



# MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: November 12, 2008

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**APPLICATION:** Conditional Use Permit No. UP08-0025, Layang Layang

APPLICATION  
SUMMARY:

A request to allow onsite consumption of beer and wine for an existing restaurant.

LOCATION:  
APPLICANT:

181 W. Calaveras Blvd, (APN: 022-35-048)  
Pangkor LLC – Tiffany Cheng, 181 W. Calaveras Blvd., Milpitas, CA 95035

OWNER:

Lisa Lo, 15 Oakwood Blvd., Atherton, CA 94027

**RECOMMENDATION:**

**Staff recommends that the Planning Commission:**  
**1. Close the public hearing following public testimony; and**  
**2. Adopt Resolution No. 08-062 approving the project subject to conditions of approval.**

PROJECT DATA:

General Plan/  
Zoning Designation:  
Specific Plan:

General Commercial / General Commercial (C2)  
Midtown Specific Plan

CEQA Determination:

Categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities). The restaurant is currently in operation at the site.

PLANNER:

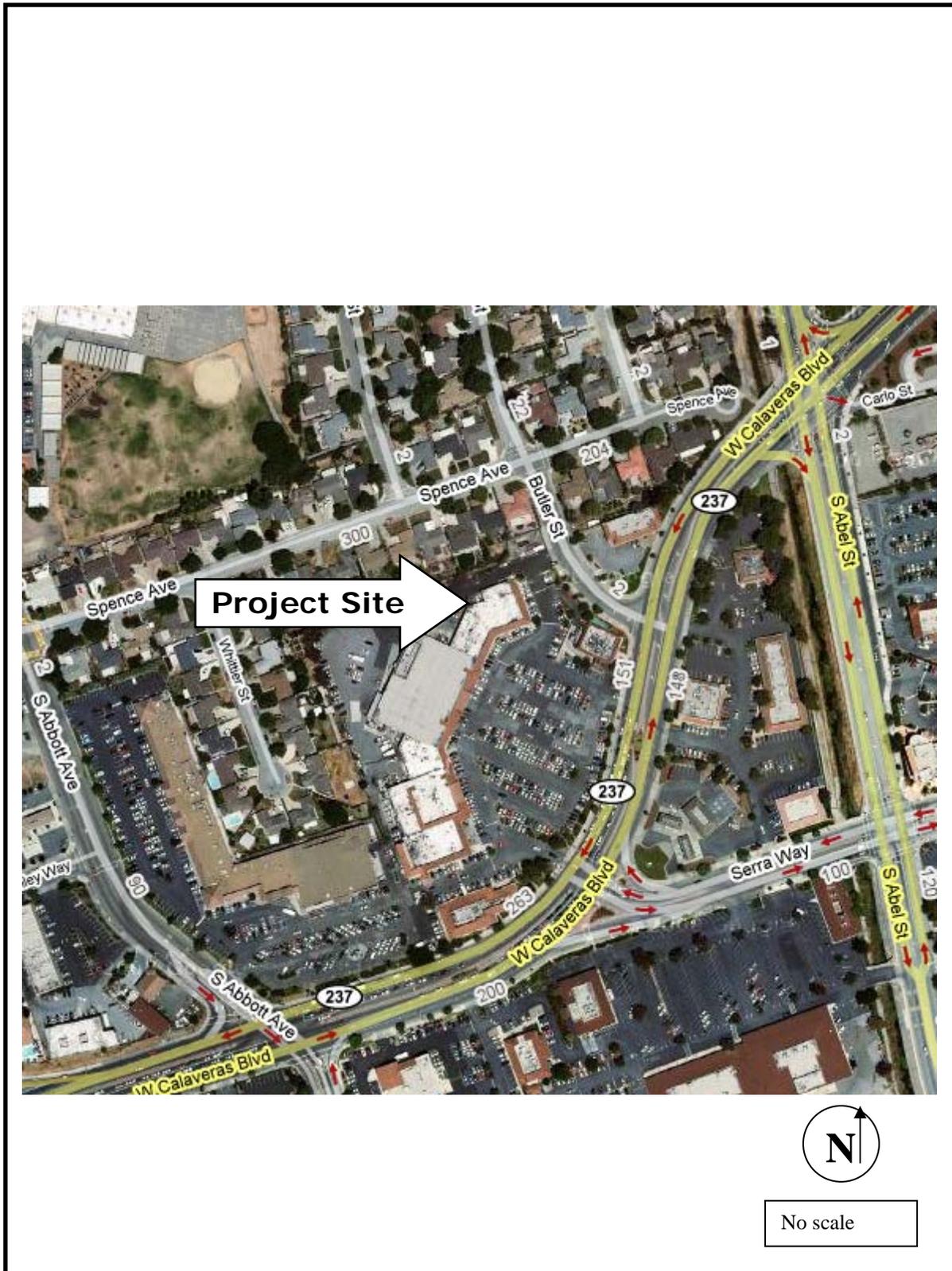
Julie Moloney, Associate Planner

PJ: 2542

ATTACHMENTS:

A. Resolution No. 08-062 / Conditions of Approval  
B. Site Plans

# LOCATION MAP



**BACKGROUND**

On July 9, 2008, the proprietors of Layang Layang Malaysian Cuisine applied for a Conditional Use Permit to allow on-site sales of beer and wine at their restaurant located at 181 W. Calaveras Blvd. According to Section 19.03-35 of the Milpitas Zoning Ordinance, restaurants which include on-premise consumption of alcoholic beverages require a Conditional Use Permit, pursuant to Section 57.04. The sale of alcoholic beverages must be found clearly incidental to the primary food service.

**SITE DESCRIPTION**

The restaurant is located within a strip commercial center. The center also contains other restaurant users including Burger King, King Crab and Lee’s Sandwiches. Save Mart is the major tenant in the center. The restaurant is approximately 1,950 square feet. No expansion of the restaurant is proposed with this application.

**PROJECT DESCRIPTION**

Layang Layang has requested this Conditional Use Permit for alcohol sales in order to be consistent with their other restaurant location in San Jose of the same name and menu. The service of alcoholic beverages is intended to enhance the Malaysian dishes and to be part of the overall dining experience. The restaurant is open between 11:00 a.m. and 10:00 p.m. and beer and wine would only be sold in conjunction with food service.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

*General Plan*

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 1**  
**General Plan Consistency**

Policy	Consistency Finding
<i>2.a-I-4: Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City’s Location to both industrial and commercial uses.</i>	Consistent. Allowing the sale of beer and wine allows restaurants to stay competitive.
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. Allowing the sale of beer and wine allows the restaurant to serve a wider market.
<i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental , social fiscal and land use constraints.</i>	Consistent. Allowing the sale of beer and wine will allow the restaurant to market to a wider clientele.

**Table 2**  
**Midtown Specific Plan Consistency**

Principles/Policies	Consistency Finding
<i>3.16: Provide for the continuation of retail development along the Calaveras Boulevard corridor</i>	Consistent. Allowing the sale of beer and wine allows the restaurant to stay competitive and maintains commercial business along Calaveras Boulevard.
<i>3.17: Encourage the development of new office/business uses along the Calaveras Boulevard corridor in order to take advantage of the area's convenient freeway access and visibility.</i>	Consistent. Allowing the sale of beer and wine allows the restaurant to stay competitive and maintains commercial business along Calaveras Boulevard.

The project is consistent with the Milpitas General Plan and the Midtown Specific Plan in that the full-service restaurant use serves the civic, cultural, business and professional life as well as provides economic opportunities for all Milpitas residents.

**Zoning Ordinance**

The proposal is consistent pursuant to Section 19.03-35: *Restraints which include the on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service.*

**ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically except from CEQA pursuant to Section 15301 (Existing Facilities) since the building and restaurant are already established at that location.

**PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. At the time of writing this report, there has been one inquiry from the public. Mrs. Edward Hamilton called staff to voice her concern over approving the sale of beer and wine. She did not find the site an appropriate location for alcohol sales due to the proximity residential uses.

**CONCLUSION**

The proposal is within the means of a restaurant service. Because the application has no interior alterations to the existing floor layout, and no intention of proposing a bar, the service of beer and wine proves to be incidental to the primary food service. Therefore, allowing Layang Layang to serve beer and wine will enhance or facilitate the vitality of an existing commercial area without presenting a significant impact in public health or safety.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission adopt Resolution No. 08-062 approving Conditional Use Permit Amendment No. UP08-0025, Layang Layang, subject to the attached Conditions of Approval.

*Attachments:*

- A. Resolution/Conditions of Approval
- B. Plans

S:\PLANNING DIVISION1\STAFF FOLDERS\Julie Moloney\Active Projects\Calaveras Blvd W 181 CUP for type-41 and additional seating\Reports\Staff-Report for Beer and Wine.doc

## RESOLUTION NO. 08-062

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP08-0025, LAYANG LAYANG, TO ALLOW FOR ONSITE CONSUMPTION OF BEER AND WINE LOCATED AT 181 W. CALAVERAS BLVD.

**WHEREAS**, on July 9, 2008, an application was submitted by Ms. Tiffany Cheng, 181 W. Calaveras Blvd. Milpitas, CA 95035 to allow for onsite consumption of beer and wine at the Layang Layang Malaysian restaurant. The property is located within the General Commercial (C2) zoning district (APN: 022-25-048); and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt from further environmental review pursuant to Section 15301 "Existing Facilities," since the building and restaurant are already established.

**WHEREAS**, on November 12, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The recitals set forth above are true and correct and incorporated herein by reference.

**Section 2:** The project is exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities") of the California Environmental Quality Act (CEQA) Guidelines

**Section 3:** The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare due to the service and consumption of beer and wine being onsite, indoors, and incidental to the primary food service.

**Section 4:** The on-site sale of beer and wine is found to be an appropriate use at this site and is not anticipated to cause detriment to adjacent businesses and land uses.

**Section 5:** Should there be an undue concentration of ABC licenses within census tract 5045.07, the Planning Commission finds that this would not negatively impact the surrounding commercial businesses.

**Section 6:** The on-site sale of beer and wine is common in full service restaurants, is ancillary to the main food-serving function of the restaurant, and is a convenient service for the

restaurant patrons; it therefore will provide a public convenience and necessity to the patrons of the restaurant.

**Section 7:** The proposed use is consistent with the Milpitas General Plan because it is ancillary to a restaurant, which promotes and encourages economic pursuits while publicizing Milpitas as a place to carry on compatible industrial and commercial activities. (General Plan, Implementation Policy, 2.a-I-4, 2.a-I-3, and 2.1-I-5).

**Section 8:** The proposed use is consistent with the Milpitas Zoning ordinance pursuant to Title XI, Chapter 10, Section 35.04-9 (Industrial Park District, Conditional Uses-Restaurants, on-premise consumption of alcoholic beverages), and Section 57 (Conditional Use Permitted by Commission) in that the proposed use is a conditionally permitted use with the approval of the Planning Commission.

**Section 9:** The Planning Commission finds that the proposed use would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact in public health or safety.

**Section 10:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP08-0025, Layang Layang, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on November 12, 2008

\_\_\_\_\_  
Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on November 12, 2008, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>OTHER</b>
Cliff Williams			
Gunawan Ali-Santosa			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			

**COMMISSIONER**

Aslam Ali

**AYES NOES**

**OTHER**

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**EXHIBIT 1**

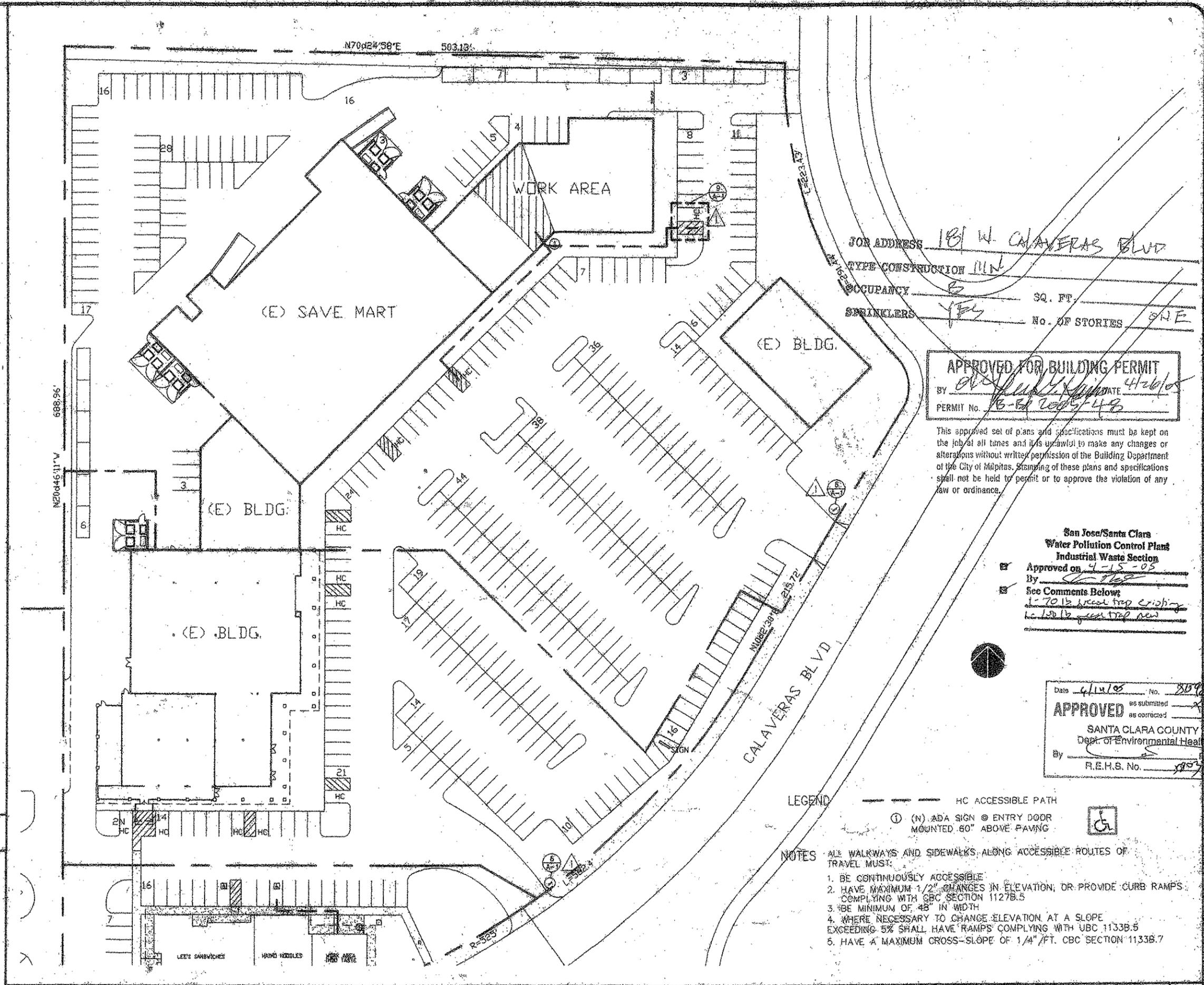
**CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT AMENDMENT NO. UP08-0025**

**Planning Division**

1. The owner or designee shall develop the approved project in conformance with the approved plans and project materials approved by the Planning Commission on November 12, 2008, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

2. Conditional Use Permit No. UP08-0025 shall become null and void if the project is not commenced within 18 months from the date of approval.
3. The sale of beer and/or wine shall be in conjunction with the service of food.
4. All conditions of previous Conditional Use Permit still apply to restaurant use.



FOR ADDRESS 181 W. CALAVERAS BLVD  
 TYPE CONSTRUCTION MIN  
 OCCUPANCY B SQ. FT. \_\_\_\_\_  
 SPRINKLERS YES No. OF STORIES ONE

**APPROVED FOR BUILDING PERMIT**  
 BY [Signature] DATE 4-26-05  
 PERMIT No. 16-54 2005-48

This approved set of plans and specifications must be kept on the job at all times and it is unlawful to make any changes or alterations without written permission of the Building Department of the City of Milpitas. Stamping of these plans and specifications shall not be held to permit or to approve the violation of any law or ordinance.

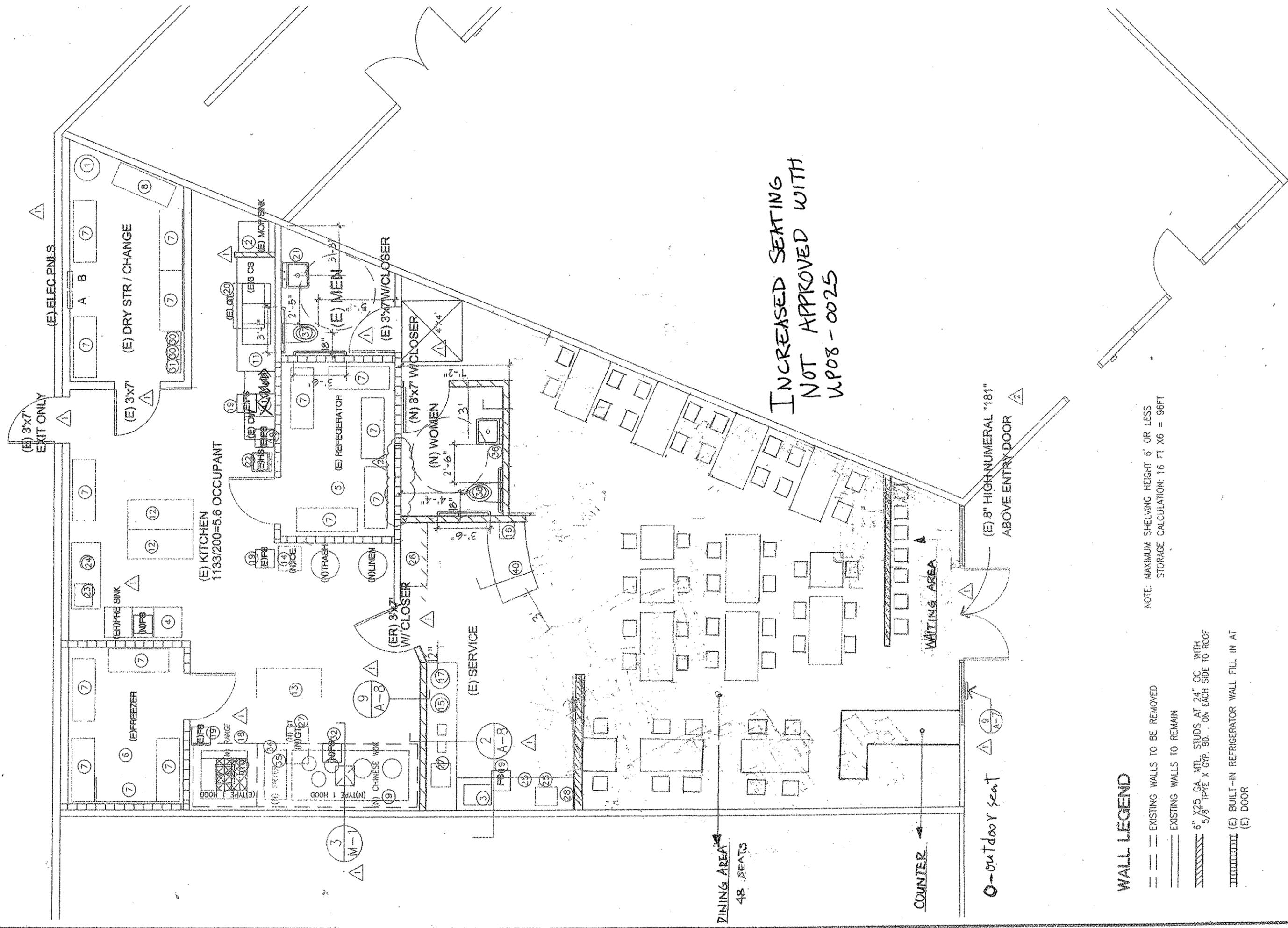
San Jose/Santa Clara  
 Water Pollution Control Plant  
 Industrial Waste Section  
 Approved on 4-15-05  
 By [Signature]  
 See Comments Below  
1-70 lb. metal trap existing  
1-100 lb. metal trap new

Date 4/15/05 No. 309  
**APPROVED** as submitted \_\_\_\_\_  
 as corrected \_\_\_\_\_  
 SANTA CLARA COUNTY  
 Dept. of Environmental Health  
 By [Signature]  
 R.E.H.S. No. 2809

**LEGEND**  
 - - - - - HC ACCESSIBLE PATH  
 (N) ADA SIGN (E) ENTRY DOOR  
 MOUNTED .60" ABOVE PAVING

**NOTES** ALL WALKWAYS AND SIDEWALKS ALONG ACCESSIBLE ROUTES OF TRAVEL MUST:  
 1. BE CONTINUOUSLY ACCESSIBLE  
 2. HAVE MAXIMUM 1/2" CHANGES IN ELEVATION, OR PROVIDE CURB RAMPS COMPLYING WITH CBC SECTION 1127B.5  
 3. BE MINIMUM OF 48" IN WIDTH  
 4. WHERE NECESSARY TO CHANGE ELEVATION AT A SLOPE EXCEEDING 5% SHALL HAVE RAMPS COMPLYING WITH UBC 1133B.5  
 5. HAVE A MAXIMUM CROSS-SLOPE OF 1/4" / FT. CBC SECTION 1133B.7

**SITE PLAN**



**WALL LEGEND**

- EXISTING WALLS TO BE REMOVED
- EXISTING WALLS TO REMAIN
- 6" X 25 GA. WTL. STUDS AT 24" OC. WITH 5/8" IPYE X GYP. BD. ON EACH SIDE TO ROOF
- ||||| (E) BUILT-IN REFRIGERATOR WALL. FILL IN AT (E) DOOR

NOTE: MAXIMUM SHELVING HEIGHT 6' OR LESS  
STORAGE CALCULATION: 16 FT X 6 = 96FT