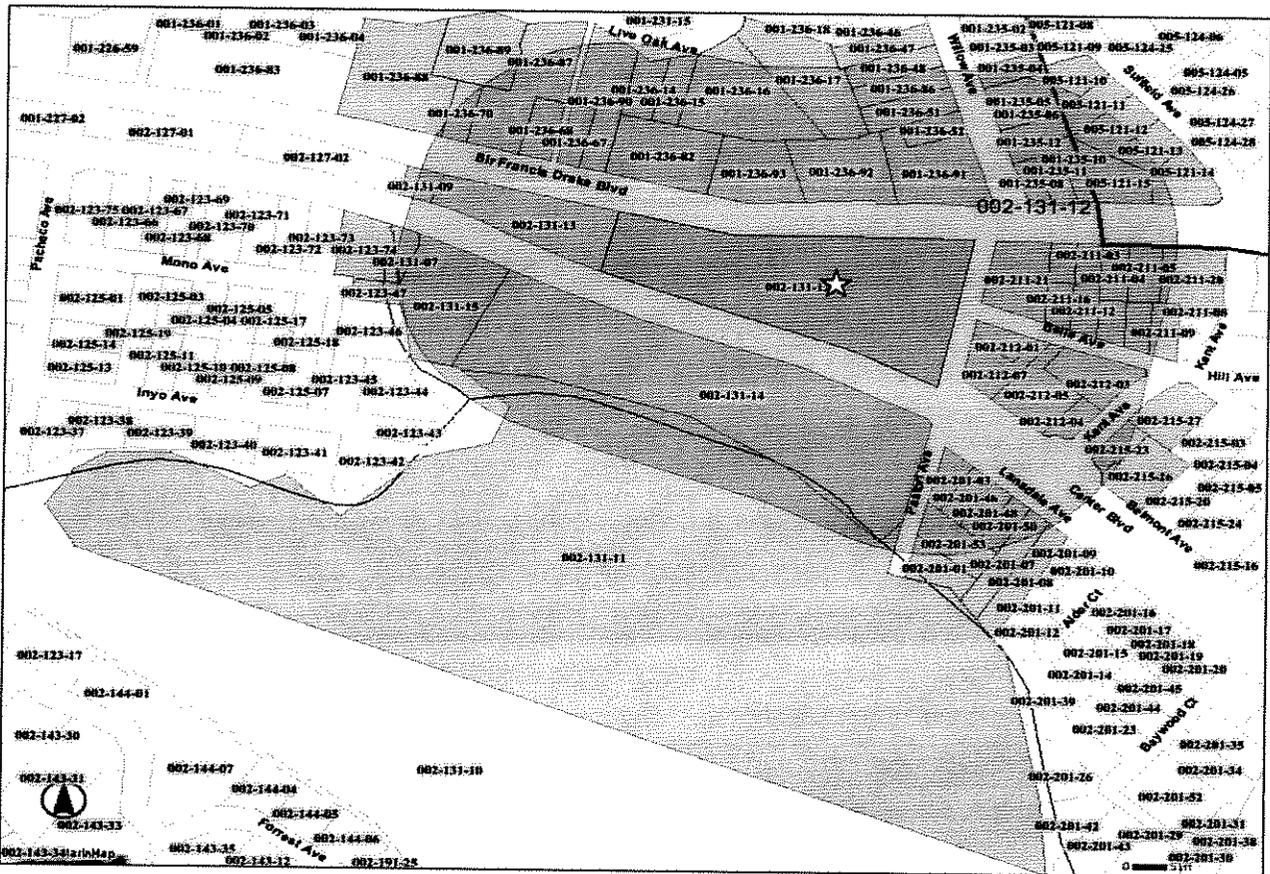


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** April 18, 2013  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Senior Planner  
**LOCATION:** 720 Center Boulevard; Assessor's Parcel No. 002-131-12  
**PROJECT:** Minor Modifications to a previously approved Use Permit and Design Review Applications  
**ACTION:** Fence Variance and Design Review Board modifications  
**APPLICANT:** Rich Hall, Fairfax Center Properties, LLC.  
**OWNER:** Same as above  
**CEQA STATUS:** Categorically exempt section 15301(a)



### 720 CENTER BOULEVARD

## **BACKGROUND**

On April 21, 2011, the Planning Commission approved the Traffic Impact Study, Use Permit and Design Review for the Good Earth Market to relocate at 720 Center Boulevard which is the former site of Albertsons Market; with specific Conditions of Approval – and based upon the set of plans that were submitted as part of the application.

On June 22, 2011, the Fairfax Town Council approved a Traffic Impact Permit and adopted a Mitigated Negative Declaration for the Good Earth Natural Foods Store (720 Center Boulevard) subject to all the mitigation measures enumerated in the project Initial Study; and including revisions as a result of a June 4, 2011 Saturday community meeting (Exhibit A – Resolution No. 11-26 and revised Mitigation Monitoring Plan (MMP) including community comments made at the 6/4/11 meeting).

On August 10, 2012 the Building Official issued a Conditional Certificate of Occupancy for the store because there were some items that had either (1) been modified in the field during construction from what had been previously approved, or (2) had been eliminated during construction due to unforeseen circumstances, or (3) unforeseen impacts or circumstances (from what had been presented in the original application package) – and that would need to be revisited by and/or approved by the Planning Commission as modifications to the original Conditions of Approval before final occupancy could be approved. The Conditional Certificate of Occupancy expired on February 10, 2013 (Exhibit B – Outstanding Item Contract and Conditional Certificate of Occupancy).

## **DISCUSSION**

The following changes were made from the plans that were approved by the Planning Commission on April 21, 2011 and subsequently by the Town Council on June 22, 2011.

### **Exterior Design Changes**

Item # 1 on the plans: The equipment located on the northern portion of the lower roof at the rear of the building fronting Sir Francis Drake Boulevard, below the clear story roofline, was not shown on any of the plans reviewed during the public hearings on the project and was not included in the building permit plans. The applicant has indicated that this was just replacement of a "as is" condition. However, a review of the property file and historic photographs in the file show that the previous equipment that did exist was lower in profile and screened by lattice panels (Exhibit C – photograph of building when it was Albertsons).

Item # 2 on the plans: A combination fence/retaining wall that exceeds the permitted 6 feet in height was constructed at the rear of the building along Sir Francis Drake Boulevard. This fence/wall requires a Fence Height Variance and Design Review approval because it is new construction in the Central Commercial CC Zone District. Town Code section 17.044.080(B)(2) limits fence/wall heights to 6 feet without a variance and section 17.020.030(B) requires Design Review approval for any new construction in the Central Commercial CC Zone District. Please

note that only the 6 feet of fence is visible from Sir Francis Drake Boulevard and the visual impact of the 9 to 10 foot tall wall and fence from Center Boulevard and Pastori Avenue is minimal because the fence maintains a 94 foot setback from the intersection where it does not obstruct visibility.

Item # 2A on the plans: The applicant now proposes installation of a rolling gate to screen the loading dock from view during the hours the business is closed - and offers this alteration in-lieu of fully screening the equipment on the rear roof (see lower middle of page 1 of the revised plans). The rolling fence would be chain link with green plastic strips woven through the metal in the color Metallic Fern Green (see color sheet attached to plans). However, the equipment on the back lower roof is very visible as one travels East and West on Sir Francis Drake Boulevard and from Pastori Avenue (see Exhibit C, pages 2 and 3). Staff recommends that the equipment be visually screened in some manner.

The plans do include a proposal to erect metal screening panels painted to match the building around the bottom of the equipment located on the eastern most portion of the roof but have not proposed a way to screen the equipment on the western portion of the rear roof that is very visible as you travel East on Sir Francis Drake Boulevard (Exhibit C). Staff is recommending that some type of screening be located around all the equipment along the entire length of the rear roof where it is visible from Sir Francis Drake Boulevard in any direction.

Item # 4 on the plans: Condition # 22 currently reads, "Provide on-site bicycle parking facilities, as proposed, including rack space for 20 bikes, a Bike Rider Rest Station, air pump and an area bike trail map". The Developer has requested that the requirement for an air pump be deleted from this condition. They have indicated that they do not want to install an air pump because Sunshine Bikes across the street already has one that they use as a free promotion/selling point.

Item # 6 on the plans: Replacement of the in-ground planters at the West patio with raised planters as depicted in the revised plans: with two trees designed into the East patio in raised pre-cast planters of similar size rather than in-grade planters. The proposed planters have raised the height of the trees by approximately 18 inches, but their location will be the same as originally approved. Please note that the proposed landscaping changes still provide the same number of plants/trees and do not substantially change the site landscaping plan.

Other landscaping changes not itemized in the revised plans are:

The applicants also retained the existing street trees along Center Boulevard when the landscaping plan originally showed them being replaced.

Two trees have also been planted behind the monument sign at the northeast corner of the site. These trees may also help screen the roof equipment on the eastern side of the roof from view when they are fully matured.

## **Delivery Vehicles**

The Initial Study project description included the explanation that delivery trucks would arrive to deliver goods to the store Monday through Saturday and that delivery goods would be processed through the loading dock area at the northeast corner of the building. The deliver description went on to indicate that only one 60-foot long grocery truck would arrive between 5:00 AM and 6:00 AM, Monday through Friday, and that only two 45-foot long produce trucks would arrive between 6:00 AM and 7:00 AM Monday through Saturday. Trash is picked up after 8:00 AM (Exhibit D – excerpt from Initial Study).

After operating for over a year the applicants have discovered that the strict limitations put on the smaller delivery vehicles impacts both the store and the small local businesses that use the small trucks to deliver local products (Exhibit E – letters from the applicant's dated 2/7/13 and 3/11/13).

There continue to be complaints regarding the number and size of trucks making early morning deliveries to the store prior to 6:00 AM and about the truck back-up beepers (Exhibit F – Police Report and G).

A neighbor has suggested that the large 60 foot delivery vehicle not deliver until after 6:00 AM but that after 6:00 AM the restriction on the number of any truck deliveries could be eliminated: which would likewise decrease the necessary number of deliveries occurring after 7:00 AM (Exhibit G – letter dated 3/20/13 from Stephen Franks, 19 Willow Avenue) and assist the Market with the laborious task of stocking the store before patrons arrive at opening.

The same neighbor has also indicated that the back-up beepers the trucks are equipped with pose additional noise problems. In response, the applicants have addressed this issue by proposing new technology changes being made for truck back-up beepers; the existence of which has been verified by the Building Official. The new beepers use a different tone, more similar to white noise machines, that is audible to pedestrians but not the shrill beep currently used and heard for long distances. The applicant also states that the company that has the largest truck and the earliest delivery time is in the process of converting their vehicles to this new type of beeper.

Staff has contacted United Market in San Anselmo and Scotty's Market in Terra Linda to compare hours of operation and deliveries. Scotty's Market informed us that they do not get noise complaints because deliveries usually occur after 7:00 AM and if they are made before 7:00 AM they pull up in front of the story and use hand carts to unload the products. Their delivery trucks also are able to pull through the parking lot and do not have to back-up thus avoiding the back-up beeping.

United Market also indicated that their deliveries only start at 6:00 AM and they do not have problems with back-up beeper complaints because the truck can maneuver in a way to avoid the beepers going off.

Scotty's opens at 7:00 AM and United Opens at 7:30 AM and both markets said that they are

continually stocking and re-stocking the shelves throughout the day and do receive some deliveries after they have opened for business.

However, the Good Earth Site is more constrained and it would be dangerous for trucks, especially the larger ones, to be maneuvering in the eastern parking lot area when customers are also visiting the store.

Shelf stocking could occur while the business is open and the store could make shift changes to have more people working early shifts to get trucks that deliver after 6:00 emptied and to accept other deliveries that occur between 6:00 AM and 8:00 AM when they open for business. Allowing the Good Earth to accept deliveries after 6:00 is 1 hour earlier than some of the other smaller markets in Marin open for deliveries.

Staff is recommending that no deliveries (including trucks on the property) be allowed before 6:00 am and no restrictions on the number of trucks making deliveries after 6:00 am to either the east side or west side to the Market.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested modifications to the plans and operations/deliveries approving; a) the proposed landscaping changes; b) the rolling fence; c) the 9 foot fence/wall and, d) elimination of the air pump as shown on the revised plans by Williams Bagnall Architects Inc., page 1, dated 3/26/13 and 2, dated 1/ 25/13; and deliveries by trucks based on the following findings and subject to the following conditions:

## **Recommended Findings**

### **Design Review**

As long as the equipment on the northern lower roof is screened in an attractive manner that complements the other exterior changes that have been made to the building the modified project will comply with design review criteria as follows:

1. The proposed retrofitting of the Good Earth market building creates 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. The proposed development is of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area.

3. The proposed development, modified to require screening for the roof equipment on the Northern side of the building, provides adequate landscaping and visual screening.
4. Sufficient variety exists in the design of the structures and grounds to avoid monotony in external appearance.
5. The parking on the site is accessible and the parking lot design accommodates traffic on adjacent public streets.
6. Town Code § 17.020.040, Design Review Criteria M, reads, "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". Restricting delivery vehicles to after 6:00 AM minimizes the impact of the business delivery vehicles on the neighboring residential areas and protects their property values.

#### Fence Height Variance

1. Sir Francis Drake Boulevard is at a higher elevation than the finished elevation of the rear loading dock and therefore slope up to Sir Francis Drake Boulevard has been retained with a small wall. In order to keep the loading area secure, a 6 foot fence on top of the 3 to 4 foot wall is required. The 6 foot fence also helps to screen the rear of the building from view. These are the special circumstances applicable to the property that will result in the strict application of the 6 foot fence limitation depriving the property owners of the ability to secure and screen the rear of the property which is a privilege enjoyed by other property owners in the vicinity that are built on level site and under identical zone classification.
2. The fence/wall will appear to only be 6 feet in height from the heavily traveled Sir Francis Drake Boulevard and it maintains a 94 foot setback from Pastori Avenue so it does not obstruct vehicular visibility at the corner of Pastori and Sir Francis Drake. Therefore, the variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship because the applicants would be unable to screen and secure the rear of the store.
4. The granting of the variance or adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated because the fence/wall does not obstruct vehicular or pedestrian visibility in the on-site parking lot or on adjacent public streets.

#### Recommended Conditions

1. Deliveries shall not begin prior to 6:00 AM in the morning but the number, size and frequency of the deliveries after that time shall not be restricted. Deliveries shall not occur between 9:00 PM and 6:00 AM, Monday through Sunday.
2. All the equipment on the northern most lower roof shall be screened in some manner subject to the review and approval by the Department of Planning and Building Services.
3. The location of the rolling gate at the rear loading dock area shall be subject to the review and approval of the Fairfax Police Department and the Ross Valley Fire Department prior to its installation.

## **ATTACHMENTS**

Exhibit A – Resolution No 11-26, including the conditions of approval, Mitigation Monitoring Plan (MMP)

Exhibit B – Acknowledgement of Outstanding Conditions under Temporary Certificate of Occupancy

Exhibit C – photo of screened Albertsons rear roof and currently unscreened Good Earth roof

Exhibit D – Initial Study language addressing delivery vehicles

Exhibit E – letters from Good Earth dated 2/7/13 and 3/11/13

Exhibit F – Police Incident Report

Exhibit G – Letter from neighbor at 19 Willow

RESOLUTION NO. 11-26

**A Resolution of the Fairfax Town Council Approving the Traffic Impact Permit and adopting the Mitigated Negative Declaration for the Good Earth Natural Foods Project (720 Center Blvd) Including all the Mitigation Measures Enumerated in the Initial Study**

**WHEREAS**, the Town of Fairfax has received an application to relocate operations of the Good Earth Market from 1966 Sir Francis Drake Boulevard to the Fair Anselm Shopping Center at 720 Center Boulevard (the "Project"); and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on April 21, 2011 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Traffic Impact Permit, Use Permit, Initial Study and Mitigated Negative Declaration for the Project; and

**WHEREAS**, the Town Council also held a duly noticed Public Hearing on June 1 and June 22, 2011 at which time all interested parties were given a full opportunity to be heard and to present evidence on the Traffic Impact Permit and Initial Study and Mitigated Negative Declaration for the Project; and

**WHEREAS**, based on the traffic study and other documentary evidence in the record, as well as testimony at the public hearing, the Town Council has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permits.

**NOW, THEREFORE BE IT RESOLVED**, the Town Council of the Town of Fairfax hereby finds and determines as follows:

1. The potential environmental impacts from the Project can be mitigated to a level of insignificance;
2. The Project's average daily traffic, when added to the existing daily traffic, will not cause the performance of intersection or roadway linkages to fall below the acceptable level of service or otherwise further reduce the system performance if it is already below the acceptable level of service, nor will it cause a significant degradation in service levels for impacted intersections at their peak traffic periods.
3. The Initial Study/ Draft Negative Declaration for the Project is hereby adopted.
4. The Traffic Impact Permit required by Chapter 17.56 of the Town Code is hereby granted and the Project is approved, subject to compliance with the Initial Study/Draft Negative Declaration, the conditions of approval attached hereto as Exhibit A and all applicable Town Code requirements.

The foregoing resolution was adopted at a regular meeting of the Town Council, held in said Town, on the 22nd day of June 2011, by the following vote:

AYES: Bragman, Hartwell-Herrero, Reed, Tremaine  
NOES: None  
ABSENT: Weinsoff

  
Mayor, Larry Bragman

Attest:

  
Deputy Town Clerk, Michael Rock

EXHIBIT #     A

### **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>A/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>A/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 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.</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 archived 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 geoaerchaeological techniques.</p>	<p>Project sponsor will retain a licensed archeologist 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 archived 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 archeologist 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>

Good Earth – Mitigation Monitoring Plan

	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 design phase/prior to obtaining building permits	
<b>N-Q-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	

Good Earth – Mitigation Monitoring Plan

business hours			
<b>N-Q-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-QM-2:</b>	In the event that N-Q-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-Q-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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Good Earth – Mitigation Monitoring Plan

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		

Good Earth – Mitigation Monitoring Plan

<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 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>	

Good Earth – Mitigation Monitoring Plan

<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 Pastori 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 Pastori.</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 Pastori 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>	

Good Earth – Mitigation Monitoring Plan

<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>	
	<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 signaling 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 / 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.</p>			

## **Acknowledgement of Outstanding Conditions under Temporary Certificate of Occupancy for 720 Center Boulevard, the Good Earth Natural Foods Store**

THIS ACKNOWLEDGEMENT is executed this 10th day of February, 2012, by the Town of Fairfax, a municipal corporation ("town") and the following entities: Good Earth Market, Inc. and Fairfax Center Properties, business owners and property owners of 720 Center Boulevard (collectively, "Developers") in the Town of Fairfax, California and is based upon the following facts:

1. CDM, Construction Development Management, a Real Estate Company, Inc., on behalf of Developers, has requested changes to the approved project conditions of approval and project plans for the relocation of the Good Earth Natural Food Store to 720 Center Boulevard.
2. Good Earth Market, Inc. has requested that the Town issue a Certificate of Occupancy so that the store can open on February 15, 2012 before certain conditions have been met, or have been modified with the required planning and building entitlements.
3. The Town cannot issue a final certificate of occupancy in light of the project's inconsistencies with the entitlements, but it is issuing a temporary certificate of occupancy to permit the Developers to open and operate the project while seeking the modified entitlements.

The parties acknowledge and agree that the following items are outstanding and require either issuance of additional planning entitlements or modification of entitlements already approved prior to issuance of a Final Certificate of Occupancy:

1. The equipment located on the northern portion of the roof, below the clear story roofline, was not shown on any of the plans reviewed during public hearings on the project and was not included in the building permit plans. A modification of the Design Review Permit must be obtained and the equipment must be screened in some visually appealing manner that complements the architecture of the building.
2. A fence that exceeds the permitted 6 feet in height has been constructed that was not shown on any of the plans reviewed during public hearings on the project and was not included in the building permit plans. A Fence Height Variance must be obtained from the Planning Commission and Design Review approval must be obtained for the design and materials of the fence; or the fence must be removed.
3. As built building plan sheets must be submitted showing the equipment and fence improvements.
4. Condition # 22, currently reads, "Provide on-site bicycle parking facilities, as proposed, including rack space for 20 bikes, a Bike Rider rest Station, air pump, and area bike trail map".

The Developer has requested that the requirement for an air pump be deleted from the condition.

5. Amendment of condition #'s 8 and 11b to include removal of the electric car fueling station if an agreement with Ecotality, or some other company that installs charging stations, cannot be reached and replacement of the 24 inch box trees with 15 gallon trees.
6. Replacement of the in-ground planters at the West patio with raised planters as depicted in the attached Exhibit A.
7. Placement of the two trees designed into the East Patio in raised pre-cast planters of similar size rather than in-grade planters. The proposed planters would raise the height of the trees by approximately 18", but their location on the patio would be exactly the same.

Developers acknowledge that any modifications to the entitlements will be considered by the responsible Town official or body in accordance with the Town Code. If the modifications desired by the Developers are not granted, Developers remain responsible for completing the project in accordance with the initial entitlements, and failure to do so may result in enforcement actions by the Town in accordance with the Town Code and state law.

Please note that any other changes that were made during construction that were not previously approved and have yet to be identified by Town staff will be subject to being approved or corrected prior to the Town issuing the Final Certificate of Occupancy.

Developers hereby agree to allow the Town to retain the \$30,000 "roadway damage deposit" previously submitted to the Town to serve as a "project completion deposit." Developers agree that the Town may complete the required remaining work if the Developers fail to do so within one year, and consents to Town or its agents entering the property to do so.

Developers shall obtain all necessary planning entitlements, and/or building permits for six (6) months of the date of this acknowledgement, and shall complete satisfy all required conditions and/or complete project improvements within one (1) year from the date of this acknowledgement. The Temporary Certificate of Occupancy shall expire one (1) year from the date of this acknowledgement if the project is not completed by that date..

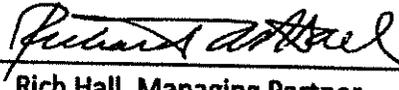
The Developers agrees to work diligently to comply with all of the above conditions and agrees to complete all the required permit processing and construction by February 10, 2013.

IN WITNESS WHEREOF, the parties hereto have executed this acknowledgement the day and year first above written.

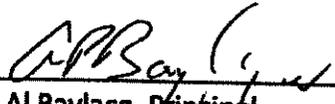
Town of Fairfax

By:   
Town Manager

Fairfax Center Properties, LLC

By:   
Rich Hall, Managing Partner

Good Earth Market, Inc.

By:   
Al Baylacq, Principal

Building Permit No. 11-102 & 11-103

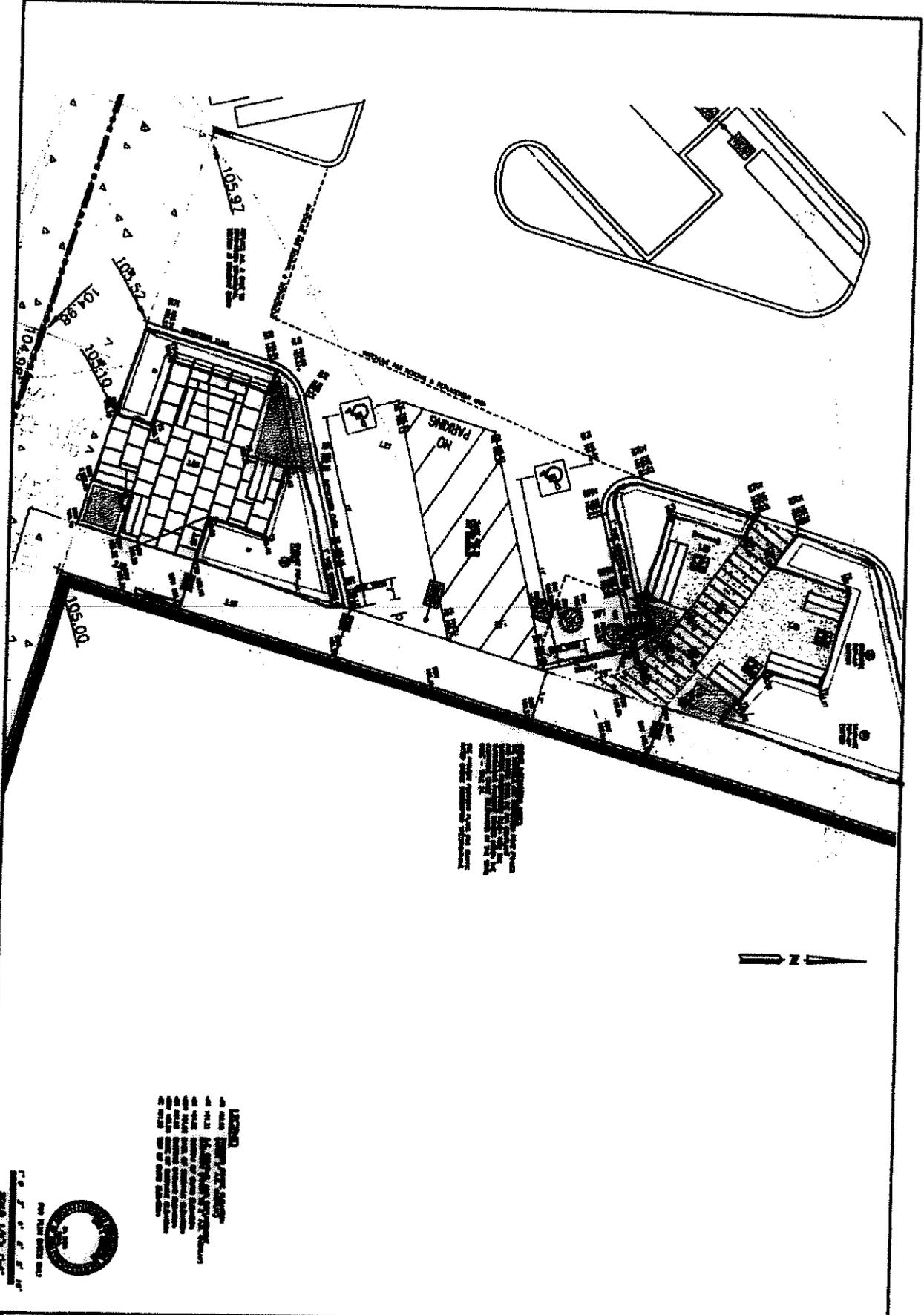
## **TOWN OF FAIRFAX CONDITIONAL CERTIFICATE OF OCCUPANCY**

**Date: 2-10-2012 Expires: 8-10-2012**

This certifies that the renovation known as: Good Earth Market, located at: 720 Center Blvd. Parcel APN 002-131-12, owned by Good Earth Market LLC, 720 Center Blvd., Fairfax, CA 94930 & Fairfax Center Properties, P.O. Box 633, Ross, CA 94957, has been inspected and found to comply conditionally with the provisions of the 2010 Edition of California Building, Fire, Plumbing, Electrical, and Mechanical Codes and related local ordinances and laws. The conditions are described in the Acknowledgement of Outstanding Conditions executed by the owner as of the date of this certificate. Use and Occupancy classifications M, B, S-2, Type of Construction V-B, Fully Sprinklered (sprinkler required). Occupant Loads: Retail - 378, Office - 10, Service/Kitchen- 28, Storage - 10, Accessory - 2, Conference - 12, Locker Room - 6, Total Occupant Load -- 446



**Mark Lockaby**  
**Building Official**



DATE	DESCRIPTION
02/10/2011	ISSUED FOR PERMITS
02/10/2011	ISSUED FOR CONSTRUCTION
02/10/2011	ISSUED FOR RECORD

**ADA PARKING PLAN WEST & CREASE INTERCEPTOR**  
**GOOD EARTH MARKET SHELL**  
 IRVING COUNTY, OKLAHOMA

**OVERKAMPF & ASSOCIATES**  
**CIVIL ENGINEERS INC.**  
 700 S. W. 10th Street, Suite 200  
 Muskogee, Oklahoma 74401

NO.	DATE	REVISION
1	02/10/2011	ISSUED FOR PERMITS
2	02/10/2011	ISSUED FOR CONSTRUCTION
3	02/10/2011	ISSUED FOR RECORD

D



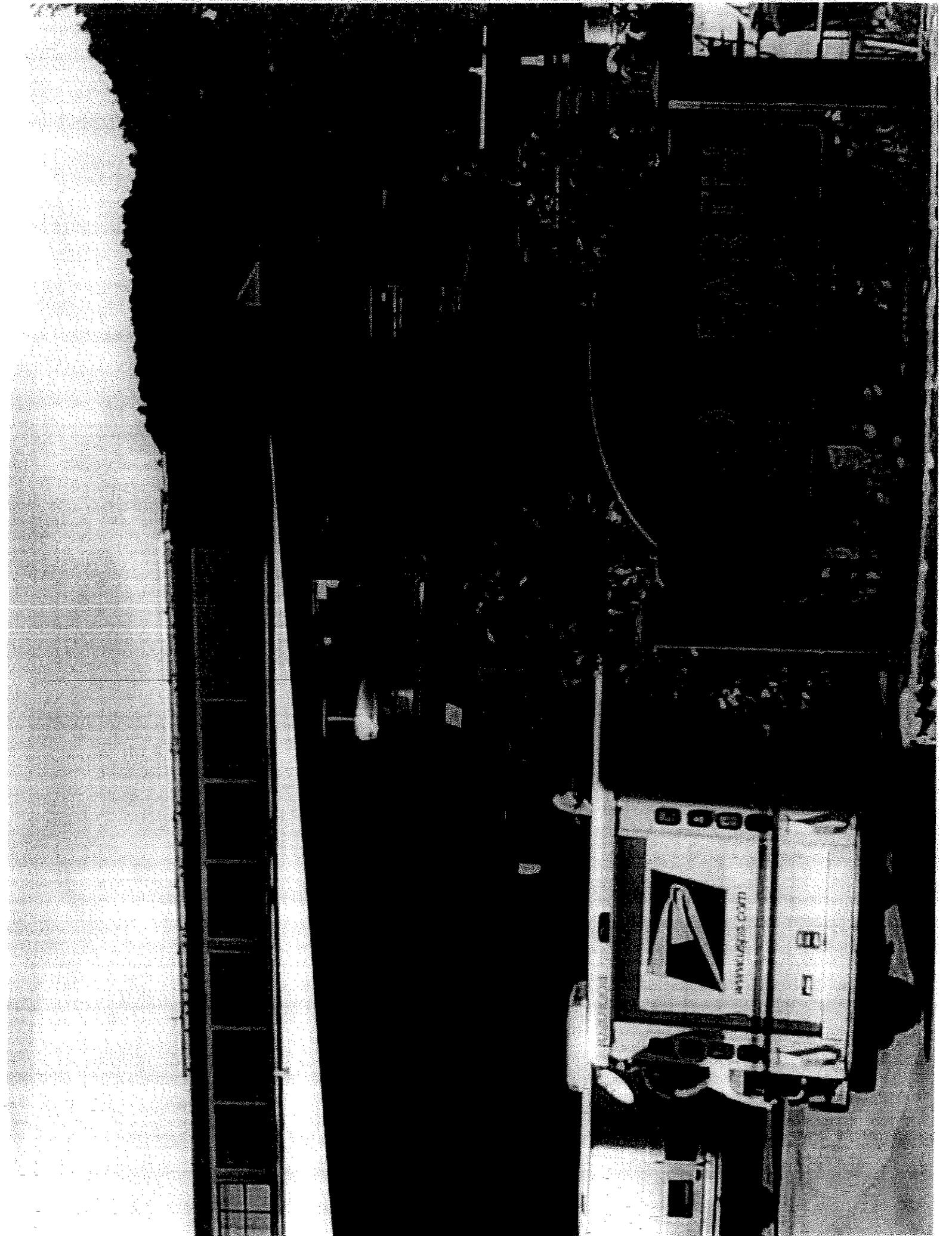
Our landscaping design proposed for this area is to provide visual enhancement as well as buffering of this northwest corner of the building as it nears the edge of Sir Francis Drake Boulevard. Note that the existing conifers extend nearly halfway through the width of the grocery building (some 200-feet from the intersection of Sir Francis Drake Blvd. and Pastori Avenue). Our new landscaping will provide the continuation of buffering to extend it an additional 10-feet along the boulevard, shielding the complete building from the roadway.

Albertson's Grocery #7087  
Fairfax, California  
Project No 2k026.900

Photo on 02 18,00  
Page 1 of 4

EXHIBIT #

C





**NOTICE OF INTENTION TO CIRCULATE  
PROPOSED MITIGATED NEGATIVE DECLARATION AND INITIAL STUDY FOR A  
21,150SF COMMERCIAL DEVELOPMENT AT 720 CENTER BOUVLEVARD  
IN THE TOWN OF FAIRFAX**

**Project Location**

The project site is located on the northern side of Center Boulevard at the intersection with Pastori Avenue, 720 Center Boulevard, which is the site of the former Albertson's market. The existing structure and two existing parking areas will be renovated and modernized as part of the project.

**Project Description**

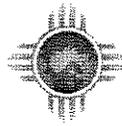
The project involves relocation of the existing Good Earth Market from its current site at Sir Francis Drake Boulevard / Claus Drive to a currently vacant building at the intersection of Center Boulevard and Pastori Avenue.

The Good Earth Market will be transferring store operations from their current store at 555 Sir Francis Drake Blvd (west end of Town) to the east end of Town in the former Albertson's market in the Fair Anselm shopping center at 720 Center Blvd. Good Earth is a provider of natural foods. The renovated facility will include an on-site bakery, prepared food kitchen and service deli, meat/ fish/ poultry department, farmer's market/ organic produce & bulk grains department, a nutrition and health care venue, and increased selection of groceries. The new facility will renovate the existing Albertson's Grocery Store to include 21,150 square feet of total space.

The proposed project would not require a zone change. The existing parking lots on the east and west sides of the store building will be renovated and repaved including adding new landscaping and light standards. The new Good Earth will continue to have an entrance from Center Blvd (current entrance) and will introduce a new entrance with patio/porch, trellis, and seating areas on the east side (facing Pastori). The exterior of the building will be upgraded to include a clerestory element on the ridge of the roof.

The interior store improvements will include a complete remodel: new décor, insulated windows, upgraded equipment, and energy saving lighting and HVAC [heating and air conditioning], as well as, mechanical refrigeration with commuter controlled energy management system. In addition, the building will have a seismic upgrade to the Standards of the International Building Code, Edition 2011.

Delivery truck will arrive Monday through Saturday. Most delivered goods will be processed through the loading dock area at the northeast corner of the building. One 60-foot long grocery truck will arrive between 5:00AM and 6:00AM, Monday through Friday. Two 45-foot long produce trucks will arrive between 6:00AM and 7:00AM, Monday through Saturday. Trash trucks will make pickups after 8:00AM.



**GOOD EARTH**  
ORGANIC & NATURAL FOODS

FEB 07 2013

RECEIVED

2/7/13

To Fairfax Planning Commission and Staff  
re Truck deliveries to Good Earth

Dear Planners,

Thank you for your time and attention to our operation of Good Earth and we appreciate your position of having to balance the needs of business and residential in a continual on-going way here in town.

We would like to provide some clarity to you regarding our operation and the needs of Good Earth in our new location, in order to facilitate your decision about our use permit. Overall we are very happy with how the whole project has progressed and how we have landed down the street. There is still work to be done (parking lot re-surfacing and solar project completion) but we feel mostly welcomed by our new neighborhood and hope to spend the next few decades operating this business in a sound and sustainable way, and in the best possible neighborly way any dynamic business could.

When our planning process had just begun nearly two years ago, we were asked to do a traffic study. As part of that process we were asked how many trucks and at what times they would deliver to us. We answered that question with the minimum number and times that we thought we could live with. That number, which we always considered both a minimum and frankly a fairly wild guess, got rolled into the conditions of occupancy as *maximums* allowed. At that time we objected to this severe restriction, but Planning, who was very worried that an irate neighbor might sue under CEQA, asked that we sign off on it to expedite the process. At that point we were really behind on construction and really could not afford more delays. Compliance with the Native American archaeological aspect alone cost the project about \$90,000. So we were over budget as well. Frankly we felt like we were over a barrel and not able to really even express our real delivery needs for the new store with the necessary increases in business.

Our difficulty in complying with our current restrictions are partly due to their extreme severity. Nonetheless we have tried very hard to comply despite the fact that it felt like swimming against the current. It has made it very difficult for our suppliers, many of which are small local businesses. Enforcement by us has resulted in truck drivers being frustrated to the point that they have been verbally abusive to Good Earth's staff. We have made frequent calls to business owners to get their drivers into compliance. One of the things that sets Good Earth apart from many other markets is the number of small businesses we buy from unlike the



# GOOD EARTH

ORGANIC & NATURAL FOODS

chains. Restricting deliveries to after 7 for most of our suppliers results in considerable expense to many of them, most of whom have silently complied.

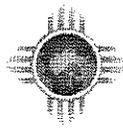
I hope that this background is helpful to you in your decision making and does not seem like us complaining. In fact, although compliance cramps our style a lot, we are not asking to have the current restrictions lifted completely. What we could live with longterm, and be able to manage as well, is if we are able to receive up to three trucks in the 5 - 6am slot, and unlimited trucks after 6am.

We would also like to get a little understanding from the town about the complexity of Good Earth enforcing the restrictions. In other words, even if we do our best, we may occasionally have a truck driver that is not familiar with our rules who comes into town earlier than we had arranged with them. What you can count on us for, going forward, is to do whatever is in our power to comply.

We have spent the last 90 days with renewed efforts to control what happens around here in the early mornings. We have worked very hard at many levels at limiting noise in the AM and in complying with the restriction of three large trucks (between 5 - 7am). We are confident in managing those three company's actions moving forward. This shift in compliance for these three large trucks has been in place since mid-Dec. Although the record could show a violation or two since mid-Dec., that's due to extreme circumstances (newly hired driver who didn't get the message). The three key vendors (UNFI-grocery and two produce companies) will obey the rules going forward. That said, each one of them have violated the 5am restriction for most of the 2012 year - all three companies are adamant about wanting earlier delivery times. Two of the three companies have outlined for us how the current restriction is financially impacting them for the worse. They are disgruntled, but have agreed to comply moving forward. And you can count on Good Earth to comply with whatever is in our power to!

The remaining issue of receiving small trucks and vans is much harder to manage and frankly to live with, but we can agree to enforce a 6am restriction on any other noise-making delivery.

The current restrictions make it very difficult for us - it is very important to our efficiency that we get our shelves stocked before our customers show up. If we were compelled to take deliveries any later it would necessitate us developing new overnight (graveyard) shifts so we could get deliveries in the evening and stock our shelves in the middle of the night. We do not want to do this as we believe these kinds of shifts are not natural and we would not wish the health and lifestyle problems associated with working all night on Good Earth's staff.



# GOOD EARTH

ORGANIC & NATURAL FOODS

We do plead with you not to consider any further restrictions than requested above. To reiterate, what we are requesting is to be able to receive up to three trucks in the 5 - 6am slot, and unlimited trucks after 6am. We will commit to managing this to have the lowest noise impact possible for the long term.

We have tried very hard to be good Fairfax citizens in every way. We hope that the increased traffic that we have generated is understood to be a necessary challenge. The town has received many benefits from our rehabilitation and inhabitation of the old, dilapidated Albertson's and that significant improvement in our town will not continue to be achievable and prosperous without some noise generation in the neighborhood.

We strive to have our neighbors satisfied with our actions to control or mitigate noise problems now and well into the future. We know you have deep appreciation for the complexity of issues related to business district needs and residential needs. We trust and hope your decision will be fair-minded in considering all the issues and dynamics at play, and we thank you for your time and attention to the issue.

Thank you,

Mark Squire

Al Baylacq



**GOOD EARTH**  
ORGANIC & NATURAL FOODS

TOWN OF FAIRFAX

MAR 13 2013

3/11/13

RECEIVED

To Fairfax Planning Commission and Staff  
re Truck deliveries to Good Earth/Addendum

Dear Planning Commission and Department,

Since writing our letter of 2/7/13 we have realized a couple of other important pieces of information that we feel are pertinent, so we are submitting them in this addendum.

We want to make very clear that we are now, and have always been in complete compliance with Fairfax's Noise Ordinance. We believe we are the only business in Fairfax that has any restriction put on them that exceeds the Noise Ordinance. Most Marin Grocery stores of our volume have no delivery restrictions at all. The few that do are much more closely surrounded my residences than we are in our location.

In speaking with our closest neighbor at the corner of Willow and SFD it came to light that the noise that bothered them was not Good Earth deliveries but rather the garbage pickup in the neighborhood. Good Earth purchased a trash compactor when we moved into 720 Center, partly so we would not need to create this early morning noise of garbage pickup. Due to the compactor we have eliminated this noise which was the biggest source of truck noise at our old building as they now pick it up weekly and later in the day.

The technology is changing for the legally mandated back up beepers which were the biggest fear of the neighborhood residents before we opened. The company that delivers our earliest big truck is in the process of converting to a new muffled beeper which creates way less noise. Some of their trucks already use them and they plan to move all their trucks to these eventually.

We want to point out that some of the criticism directed our way is from trucks coming into town before we take deliveries. Although Good Earth can ask these companies not to, we really have no control of trucks on public streets. Part of our application is for permission to put a fence on our loading dock. This in addition to improving the view of the store as you come into town on SFD, would also allow us to control our dock better. We could keep the fence closed until we are ready for deliveries, so we will not be in the position of telling trucks to leave that have already pulled up to our dock.



# GOOD EARTH

ORGANIC & NATURAL FOODS

Lastly, we would like to reiterate that we believe our noise levels for our first year have not been the nuisance that the neighborhood feared before we moved in. Due to this fact and due to the fact that it would be way easier for us to manage a single receiving time instead of the staggered one of one truck for the first hour and two for the second hour, we request that our restriction moving forward be simply that we will not receive any trucks before 5:00. This would be facilitated by your approval of the loading dock fence that we can keep closed until that hour. We will of course take this restriction very seriously and do everything in our power to comply.

We thank you again for your consideration of this matter that seriously impacts our business. We would also welcome talking with any of you more in person and showing you our receiving dock and procedures.

Thank you,

Mark Squire

Al Baylacq



FAIRFAX POLICE DEPARTMENT

CAD INCIDENT REPORT

130403008

4/3/2013

<b>Location</b> GOOD EARTH NATURAL FOODS, 720 CENTER BL				<b>Cross Streets</b> PASTORI AV/PACHECO AV			<b>City</b> FAIRFAX			
<b>Incident Type</b> CITASST - CITIZEN ASSIST				<b>Call Taker</b> CROW, GUY			<b>Dispatcher</b> CROW, GUY			
<b>Date</b> 4/3/2013	<b>Priority</b> 2	<b>Primary Unit</b> 5L3	<b>Beat</b>	<b>Fire Zone</b>	<b>Area</b> DNTN	<b>Map</b> F5	<b>Source</b> TELEPHONE CALL			
<b>Caller Name</b> FRANKS, STEPHEN CONWAY				<b>Caller Address</b> 19 Willow Av, Fairfax				<b>Caller Phone</b> 415-819-5293		
<b>Dispositions</b> Service Provided, Service Provided					<b>Weapon</b>		<b>Alm Level</b>	<b>Case Number</b>		
<b>Vehicles</b> 8U15420/CA 2010848/IN					<b>Associated Incidents</b>					
<b>Incident Times</b>			<b>Special Circumstances</b>							
Received 05:15:21										
Created 05:16:26										
Dispatched 05:16:33										
En Route 05:16:33										
On Scene 05:19:50										
Closed 05:24:14										
Rcvd-Closed 08:53										
<b>Unit Times</b>			<b>Officer</b>	<b>Dispatched</b>	<b>Enroute</b>	<b>On Scene</b>	<b>Clear</b>	<b>Disp-On Scene</b>	<b>On Scene-Clear</b>	<b>Disp-Clear</b>
5L3			Cade, William	05:16:30	05:16:33	05:19:50	05:24:14	03:20	04:24	07:44
5L3			Cade, William	05:34:55		05:34:55	05:36:09		01:14	01:14

**Incident Comments**  
 RP requests an officer respond to document the amount of trucks currently at the loading dock.

TIME	#	EVENT	BY
05:16:26	1	Incident initiated at Good Earth Natural Foods, 720 Center Bl, Fairfax 2	G. Crow
05:16:30	2	5L3 DISP. Good Earth Natural Foods, 720 Center Bl, Fairfax	G. Crow
05:16:33	3	5L3 ENRT.	G. Crow
05:19:50	4	5L3 10-97.	G. Crow
05:21:29	5	5L3 10-29: 8U15420/CA	G. Crow
05:21:29	6	5L3 DMV check: 8U15420/CA	G. Crow
05:21:29	7	5L3 (8U15420 CA) added to incident	G. Crow
05:21:43	8	5L3 10-29: 2010848/IN	G. Crow
05:21:43	9	5L3 Out of state DMV check: 2010848/IN	G. Crow
05:21:43	10	5L3 (2010848 IN) added to incident	G. Crow
05:22:38	11	5L3 10-29: 2010848/IN	G. Crow
05:22:38	12	5L3 Out of state DMV check: 2010848/IN	G. Crow
05:24:14	13	5L3 10-8. Disposition SP	G. Crow
05:24:15	14	5L3 Closed - Disposition SP	G. Crow
05:34:53	15	Reopened	G. Crow
05:34:55	16	5L3 DISP. Good Earth Natural Foods, 720 Center Bl, Fairfax	G. Crow
05:34:55	17	5L3 10-97.	G. Crow
05:36:09	18	5L3 10-8. Disposition SP	G. Crow
05:36:09	19	5L3 Upon officer's arrival, on truck was at the loading dock either being unloaded or just had been unloaded. The other truck was in the parking lot and had not yet been	G. Crow
	20	unloaded.	
	21		
05:36:10	22	5L3 Closed - Disposition SP	G. Crow

March 20, 2013 TOWN OF FAIRFAX

MAR 20 2013

To whom it may concern:

RECEIVED

My name is Stephen Franks and I live at 19 Willow Ave. I am writing this letter to help not hinder a final permit for Good Earth. Although the use permit was written with good intentions, I believe there are some issues that should be dealt with before a final permit is given. My wife and I have worked in grocery stores locally for over 50 years combined. We were both raised in the neighborhood where we now raise our family.

I am suggesting that deliveries start at 6am and not before. This is a very common delivery schedule for a grocery store in a residential neighborhood. There is no way to make a quiet delivery with a 60ft semi-truck. After 6am, there could be more deliveries than are currently allowed. This could relieve some of the traffic after 7am. Another issue is the noise generated from the delivery trucks backup beepers at the loading dock. Currently, in Fairfax there are no noise restrictions pertaining to backup beepers at any time, day or night. This I find to be a huge problem for our neighborhood.

Although the Good Earth provides well needed revenue for the town of Fairfax, so do the homeowners. I have spoken many times at the town meetings and have contacted Good Earth numerous times about this matter. At this point, I feel I have done all that I possibly can on my own. The town of Fairfax needs to not only make noise ordinance rules for all residences and businesses but also enforce those rules. I support local business and believe Good Earth is a great fit for our neighborhood. I welcome any further discussion on this matter and believe we can find a solution that works for all involved.

Sincerely,



Stephen Franks

EXHIBIT # 6

