms@yahoo.com  
Manual\_BP1.pdf (40KB)

Thursday, May 28, 2009 10:47 AM

Noise level is 90 decibels



**Steve Gray**  
207 N. Aspan Ave. #6  
Azusa, CA 91702 USA  
Toll Free: (888) 463-5848  
Tel: (626) 969-7780  
Fax: (626) 969-4480

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## **INTRODUCTION TO B-AIR BP-1**

YOUR NEW B-AIR BP-1 BLOWER HAS A 1 HP HIGH EFFICIENCY MOTOR, WHICH HAS STATE OF THE ART CONSTRUCTION AND SCREENS ON OPEN VENTS FOR SAFETY AND LONG LIFE. THE HANDLES ARE DESIGNED FOR EASY CARRYING AND THE UNITS ARE ALSO STACKABLE FOR SPACE EFFICIENCY.

## **OPERATION/USE**

**THIS HIGH PRESSURE UNIT IS INTENDED TO INFLATE LARGE INFLATABLE PLAY STRUCTURES, BUT IS SUITABLE FOR A VARIETY OF OTHER APPLICATIONS.**

- A) CAREFULLY PLACE THE B-AIR UNIT ON STABLE FLAT DRY SURFACE-KEEPING CHILDREN AWAY.
- B) ATTACH AN INFLATABLE TUBE AROUND THE EXHAUST OPENING USING STRAPS OR ANY OTHER FORM OF TIGHTENER.
- C) PLUG CORD INTO A GROUNDED GFCI OUTLET ONLY.
- D) TURN ON SWITCH AND MAKE SURE IT IS OPERATING CORRECTLY.
- E) ALL BLOWERS IN OPERATION MUST BE SUPERVISED AT ALL TIMES.

## **STORAGE**

**STORE UNIT INDOORS IN A CLEAN DRY ENVIRONMENT TO ENSURE LONG LIFE**

Claw

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**B-AIR BLOWERS LIMITED WARRANTY**

**COVERS**

- 1) B-AIR BLOWERS ARE COVERED AGAINST DEFECTS IN MATERIAL AND CRAFTSMANSHIP USED UNDER NORMAL INTENDED USE TO ORIGINAL PURCHASER FOR A TERM OF (1) ONE-YEAR FROM THE ORIGINAL DATE OF PURCHASE.
- 2) B-AIR BLOWERS HOUSING IS COVERED FOR A TERM OF (5) FIVE FULL YEARS FROM THE DATE OF THE ORIGINAL PURCHASE.

**DOES NOT COVER**

- 1) ANY SIGNS OF MISUSE INCLUDING; BUT NOT LIMITED TO ROUGH HANDLING, ABUSE, TAMPERING, IMPROPER VOLTAGE USE, UNAUTHORIZED MAINTENANCE AND REPAIRS.

**WARNING**

ALL BLOWERS IN OPERATION MUST BE SUPERVISED AND ATTENDED AT ALL TIMES.  
THE USE OF A 3-PRONG TO 2-PRONG ADAPTER IS PROHIBITED.

**CONTACT**

INTERTEX, INC  
1851 TYBURN STREET  
GLENDALE, CA 91204  
1-877-800-2247(BAIR)  
FAX:(818) 242-2430  
EMAIL:INFO@INTERTEXINC.COM

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## **SAFETY**

- 1) BLOWER MUST HAVE BACK PRESSURE, MEANING IT MUST BE ATTACHED TO AN INFLATABLE OR DUCT TO AVOID ANY DAMAGE TO MOTOR.
- 2) KEEP CHILDREN AWAY FROM UNIT AT ALL TIMES WHILE IN OPERATION AND/OR PLUGGED IN.
- 3) DO NOT PUT FINGERS OR OTHER OBJECTS IN UNIT WHILE IN OPERATION AND/OR PLUGGED IN.
- 4) DO NOT OPERATE IN POOLED WATER TO AVOID ELECTRIC SHOCK.
- 5) MOTOR MUST BE KEPT DRY AT ALL TIMES. IF UNIT BECOMES WET, THOROUGHLY DRY BEFORE NEXT OPERATION.
- 6) INDOOR USE: USE ONLY WITH A GROUNDED PLUG AND/OR EXTENSION CORD TO AVOID RISK OF ELECTRICAL SHOCK OR FIRE. REMEMBER NEVER TO USE A CORD WITH ANY KIND OF DAMAGE OR WEAR.
- 7) MAKE SURE THE POWER SOURCE IS SUFFICIENT TO MEET THE REQUIREMENTS OF THE BLOWER.
- 8) KEEP AIR INTAKES CLEAR AT ALL TIMES TO AVOID CLOGGING OR BLOCKING IN ORDER TO PREVENT OVERHEATING THE UNIT. BLOCKING THE AIR INTAKES COULD RESULT IN A FIRE OR ELECTRICAL HAZARDS.
- 9) DO NOT REMOVE ANY SCREENS OR SAFETY GUARDS FROM THIS UNIT TO PREVENT INJURY TO PERSONS, AND TO AVOID OBJECTS FROM COMING IN CONTACT WITH THE BLOWER WHEEL. UNIT DAMAGE IN THIS MANNER WILL VOID YOUR WARRANTY.
- 10) DO NOT OPERATE UNIT CLOSE TO ANY DANGEROUS AREAS, SUCH AS EXPLOSIVE GASES, FLAMMABLES, HEATERS AND VENTILATED ENVIRONMENTS, WHICH MAY RESULT IN EXPLOSIONS OR ELECTRICAL HAZARDS.
- 11) DO NOT USE ANY FORM OF SPEED CONTROL DEVICE AS DOING SO MAY RISK INJURY OR FIRE.
- 12) ALWAYS PLACE BLOWER ON A SMOOTH AND LEVELED SURFACE FOR SAFE OPERATION.
- 13) DO NOT OPERATE IN STACKED POSITION.
- 14) DO NOT USE UNIT IF DAMAGED.
- 15) BEFORE CLEANING OR SERVICING UNPLUG UNIT.
- 16) ALL BLOWERS IN OPERATION MUST BE SUPERVISED AT ALL TIMES.

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## **WARRANTY**

**1 YEAR:** From Original Purchase date will cover all parts (except Cords), labor and one-way shipping costs to your location in the 48 Contiguous states, using UPS Ground Service. Customer will pay shipping to our warehouse. Canada and Non-Contiguous States must pay for freight both ways.

**5-YEAR:** B-Air will cover Housing from date of Original purchase.

## **SERVICE**

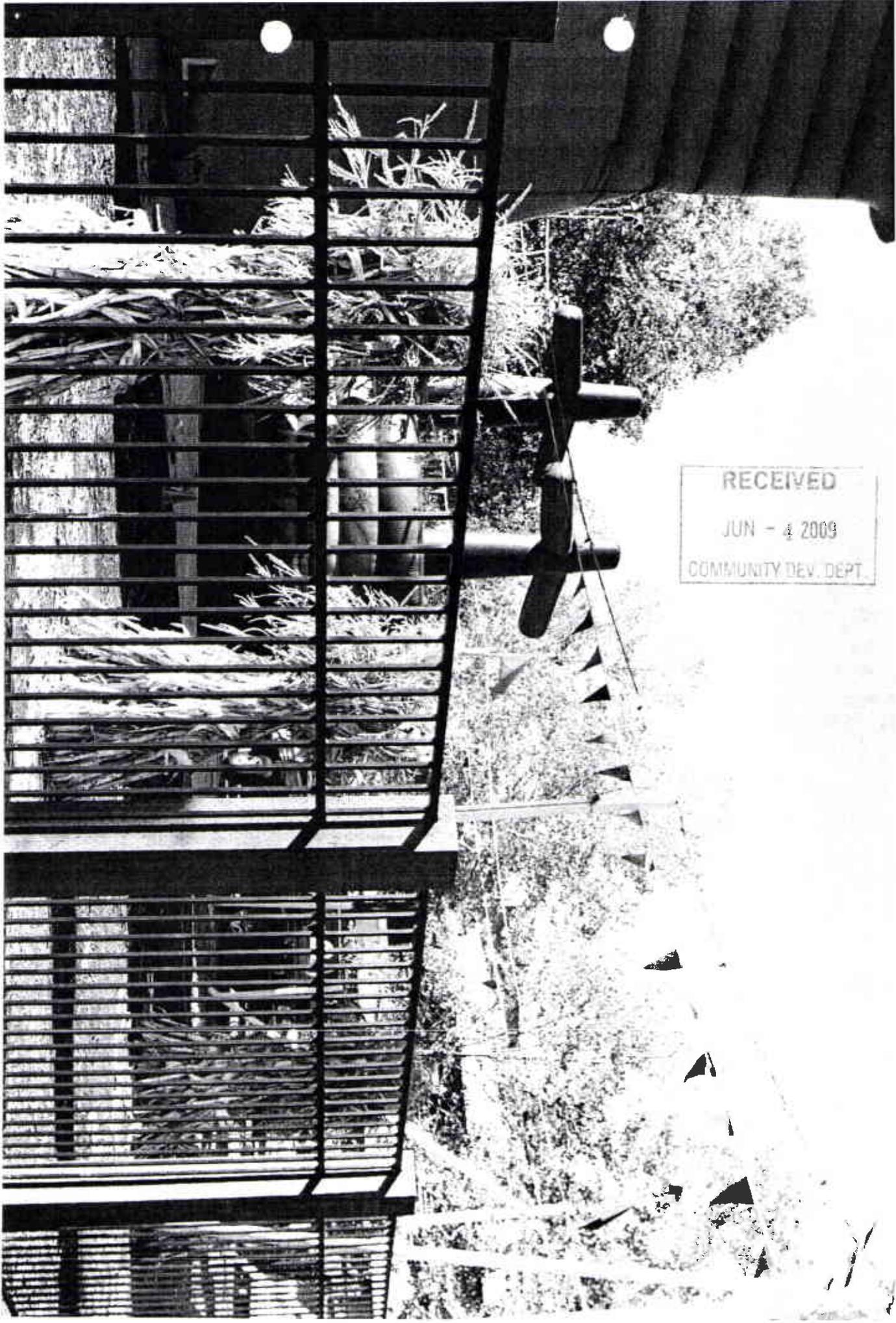
IN ORDER TO RECEIVE SERVICE OR REPLACEMENT PARTS UNDER WARRANTY, YOU MUST:

- A) CALL FOR A RMA# (Return Merchandise Authorization Number)
- B) HAVE PROOF OF PURCHASE
- C) SHIP TO: B-AIR BLOWERS
  - IF IMMEDIATE SERVICE IS REQUIRED, B-AIR WILL SHIP A REFURBISHED BLOWER IMMEDIATELY TO REPLACE THE ONE REQUIRING SERVICE IF A CREDIT CARD IS PROVIDED AND CHARGED. ONCE WE RECEIVE YOUR BLOWER, WE WILL CREDIT YOUR CREDIT CARD ACCOUNT.
  - WE WILL GLADLY REPAIR YOUR BLOWER AND SHIP WITHIN 24 HOURS

UPON INSPECTION, WE WILL CALL WITH THE STATUS OF YOUR ORDER AND WILL ISSUE REPAIR OR REPLACEMENT PARTS DEPENDING ON WARRANTY CRITERIA.

## **CORDS**

- 1) DO NOT USE EXTENSION CORDS FOR OUTSIDE USE.
- 2) USE 3 PRONG ADAPTORS THAT ARE UL APPROVED AND NOT LESS THAN 14-3 WITH GROUND FAULT CIRCUIT INTERRUPTER (GFCI).
- 3) DO NOT USE CORDS THAT SHOW ANY KIND OF WEAR OR DAMAGE.
- 4) CORDS ARE NOT COVERED BY ANY WARRANTY.



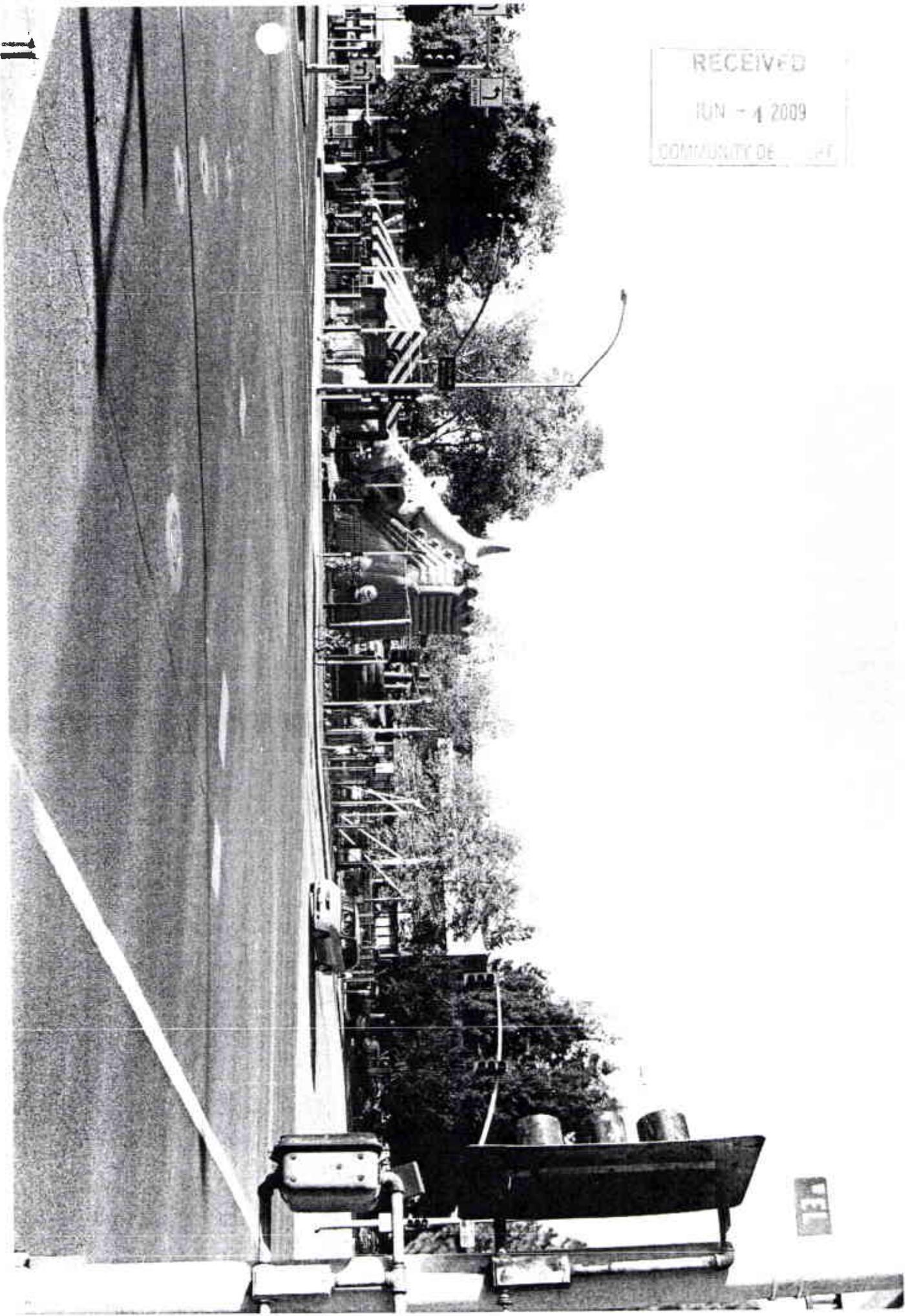
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# LET FRESH PRODUCE

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