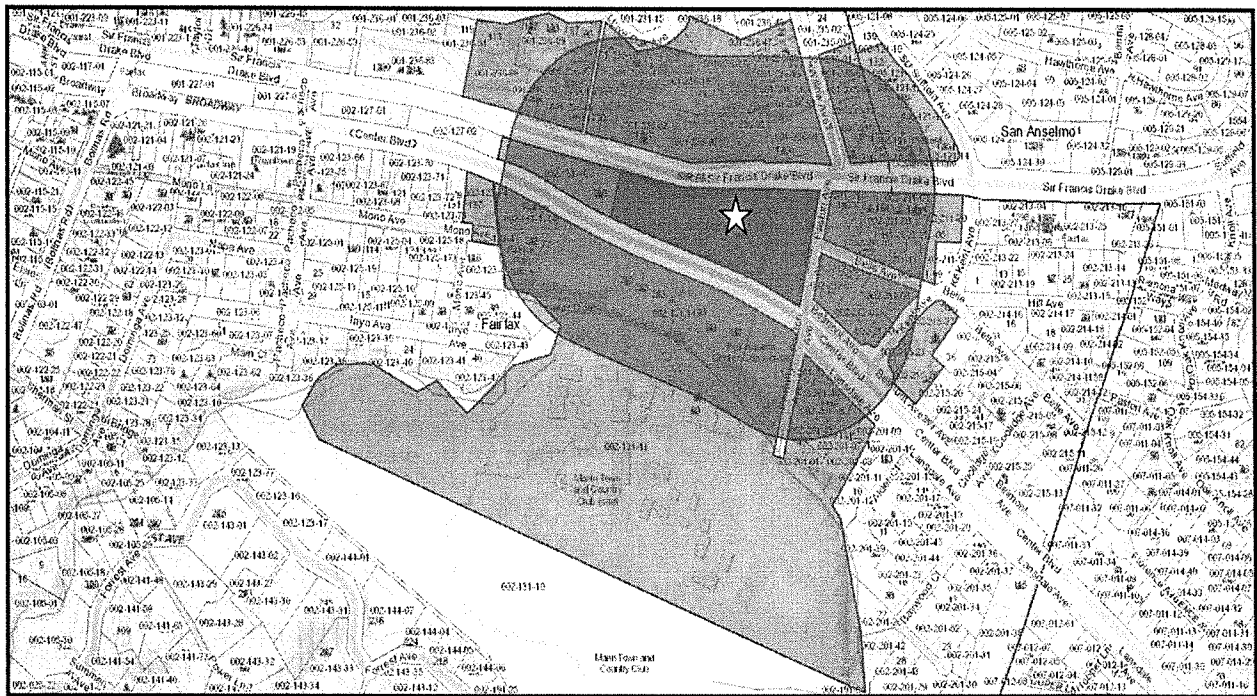


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** July 18, 2019  
**FROM:** Linda Neal, Principal Planner  
**LOCATION:** 720 Center Blvd.; Assessor's Parcel No. 002-131-12  
**ZONING:** Highway Commercial CH Zone  
**PROJECT:** Accessory Refrigeration Unit  
**ACTION:** Design Review; Application # 19-12  
**APPLICANT:** Al Baylacq  
**OWNER:** Rich Hall, Fairfax Center Properties  
**CEQA STATUS:** Categorically exempt, §15305(e)



**720 CENTER BOULEVARD**

## **BACKGROUND**

In 2011 the Town approved a Traffic Impact Permit, Use Permit, Design Review Permit and a Mitigated Negative Declaration for a remodel/expansion of the grocery store building at 720 Center Boulevard. The remodel/expansion included improvement of the parking lot and the creation of an outdoor eating area. Attachment B includes the final Town Council Resolution of approval for the project and the conditions of approval including the mitigation monitoring program from the Mitigated Declaration.

## **DISCUSSION**

In late January of 2019 the Building Official placed a stop work order on a walk-in cooler structure that the Good Earth Natural Foods grocery was erecting without Planning, Building or Environmental Health Department permits, for produce on top of the store loading dock structure.

The site is located in the Highway Commercial CH Zone District where supermarkets are a permitted use [Town Code § 17.096.040 (A)(71)].

The addition of 200 square-feet of accessory storage space does not increase the parking requirement for the property per Town Code § 17.052.030(F) which indicates that one additional parking space is required in this zone for each additional 500 square-feet of gross floor area.

Town Code §17.020.030(B) indicates that new construction in the Highway Commercial Zone requires a design review permit from the Planning Commission. The refrigeration structure which has been constructed upon the loading dock meets the definition of a structure in Town Code § 17.008.020, and requires a design review permit.

Staff was originally concerned that the placement of the new structure might be the start of a trend or pattern. It was difficult to conceive that with the relatively recent expansion and remodel of the main building just 7 years ago, the business had already outgrown the building.

However, the applicants have provided floor plans for the organic specialty market showing that they are efficiently using the interior space. They have explained in their written supplemental information they explored many different possibilities for locating additional cooler space inside the building and were unable to find an appropriate location. They also indicated that due to the lack of space they are current storing fresh produce in a manner that is not desirable for employee safety (Attachment B – applicant's supplemental information). They have provided photographs of the current interior fresh produce storage areas attached to the project plans showing items stored and stacked up to the ceiling in precarious conditions. Staff is convinced of the necessity for the new fresh produce space. and we believe that otherwise expanding the existing building to accommodate additional refrigeration space would compromise the established traffic patterns and improved exterior spaces where people gather, the

parking or the loading dock cardboard baler recycling operations. The best location for additional cooler space appears to be where the applicants have placed the new cooler structure on the loading dock.

When reviewing a project for a design review permit, the Planning Commission must consider whether or not the proposed project meets the design review criteria listed in Town Code § 17.020.040, which include but are not limited to the following:

1. The proposed development shall create a well composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community.
2. Only elements of design which have significant relationship to exterior appearance of structures and facilities shall be considered; these elements may include height, arrangement on the site, texture, material, color, signs, landscaping and appurtenances.
3. The proposed development shall be of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area.
4. The proposed development shall conform with all requirements for landscaping, screening, usable open space and the design of parking and off-street loading areas set forth in this title.
5. There shall exist sufficient variety in the design of the structures and grounds to avoid monotony in external appearance.
6. The size and design of the structure shall be considered for the purpose of determining that the structure is in proportion to its building site and that it has a balance and unity among its external features so as to present a harmonious appearance.
7. The extent to which the structure conforms to the general character of other structures in vicinity insofar as the character can be ascertained and is found to be architecturally desirable.
8. The extent to which ornamentation is to be used and the extent to which temporary and second-hand materials, or materials which are imitative of other materials, are to be used.
9. The extent to which natural features, including trees, shrubs, creeks and rocks, and the natural grade of the site are to be retained.
10. The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets.

11. The reservation of landscaping areas for the purpose of separating or screening service and storage areas from the street and adjoining building sites, breaking up large expanses of paved areas, separating or screening parking lots from the street and adjoining building sites, and separating building areas from paved areas to provide access from buildings to open space areas;
12. In the case of any commercial or industrial structure, the board shall consider its proximity to any residential district and shall consider the effect of the proposed structure upon the character and value of the adjacent residential district area.

The structure is far enough away from the nearest residential structures on Belle Avenue to the east so that noise from the cooler will not create a noise disturbance or violate the Town Noise Ordinance (Town Code Chapter 8.20).

The structure is box-shaped and has no exterior design features to speak of. While there are measures that could be taken to improve the appearance of the structure such as the application of decorative siding and/or the installation of a false roof to compliment the main structure, staff is hesitant to require such conditions since the structure has been built on a loading dock. It is located adjacent to the garbage dumpsters, box crushing and recycling areas, none of which can be screened or beautified without compromising loading and garbage disposal operations. It was suggested to staff that perhaps a planter with vines could be positioned on the east side to screen it from the view of vehicles and pedestrians traveling west on Sir Francis Drake Boulevard and south on Pastori Avenue. After visiting the site speaking with Building Official, staff believes locating any plants that have to be watered could lead to unsafe conditions on the loading dock.

The loading dock and the new refrigeration unit are somewhat screened from views from Sir Francis Drake Boulevard by the 6 foot fence along the northern property line, the row of redwood trees planted within the public right-of-way on the north side of the fence, and the Good Earth business identification sign. Furthermore the physical character of Sir Francis Drake immediately adjacent to the structure is such that motorists tend to be concentrating on the slope and upcoming intersection, rather than gazing off to the side where the unit is located.

The applicants are proposing to paint the cooler structure, Roxbury Caramel (Benjamin Moore # HC-42) to match the siding of the main building and staff believes painting the structure will result in the cooler adequately visually blending into the main structure walls behind the cooler.

## **OTHER DEPARTMENT/AGENCY COMMENTS/CONDITIONS**

### **Marin County Environmental Health Services (EHS)**

MEHS has submitted written requirements indicating that the store is required to submit plans and specifications for the outside walk-in refrigeration unit to EHS for review and approval prior to issuance of the building permit.

Ross Valley Fire Department, Marin Municipal Water District, Ross Valley Sanitary District and the Fairfax Police t, Public Works and Building Departments did not comment or place conditions upon the project.

## **RECOMMENDATION**

1. Conduct the public hearing.
2. Move to approve application # 19-12 by adopting the attached Resolution No. 2019-14 setting forth the findings and the conditions for the project approval.

## **ATTACHMENTS**

Attachment A – Resolution No. 2019-14

Attachment B - Applicant's supplemental information

Attachment C – Good Earth Original Conditions of Approval



## RESOLUTION NO. 2019-14

### A Resolution of the Fairfax Planning Commission Approving a Use Permit for an Accessory Walk-in Cooler Structure at 720 Center Boulevard for Good Earth Natural Foods

**WHEREAS**, the Town of Fairfax has received an application from Good Earth Natural Foods for their grocery site at 720 Center Boulevard to legalize an approximately 200 square-foot walk-in produce cooler on the Fair Anselm Shopping Center property; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on July 18, 2019 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS**, the design review code does not contain any legally required findings but does contain design review criteria to ensure that new construction complements existing development and does not negatively impact neighboring properties;

**WHEREAS**, the proposed development will be painted to match the paint color of the main building with Roxbury Caramel (Benjamin Moore # HC-42). The cooler's modest size and matched color will result in the cooler structure visually blending in with the main building; and

**WHEREAS**, the applicant has met the burden of proof required to support the requested discretionary design review permit as long as the following conditions are complied with:

1. The applicant must obtain a building permit in order to legalize the cooler structure within 30 days of the date of this action.
2. The applicant must obtain the approval of the Marin County Environmental Health Department prior to issuance of the building permit.
3. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
4. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
5. Any other changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc, shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Planning Commission or Planning Director as required.
6. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or

any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly.

7. The project final inspection and issuance of the occupancy permit shall not occur until all the building improvements and bicycle parking improvements are completed and approvals have been received from all agencies and departments with jurisdiction over the project.
8. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
9. Any other changes made to the exterior of the building, including but not limited to new lighting shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Planning Commission or Planning Director as required.
10. All other prior conditions of approval remain in full effect.

**NOW, THEREFORE**, the Planning Commission of the Town of Fairfax after careful consideration of the site plan, architectural drawings, color elevations hereby approves the proposed project.

**PASSED AND ADOPTED** by the Town of Fairfax Planning Commission, State of California, this 18th day of July 2019 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

\_\_\_\_\_  
Chair Swift, Planning Commission

ATTEST:

\_\_\_\_\_  
Ben Berto, Director of Planning and Building Services





# GOOD EARTH NATURAL FOODS

May 15, 2019

To: Fairfax Planning Group

From: Good Earth Natural Foods (Partners, Mark, Stephen and Al)

We have three important points to make in describing our need for an additional walk-in cooler space at 720 Center Blvd, Good Earth Natural Foods and an apology.

## **Historical Background**

We opened the current market in early 2012; we are upon our 7-year anniversary down at Fairfax Plaza after being in two previous properties in Fairfax and operating the business in town for 50 years.

The first thirty-one years at 123 Bolinas Ave, across from Town Hall, then in 2000, we moved to the Bike Museum (*Middle Earth*) location and left twelve years later to the Fairfax Plaza and current location. Things have worked out pretty well for this business we are quite thankful overall, and we continue to consider more growth (outside of town).

## **#1- Staff Safety is Paramount**

We have recently embarked on multiple numerous projects that all are about safety for our staff. We have incurred great expense in doing so. We consider our natural food business very much a healthy choice for customers and as much so, a safe and healthy place to work. It is incredibly important that we achieve our goals in relationship to safety for staff and customers.

## **More Recently**

We have spent over \$200,000 in the following separate projects. We are serious about our safety program and making sure our facilities are safe for staff and customers.

- Installed new epoxy anti-slip flooring in Tam Valley store backroom.
- Installed new epoxy anti-slip flooring in Fairfax kitchen and scullery.
- Moving some kitchen and bakery production out of our Fairfax kitchen and bakery departments back up the street to where Miyoko's Kitchen was most recently at 1966 Sir Francis Drake Blvd. The move of a couple of production programs back to *Middle Earth* will free up valuable space that we can safely operate in, once we make the move. We absolutely do not anticipate any further physical changes to our facility in Fairfax. (except for the installation of more solar panels and a redo to our existing electric car charging station)

## **#2- Placed an Additional Walk-in on Loading Doc**

We are in front of you today because we built a walk-in cooler outside of the store on our loading dock to support our produce and kitchen departments **fresh produce** storage needs. **The**

Good Earth Natural Foods  
720 Center Blvd. Fairfax, CA 94930  
Phone: 415-454-0123 Fax: 415-454-0482  
[www.genatural.com](http://www.genatural.com)

ATTACHMENT **B**



## GOOD EARTH NATURAL FOODS

**fact is our staff has been requesting/needing additional mid-temp holding capacity for over five years now.**

We've figuratively designed and placed the walk-in cooler a half dozen times over the last five years. The situations in both departments walk-ins have been unacceptable from a safety point of view for many years. Items are being stored too high as you can see in photos of both departments' coolers. We certainly considered placing the walk-in box within the existing store envelope. I thought about doing and providing a video walk thru our back of house, so to fully communicate how constrained we already are to you all. I ask you to trust the fact that we have maxed out our operating space.

I do apologize for my naivete' in the first place in this situation. I do also appreciate the town's over all interest (including the other agency's involved) in overseeing and authorizing such changes. I respectfully ask for forgiveness here and as you can tell we have followed up here with a full application including payment of all town permitting fees.

Additionally,

### **#3 Sunday Delivery**

Additionally, to accommodate our longstanding issue of not being able to hold enough produce, we added an additional delivery day recently. It took us a long time, but our vendor coming out of San Francisco finally agreed to make such a delivery to us on Sundays. Once the cooler is in place, this Sunday delivery, will no longer be needed.

Sincerely,

Al Baylacq, Partner  
Good Earth Natural Foods, Inc.  
[al@genatural.com](mailto:al@genatural.com)  
415-305-5364

Cc; Stephen Mitchel, Partner  
Good Earth Natural Foods, Inc.

Cc; Mark Squire, Partner  
Good Earth Natural Foods, Inc.

Cc; Surane Gunasekara, Architect

### Conditions of Approval

1. Must comply with all mitigation measures identified in the Initial Study and Mitigated Negative Declaration.
2. Further analysis of the drywall and joint compound using the Point Count Method would be necessary to confirm that the asbestos content of the composite material is less than 1% asbestos. The alternative is to treat materials as RACM and remove it in accordance with BAAQMD requirements.
3. In accordance with Title 8, California Code of Regulations (CCR) Section 1529, the Asbestos in the Construction Industry Standard and NESHAP/BAAQMD Regulation 11, Rule 2, the drywall joint compound and texture, floor mastic and transite panels require removal and proper disposal prior to demolition/renovation activities that would impact those materials. A copy of the CAC report shall be submitted to the BAAQMD when applying for a renovation permit for the site.
4. A licensed geotechnical engineer shall review the plans and specification for the project when they are nearing completion to confirm the intent of the geotechnical recommendations provided in the MPEG report have been incorporated, and if needed, suggest supplemental recommendations. A licensed geotechnical engineer shall also be present during construction to observe and/or test site preparation and grading. The engineer shall also observe foundation excavation for the structures and associated improvements to confirm that the soils encountered during construction are consistent with the design criteria outlined in the MPEG report.
5. Site preparation and grading shall conform to the recommendations and criteria set forth for Site Grading in the MPEG report, Page 4.
6. New structures and features shall be designed in accordance with the provisions of the California Building Code (CBC). Based on the interpreted subsurface conditions of the site, the CBC Coefficients (Table C, page 5, MPEG report) shall be used to calculate the design base shear of the proposed improvements.
7. The project sponsor shall verify the structural integrity of the existing structure. If new foundations are required, they should be designed utilizing the shallow foundation design criteria given in Table D (MPEG report, page 6).
8. To improve performance of the flooring, a water sealant shall be applied to the concrete slab prior to placing water based adhesive. A consultation with a flooring manufacturer is recommended.
9. The walls of the 1,500 gallon grease interceptor shall be designed to resist the lateral soil and hydrostatic pressures as indicated in Table E (MPEG report, page 7).
10. As described in the ECS report, the proposed project will not result in operational or construction activities that would be considered significant impacts of exceed the Town of Fairfax noise planning standards. The following mitigation measures are suggested to reduce individual noise events impacts in nearby receptors areas.
11. For long term operations of the store, delivery trucks shall turn-off engines while unloading products at the loading dock.

12. During the construction phase of the project, the project sponsor shall choose construction equipment that is of quiet design, has a high-quality muffler system, and is well maintained. This includes trucks and equipment used to haul materials to and from the site.
13. All construction vehicles shall have installed superior mufflers and engine enclosure panels as needed on gas, diesel or pneumatic impact machines.
14. During construction, the project sponsor shall erect temporary plywood enclosures around stationary equipment that produce excessive noise at nearby receptors.
15. Construction hours shall be restricted to 8am to 8pm Monday thru Friday, subject to further restriction in accordance with condition 2 of the Community Agreement section below.
16. Eliminate unnecessary idling of machines when not in use.
17. The project sponsor shall employ good maintenance and lubrication procedures to reduce operating noise.
18. The project sponsor shall, if possible, locate equipment as far from sensitive receptors as possible.
19. Sign the two exits from the eastern parking lot (Pastori Avenue) as "right turn only".
20. Move the Pastori Avenue driveway as far to the south from Sir Francis Drake Blvd as is feasible (20 feet).
21. The project shall contribute its "fair share" to the cost of improving the two intersections where LOS deficiencies are projected in Year 2016 whether the project proceeds or not. The fair share should be based on the project's traffic as a percentage of the total volume occurring in the future. For example, the net new trips generated by the project are 4.2% of the total traffic through the Broadway / Center Blvd / Pacheco Avenue intersection under adjusted Year 2016 condition. If a traffic signal was selected, the Good Earth project should contribute 4.2% of the cost of signaling the Pacheco Avenue intersections on Center Blvd and on Sir Francis Drake Blvd, which is estimated at roughly \$500,000. Thus, the project's fair share is \$21,000.  
  
Similarly, the net new trips generated by the Good Earth project are 9.1% of the total traffic through the Center Blvd / Pastori Avenue intersection under adjusted Year 2016 conditions. If a traffic signal is selected as the ultimate solution, the cost of signaling this intersection is roughly \$250,000, making the project's share \$22,750.
22. Provide on-site bicycle parking facilities, as proposed, including racks space for 20 bikes, a Bike Rider Rest Station, air pump, and area bike trail map.

#### Planning Commission Condition

1. All agency requirements must be complied with as stated below unless an agency relaxes a requirement in writing to the Town.

### Ross Valley Fire Department

1. Provide a 20 foot access road within 150 feet of all portions of the first floor exterior wall (CFC Section 503.1.1)
2. At least one of the required access routes shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building.
3. Access shall be provided to within 50 feet of the required fire department connection (FDC) to the sprinkler system.
4. Revise the Site Plan to indicate the relation of the FDC to the closest hydrant.
5. Prior to the issuance of the construction permit, approval of the construction documents by the Fire Department is required.
6. Prior to the issuance of the construction permit, references to the 2010 California Fire Code (with local amendments) shall be included in the construction documents.

### Marin Municipal Water District

1. Purchase additional water entitlement (above the current entitlement of 1.70 acre-feet).
2. Upgrade the dedicated fire line connection to current District standards.
3. Prior to obtaining water service, plans for compliance with the District's Water Conservation Ordinance 414 shall be submitted to the District for review to confirm compliance.
4. Prior to obtaining water service, an analysis of backflow protection shall be submitted to the Backflow Prevention Program Coordinator. Should backflow protection be required, said protection shall be installed as a condition of water service.

### Marin County Environmental Health Department

1. Prior to the start of any new construction or remodeling, a complete set of plans drawn to scale shall be submitted to Environmental Health Services for review and approval.

### Planning and Building Services

1. Collect and assess weekend traffic data.
2. Identify trip generation rates at existing Good Earth Market.
3. Participate in transportation mode survey.
4. Prepare summary memo for 1-3 above, submit to Planning and Building Services by May 2, 2011.
5. All cleaning/hosing of floor mats will be done in the designated area on the loading dock as indicated on the Construction Documents; and/or per the Sanitary District and applicable code requirements.
6. The applicants shall obtain sign permits and building permits before erecting any signs on the building.
7. The applicant shall submit to the Town a letter of credit, bond, or saving passbook in an amount of 20% of the cost of landscaping and irrigation materials and installation prior to issuance of a building permit. The amount shall be retained for an 18 month warranty period after the project has its final inspection and all the landscaping and irrigation is installed.
8. This approval is limited to the development illustrated on the plans prepared by William S. Bagnall Architects Inc. pages A-0, A-1, A-2, A2.1, A-3, A-4, A-5, A-6, A-7, A-8, A-9 and A-10, parking plan layout page C-1, by Oberkamper & Associates Civil Engineers Inc., and the Landscape Plans, pages L1.0 and L2.0 by Roth Lamotte Landscape Architecture.
9. Prior to issuance of a building permit the applicant or his assigns shall:
  - a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

Construction delivery routes approved by the Department of Public Works.  
Construction schedule (deliveries, worker hours, etc.)  
Notification to area residents  
Emergency access routes

- b. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director/ the Public Works Director can waive this requirement).
  - c. Submit a bond, Letter of Credit, or savings passbook to the Town in an amount of \$30,000 to cover the cost of grading, weatherization and repair of possible roadway damage.
  - d. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations.
10. During the construction process the following shall be required:
- a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the grading has been completed as recommended.
  - b. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.
  - c. Any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
11. Prior to issuance of an occupancy permit the following shall be completed:
- a. The civil engineer shall field check the completed project and submit written certification to the Town Staff that the grading and drainage elements have been installed in conformance with the approved parking lot landscaping plans and the recommendations of the soils report.
  - b. The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation.
12. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.
13. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
14. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".
15. Notwithstanding section # 17.072.050 of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of application # 11-09. Any construction based on job plans that have been altered without the benefit of an approved modification of application 11-09 will result in the job being immediately stopped and

red tagged.

16. Any substantiated damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.

17. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

### Community Agreement

Please note: the conditions below were developed as a result of an agreement reached among community members, Town representative and the developer at a June 4, 2011 community meeting. These conditions have also been incorporated into the relevant sections of the Initial Study / Mitigated Negative Declaration and Mitigation Monitoring Plan.

1. The baling equipment will only be operated between the hours of 10:00AM and 5:00PM. (N-O-2)
2. In the event that complaints that construction noise exceeds applicable code or permit requirements are made to and verified by the Chief Building Official from at least three individual residences within one week, then construction will be restricted to 8 am to 5 pm.
3. The applicant will implement the use of noise mitigation materials and/or equipment standard in the building industry for the rear surfaces of the eastern back wall of the building; the vertical face of the loading dock; and the dock surface of the loading dock. (N-C-8) In the event that N-C-8 does not reasonably mitigate noise impacts to the surrounding residential neighborhood as defined by monitoring results at the most sensitive receptor locations and noise exceeds above 40dBA between 10:00PM and 7:00AM and above 50 dBA between 7:00AM and 10:00PM (per Section 8.20.050 of the Town Code), then an acoustical wall, or other reasonable mitigation measures, will be constructed that will be placed in locations that further mitigate noise impacts to less than significant levels. The acoustical noise wall, or other reasonable mitigation measure, will be implemented within 12 months and the success of the mitigation measures will be evaluated again after implementation of the contingent mitigation measures. (N-CM-8)
4. Signs will be posted on Belmont Avenue, Kent Avenue, and Belle Avenue to indicate that "residential traffic and emergency vehicles" are present. The locations of these signs will be determined prior to operation of the proposed project by the Town. The Town will develop the most stringent criteria and enforcement method to ensure compliance with the signage. This mitigation measure will be associated with a citation in the amount determined by the Town and not to exceed \$1,000. (TRAF-3)
5. The Town will explore eliminating the right turn only on red from Pastori Avenue to Sir Francis Drake Boulevard and creating one-way traffic on specific surface streets in the Belle Avenue and Kent Avenue and Belmont Avenue. These traffic circulation improvements will be implemented within twelve months of the beginning of operation of business of the Good earth. Additionally, the Town of Fairfax will evaluate the length of the left hand turning lane and traffic signal timing to improve the traffic conditions at the intersection of Sir Francis Drake Boulevard and Pastori Avenue. (TRAF-4)
6. Signs will be posted on Belmont Avenue, Kent Avenue, and Belle Avenue indicating residential

parking only. Residents will be provided parking stickers and visitor passes. Vehicles parked in the residential neighborhood without a parking pass would be cited by the Town of Fairfax. (TRAF-5)

7. A mid-block crosswalk will be placed at the intersection of Belle Avenue and Pastori Avenue to facilitate pedestrian traffic from the Belle Avenue residential area to the Good Earth store and downtown Fairfax. (TRAF-6)



Good Earth – Mitigation Monitoring Plan

<p><b>AI/R-1:</b> Incidents of asbestos occur in the existing building materials. Regulations require that regulated friable asbestos-containing materials (RACMs) be removed and appropriately disposed prior to renovation or demolition activities that would disturb them.</p>	<p>Further analysis of the drywall and joint compound using the Point Count Method would be necessary to confirm that the asbestos content of the composite material is less than 1% asbestos. The alternative is to treat materials as RACM and remove it in accordance with BAAQMD requirements.</p>	<p>Project Sponsor will submit detailed clean-up plan before building permits are issued</p>	<p>Prior to demolition of interior surfaces</p>	
<p><b>AI/R-2:</b> Incidents of asbestos occur in the existing building materials. Regulations require that regulated friable asbestos-containing materials (RACMs) be removed and appropriately disposed prior to renovation or demolition activities that would disturb them.</p>	<p>In accordance with Title 8, California Code of Regulations (CCR) Section 1529, the Asbestos in the Construction Industry Standard and NESHAP/BAAQMD Regulation 1.1, Rule 2, the drywall joint compound and texture, floor mastic and transite panels require removal and proper disposal prior to demolition/renovation activities that would impact those materials. A copy of the CAC report shall be submitted to the BAAQMD when applying for a renovation permit for the site.</p>	<p>Project Sponsor will submit detailed clean-up plan before building permits are issued</p>	<p>Prior to demolition of interior surfaces</p>	

Good Earth – Mitigation Monitoring Plan

<p><b>CUL-1:</b> Cultural and historic resources may occur on the project site where trenching and digging activities are proposed.</p>	<p>Prior to construction activities, the project sponsor should conduct an archival research to determine the appropriate locations for archaeological resources for areas that are slated for asphalt, concrete or vegetation removal.</p>	<p>Project sponsor should conduct archival records search</p>	<p>Pre construction</p>	
<p><b>CUL-2:</b> Cultural and historic resources may occur on the project site where trenching and digging activities are proposed.</p>	<p>Prior to trenching and digging activities on site, the project sponsor shall contract with a licensed archaeologist to supervise subsurface testing of the proposed project area, including the identification methods shovel-testing, surface transects units, or geotechnical techniques.</p>	<p>Project sponsor will retain a licensed archaeologist to supervise initial subsurface investigation and construction activities</p>	<p>During construction</p>	
<p><b>CUL-3:</b> Undocumented historic structures or buildings may occur on the project site.</p>	<p>It is recommended that the project sponsor conduct a resources assessment of historic-period buildings or structures for the project site</p>	<p>Project sponsor should conduct archival records search</p>	<p>Pre construction</p>	
<p><b>CUL-4:</b> Trenching and digging activities could uncover cultural and historic resources that occur on the project site.</p>	<p>In the event that archaeological resources or artifacts are discovered on site due to trenching for the proposed grease pit, further work should be monitored by an archaeologist. Artifacts or items of significance should be documented and recorded in accordance with recommendations from the archaeologist. Additionally, the project sponsor shall consult with the local Native American tribe to include or recommend monitors during all phases of investigation of archaeological resources including survey, testing, evaluation, data recovery and construction monitoring. In the event that human remains are encountered, all work must stop in the immediate vicinity of the discovery and the County Coroner and a qualified archaeologist must be</p>	<p>Project sponsor will retain a licensed archaeologist to document and provide appropriate recommendations for any discovered archaeological resources or artifacts. In the event that resources are discovered on site, the Project sponsor will contact the local Native American Tribe</p>	<p>During construction Any identified cultural resources shall be recorded on DPR 523 historic resource recordation forms.</p>	

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	notified so that an evaluation can be performed.			
<b>GEO-1:</b> The potential for strong seismic shaking at the project site is high	Site preparation and grading shall conform to the recommendations and criteria set forth for Site Grading in the MPEG report, Page 4.	Project sponsor will retain a qualified structural geotechnical engineer	During construction	
<b>GEO-2:</b> The potential for strong seismic shaking at the project site is high	New structures and features shall be designed in accordance with the provisions of the California Building Code (CBC). Based on the Interpreted subsurface conditions of the site, the CBC Coefficients (Table C, page 5, MPEG report) shall be used to calculate the design base shear of the proposed improvements.	Project sponsor will retain a qualified structural geotechnical engineer	Prior to obtaining building permits	
<b>GEO-3:</b> The potential for strong seismic shaking at the project site is high	The Structural Engineer should utilize the concrete slab-on-grade design recommendation (Table D page 6, MPEG report) to verify the structural integrity of the existing structure. If new foundations are required, they should be designed utilizing the shallow foundation design criteria given in Table D (MPEG report, page 6).	Project sponsor will retain a qualified structural geotechnical engineer	Prior to obtaining building permits	
<b>GEO-4:</b> The potential for strong seismic shaking at the project site is high	To improve performance of the flooring, a water sealant shall be applied to the concrete slab prior to placing water based adhesive. A consultation with a flooring manufacturer is recommended	Project sponsor will consult with flooring manufacturer	During construction	
<b>GEO-5:</b> The potential for strong seismic shaking at the project site is high	The walls of the 1,500 gallon grease interceptor shall be designed to resist the lateral soil and hydrostatic pressures as indicated in Table E (MPEG report, page 7).	Project sponsor will retain a qualified structural geotechnical engineer	During phase/prior to obtaining building permits	
<b>N-O-1:</b> Delivery trucks will introduce local sources of noise during	Turn off delivery trucks while unloading products at the loading dock.	Ongoing	With each delivery	

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business hours				
<b>N-O-2:</b>	The applicant will implement the use of noise mitigation materials and/or equipment standard in the building industry for the rear surfaces of the eastern back wall of the building; the vertical face of the loading dock; and the dock surface of the loading dock	Project sponsor will install or apply.	During construction	
<b>N-OM-2:</b>	In the event that N-O-2 does not reasonably mitigate noise impacts to the surrounding residential neighborhood as defined by monitoring results at the most sensitive receptor locations and noise In exceeds above 40dBA between 10:00 pm and 7:00 am and above 50 dBA between 7:00 am and 10:00 pm (per 8.20.050 of the Town Code), then an acoustical wall or other reasonable mitigation measures will be constructed that will be placed in locations that further mitigate noise impacts to less than significant levels. The acoustical noise wall or other reasonable mitigation measure will be implemented within 12 months and the success of the mitigation measures will be evaluated again after implementation of the contingent mitigation measures.	Project sponsor	Within 12 months after operation of market begins	
<b>N-O-3:</b>	The baling equipment will only be operated between the hours of 10am and 5pm.	Project sponsor will regulate pickup schedule.	When operation of market begins	
<b>N-C-1:</b> Construction operations may cause noise impacts during	Choose construction equipment that is of quiet design, has a high-quality muffler system, and is well maintained. This includes trucks and equipment	Project sponsor to submit construction schedule including list of equipment	Prior to beginning of construction	

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regular hours	construction	used to haul materials to and from the site.				
N-C-2:		Install superior mufflers and engine enclosure panels as needed on gas, diesel or pneumatic impact machines.	Project sponsor to obtain signed agreement with contractor	Prior to beginning construction		
N-C-3:		Erect temporary plywood enclosures around stationary equipment that produce excessive noise at nearby receptors.	Project contractor per agreement with project sponsor	With beginning of construction		
N-C-4:		Restrict construction hours to 8am to 8pm.	Project sponsor to obtain signed agreement with contractor	With beginning of construction		
N-CM-4:		In the event that construction noise complaints from at least three individual residences within one week are made to the Chief Building Official, then construction hours will be restricted to 8am to 5pm.	Planning and Building Services.	As needed		
N-C-5:		Eliminate unnecessary idling of machines when not in use.	Project sponsor to obtain signed agreement with contractor	With beginning of construction		
N-C-6:		Use good maintenance and lubrication procedures to reduce operating noise.	Project sponsor to obtain signed agreement with contractor	With beginning of construction		
N-C-7:		If possible, locate equipment as far from sensitive receptors as possible.	Project sponsor to obtain signed agreement with contractor	With beginning of construction		

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<p><b>TRAF-1:</b> The proposed project could create a conflict between vehicles exiting the east parking lot and peak period queues on Pastorl Avenue and on Center Blvd.</p>	<p>Sign the two exits from the eastern parking lot as "right turn only-24/7".</p>	<p>Construction / Building plans to be updated</p>	<p>Prior to occupancy permit</p>	
<p><b>TRAF-2:</b> The proposed project could create a conflict between vehicles exiting the east parking lot and peak period queues on Pastorl Avenue and on Center Blvd.</p>	<p>Move the Pastorl Avenue driveway as far to the south from Sir Francis Drake Blvd as is feasible (20 feet).</p>	<p>Construction / Building plans to be updated</p>	<p>During development of parking lot</p>	
<p><b>TRAF-3:</b> Implement the use of signage on surface streets within the vicinity of the Proposed Project to reduce the impact thru traffic in residential neighborhoods</p>	<p>Signs will be posted on Belmont Avenue, Kent Avenue, and Belle Avenue to indicate that "residential l traffic and emergency vehicles only". These locations will be determined prior to operation of the Proposed Project by the Town. The Town will develop the most stringent criteria and enforcement method to ensure compliance with the signage. This mitigation measure will be associated with a citation in the amount determined by the Town and not to exceed \$1,000.</p>	<p>The Town</p>	<p>Upon completion of market project</p>	

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<p><b>TRAF-4:</b> Reduce the likelihood for non-residential traffic to use surface streets as a shortcut to Sir Francis Drake Blvd</p>	<p>The town will explore eliminating the right turn only on red from Pastorl Ave to Sir Francis Drake Blvd and creating one-way traffic on specific surface streets in the Belle Avenue and Kent Avenue and Belmont Avenue. These traffic circulation improvements will be implemented within twelve months of the beginning of operation of business of the Good Earth. Additionally, the Town of Fairfax will evaluate the length of the left hand turning lane and traffic signal timing to improve the traffic conditions at the intersection of Sir Francis Drake Blvd and Pastorl.</p>	<p>The Town</p>	<p>Within twelve months of beginning of operation</p>	
<p><b>TRAF-5:</b></p>	<p>Signs will be posted on Belmont Avenue, Kent Avenue, and Belle Avenue indicating residential parking only. Residents will be provided parking stickers and visitor passes. Vehicles parked in the residential neighborhood without a parking pass would be cited by the Town of Fairfax.</p>	<p>The Town</p>	<p>Upon completion of market project</p>	
<p><b>TRAF-6:</b></p>	<p>A mid-block crosswalk will be placed at the intersection of Belle Avenue and Pastorl Avenue to facilitate pedestrian traffic from the Belle Avenue residential area to the Good Earth store and downtown Fairfax.</p>	<p>The Town</p>	<p>Upon completion of market project</p>	
<p><b>TRAF-7:</b> The proposed project will contribute to long-term traffic congestion in the Town of Fairfax</p>	<p>The project shall contribute its "fair share" to the cost of improving the two intersections where LOS deficiencies are projected in Year 2016 whether the project proceeds or not. The fair share should be based on the project's traffic as a percentage of the total volume occurring in the future. For example, the net new trips generated by the project are 4.2% of the total traffic through the Broadway / Center Boulevard / Pacheco Avenue</p>	<p>The project sponsor shall contribute to the fund prior to issuance of building permits</p>	<p>TBA</p>	

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	<p>Intersection under adjusted Year 2016 condition. If a traffic signal was selected, the Good Earth project should contribute 4.2% of the cost of signalizing the Pacheco Avenue Intersections on Center Boulevard and on Sir Francis Drake Boulevard, which is estimated at roughly \$500,000. Thus, the project's fair share is \$21,000.</p> <p>Similarly, the net new trips generated by the Good Earth project are 9.1% of the total traffic through the Center Boulevard / Pastorl Avenue Intersection under adjusted Year 2016 conditions. If a traffic signal is selected as the ultimate solution, the cost of signalizing this intersection is roughly \$250,000, making the project's share \$22,750.</p>			
<p><b>TRAF-8:</b> Development of the project will also result in the bicycle traffic to and from the site</p>	<p>Provide on-site bicycle parking facilities, as proposed, including racks space for 20 bikes, a Bike Rider Rest Station, air pump, and area bike trail map.</p>	<p>Project sponsor will develop project with required Improvements</p>	<p>Prior to occupancy permit</p>	