



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: June 9, 2010

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<b>APPLICATION:</b>	<b>Conditional Use Permit No. UP10-0005 &amp; Minor Site Development Permit No. MS10-0009: Olive Garden Alcohol Sales and Exterior Modifications</b>
APPLICATION SUMMARY:	A request to allow a full range of alcoholic beverages and exterior architectural and landscaping improvements for a new Olive Garden restaurant within the Great Mall.
LOCATION:	1350-J Great Mall Drive
APPLICANT:	Steve Hale, 1048 Peppertree Drive, Fairfield, CA 94533
OWNER:	Darden Restaurants, 1000 Darden Center Drive, Orlando, FL 32837
<b>RECOMMENDATION:</b>	<b>Staff recommends that the Planning Commission adopt Resolution No. 10-028 approving the project subject to conditions of approval.</b>
PROJECT DATA:	
General Plan/ Zoning Designation:	General Commercial with Site and Architectural Overlay (C2-S)
Any other pertinent info:	
CEQA Determination:	Categorically exempt form CEQA pursuant to Section 15301 (Existing Facilities)
PLANNER:	Janice Spuller, Assistant Transportation Planner
PJ:	2635
ATTACHMENTS:	A. Resolution No. 10-028 B. Site Plans

# LOCATION MAP



## **BACKGROUND**

The subject site was the location of a Ford auto assembly plant that operated from 1955 until 1983. A General Plan Amendment was approved in 1993 to change the subject site from Manufacturing to General Commercial. Within that same year, approval was granted by the city for the conversion of the existing auto assembly plant to a regional shopping mall, which opened the following year.

Recent Municipal Code amendments led to streamlining of the process for restaurants. Restaurants no longer require a Conditional Use Permit. The actual review of the tenant improvement for restaurants is now only considered through the building plan check and permitting process. However, requests for alcohol beverage sales still require a Conditional Use Permit, except within Mixed Use zoning districts. This application is submitted to allow alcoholic beverage service and to allow some exterior modifications to the tenant space, pursuant to Title XI, Chapter 10, Section 5.02.1 Commercial Zone Uses and Title XI, Chapter 10, Section 57.03, Minor Site Development Permits.

## **PROJECT DESCRIPTION**

### ***Site and Vicinity***

The Great Mall is one of the regional malls in the Bay Area. It extends over 103 acres of land located on the east side of South Main Street, just west of Union Pacific Railroad tracks, and just north of Great Mall Parkway. The General Plan and Zoning designate this site as General Commercial with a Site and Architectural Overlay (-S) district for site and architectural review (C2-S). Surrounding zoning includes: Multi-Family High Density to the north (R3), Heavy Industrial to the east (M2), Multi-Family Very High Density with a Transit Oriented Development Overlay (R4-TOD) to the south, and Heavy Industrial/Multi-Family Very High Density with a Transit Oriented Development Overlay (R4-TOD)/Multi-Family High Density with a Transit Oriented Development Overlay (R3-TOD) to the west. See the vicinity map on the previous page for reference.

### ***Building Plan Check***

The applicant concurrently submitted for review construction documents for the issuance of building permits associated with improving the vacant tenant space and any exterior modifications to the site, including exiting, trash, other waste disposal and compliance with the Americans with Disabilities Act. Staff confirmed compliance with parking and other zoning development standards for restaurants.

### ***Planning Entitlements***

For the Planning Commission consideration, the applicant requests approval of a full range of alcoholic beverage sales to complement the restaurant. In addition, the applicant requests exterior modification to the building, including façade and landscaping changes for Unit J. Both components of the project are described in detail below.

### **Alcohol beverage sales**

The applicant requests to offer a full range of alcoholic beverages to complement the food service. The licensing of the alcoholic beverage sales is under the jurisdiction of the Department of Alcoholic Beverage Control, however, through the Conditional Use Permit process, the City may impose certain conditions affecting the operation when certain findings are made. The ABC will issue a license if the applicant meets local zoning laws. Based on the operation of the restaurant, including its menu and hours, it is not anticipated that any unique conditions of approval are necessary for this request.

While the restaurant is located in a census tract deemed by the ABC to be “over concentrated” with on-sale licenses, restaurants do require any public convenience and necessity findings to be made by the City in order for the ABC to issue a license. In addition, the proposed project will only serve liquor during meal services.

Exterior Modifications

The project proposes to add exterior improvements which include a new façade composed of stone veneer, exterior plaster paint, gable roofs, wood trellis beam and posts and an entry tower element. The colors and materials palette for the exterior contrast and complement the Great Mall architecture. The changes upgrade the elevations and provide further interest to that portion of the mall building. Refer to the project plans for more detail.

The height of the entry tower is within the development standards for the commercial zone as described in Title XI-Chapter 10, section 5.03. Landscaping will consist of the addition of groundcover and nine Italian Cypress Trees that will be maintained up the roof top. Canned up-lighting will be located within the landscaping to illuminate the building.

**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**

<b>Policy</b>	<b>Consistency Finding</b>
<p><i>2.a-G-1</i></p> <p><i>Maintain a land use program that balances Milpitas’ regional and local roles by providing for a highly amenable community environment and a thriving regional industrial center.</i></p>	<p><b>Consistent.</b></p>
<p><i>2.a-I-3</i></p> <p><i>Encourage economic pursuits which will strengthen and promote development through stability and balance.</i></p>	<p><b>Consistent.</b></p>

The proposed project is consistent with Implementing Policy 2.a-G-1 in that the new restaurant location will serve the neighboring tenants and other residential/industrial uses surrounding the area. The proposed project is consistent with Implementing Policy 2.a-I-3 in that the new restaurant promotes a strong economy through the balance of supporting neighboring customers.

***Zoning Ordinance***

Restaurants are a permitted use within the General Commercial Zoning District. The sale of alcoholic beverages within the C2 districts requires a conditional use permit. California Law governs the manufacture, sale, and purchase of alcoholic beverages through the Department of Alcoholic Beverage Control (ABC). The ABC has the power to issue and revoke alcohol licenses which are defined by certain classifications and can *only* issue licenses when the location of the business complies with local zoning laws. With the approval of a conditional use permit, the applicant would be consistent with zoning and could receive a license from the ABC under the following classification:

*Type 47- On Sale-General Eating-* (Restaurant). Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. This license authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.

The exterior component of the project includes a combination of contrasting and complementing elements that provide interest to the mall building, while in keeping with the surrounding development. The enhanced landscaping brings together a cohesive theme and also includes drought tolerant species.

#### **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 exempt from further environmental review pursuant to Class 1, Section 15031 (“Existing Facilities”) because the sale of alcoholic beverages and the landscape modifications are negligible beyond the existing use.

#### **PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

#### **CONCLUSION**

Staff’s position is that the alcoholic beverage sales and exterior improvements are consistent with the uses within the Commercial Zoning District. Circulation and parking will be reviewed during the plan check process, which was submitted concurrently with this conditional use permit application.

#### **RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission adopt Resolution No. 10-028 approving Conditional Use Permit No. UP10-0005 & Minor Site Development Permit No. MS10-0009, subject to the attached Conditions of Approval.

#### *Attachments:*

- A. Resolution No. 10-028
- B. Site Plans

**RESOLUTION NO. 10-028**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP10-0005 & MINOR SITE DEVELOPMENT PERMIT NO. MS10-0009, OLIVE GARDEN, TO ALLOW FOR A FULL RANGE OF ALCOHOLIC BEVERAGES AND EXTERIOR ARCHITECTURAL AND LANDSCAPING IMPROVEMENTS FOR A NEW OLIVE GARDEN RESTAURANT WITHIN THE GREAT MALL, LOCATED AT 1350-J GREAT MALL DRIVE**

**WHEREAS**, on April 12, 2010, an application was submitted by Steve Hale, 1048 Peppertree Drive, Fairfield, CA 94533, to allow a full range of alcoholic beverages and exterior architectural and landscaping improvements for a new Olive Garden restaurant within the Great Mall. The property is located within the General Commercial Zoning District with Site and Architectural Overlay (C2-S) (APN 86-24-60); 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.

**WHEREAS**, on June 9, 2010, 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 categorically exempt from further environmental review pursuant to California Environmental Quality Act (CEQA) Section 15301 (Existing Facilities) in that the addition of alcohol beverage service and architectural and landscaping modifications to site represent a negligible expansion beyond the existing use.

**Section 3:** The project, 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 to adjacent future tenants or the surrounding community because the project is located within an existing commercial center

**Section 4:** The project is consistent with the Milpitas General Plan policies 2.a-G-1 and 2.a-I-3 in that the project promotes economic development.

**Section 5:** The proposed use is consistent with the Milpitas Zoning Ordinance in that the proposed use is permitted in the General Commercial Zone (C2).

**Section 6:** The development recognizes and respects the nature of the neighborhood and site, development patterns, materials used, and the expectations of those who will see and use the building in that it is complementary to the existing building and does not propose any building or site modifications that impact development standards for setback, height, FAR, and landscaping.

**Section 7:** The development assures that modifications satisfy functional requirements, and screened with appropriate compatible materials in that the restaurant will be reviewed for building and zoning code standards during the City Building Permitting Process.

**Section 8:** The development assures that the modification will not interfere with the privacy, quiet enjoyment or view of the surrounding properties in that the project will not create a substantial level of noise, indoor only seating, and restaurant hours closing at 11:00 pm.

**Section 9:** The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP10-0005 & Minor Site Development Permit No. MS10-0009, Olive Garden 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 June 9, 2010

\_\_\_\_\_  
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 June 9, 2010 and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Cliff Williams				
Lawrence Ciardella				
Sudhir Mandal				
Gurdev Sandhu				
Steve Tao				
Noella Tabladillo				
Mark Tiernan				

**EXHIBIT 1**

**CONDITIONS OF APPROVAL**

**UP10-0005/MS10-0009**

A request to allow a full range of alcoholic beverage services and architectural and landscaping modifications to an Olive Garden restaurant  
1350-J Great Mall Drive (APN: 086-24-60)

**General Conditions**

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on June 9, 2010, 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. **(P)**

2. UP10-0005 & MS10-0009 shall become null and void if the project is not commenced within two (2) years from the date of approval or for projects submitted with tentative maps, within the time limits of the tentative map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas: If the project requires the issuance of a building permit, the project shall be deemed to have commenced when the project completes a foundation associated with the project. If the project does not require the issuance of a building permit, the project shall be deemed to have commenced when dedication of any land or easement is required or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of UP10-0005 and MS10-0009 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**

3. Prior to the issuance of building permits, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
4. The operator shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the

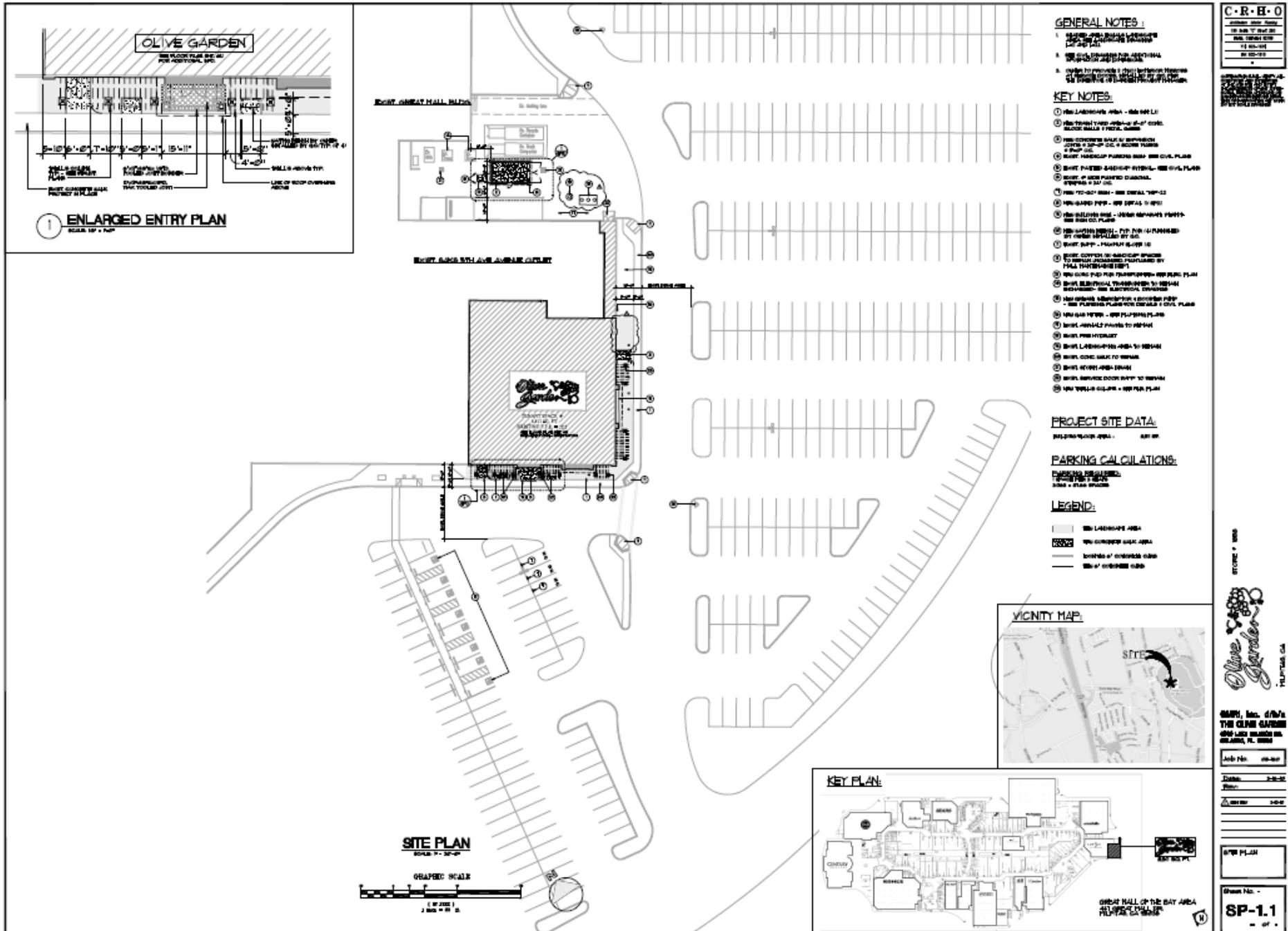
training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. (P)

5. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
6. No sign(s) are approved with this Conditional Use Permit. All signs shall comply with the approved Sign Program for the Great Mall and shall be reviewed in accordance with the City's Zoning Ordinance. (P)
7. The elevation plans shall be revised to demonstrate that no trees will obstruct any wall signs. (P)
8. Prior to occupancy permit issuance, applicant/property owner shall construct a new trash enclosure or expand the existing enclosure to accommodate the required number of bins needed to serve this development. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure. *Proposed enclosure should be used for the Solid Waste purposes only and the area allocated for the bins is not adequate to house 3-4 CYD bins; eliminate the proposed bollards and dedicate the entire enclosure area to the solid waste purposes.* (E)
9. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant/property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant/property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the applicant shall submit evidence to the City that following minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection:
  - A. Maintain an adequate level of service for trash collection, 2-4 CYD bins collected six (6) times per week.
  - B. Maintain an adequate level of recycling collection, 1-4 CYD bin collected six (6) times per week.
  - C. Since the occupying future tenant is a restaurant, a Tallow account must be maintained and the tallow bins kept clean.

After the applicant has started its business, the applicant shall contact Allied Waste Services/BFI commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, Ext. 264. (E)

10. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. *The proposed plan shows a storm drain inlet in front of the proposed enclosure. Relocate the inlet or the enclosure to maintain the required 25-foot separation.* **(E)**
  
11. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). **(E)**
  
12. The design of this project shall include adequate Best Management Practices (BMPs) to eliminate pollutant from entering the offsite drainage systems. **(E)**

(P) = Planning  
(B) = Building  
(E) = Engineering  
(F) = Fire Prevention



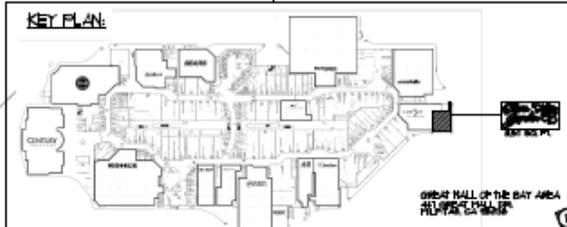
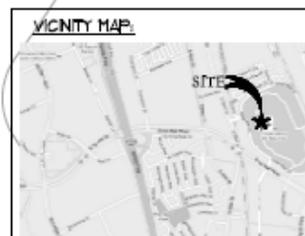
**C·R·H·O**  
 CONSULTING ENGINEERS  
 10000 W. 10th Ave.  
 Suite 1000  
 Golden, CO 80401  
 Phone: 303.440.1100  
 Fax: 303.440.1101  
 www.crh-engineers.com

- GENERAL NOTES**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER SPECIFICATIONS FOR CONSTRUCTION.
  2. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER SPECIFICATIONS FOR CONSTRUCTION.
  3. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER SPECIFICATIONS FOR CONSTRUCTION.
- KEY NOTES**
1. SEE LABORER'S AREA - SEE DETAIL L1
  2. SEE TYPICAL WALL SECTION - SEE DETAIL W1
  3. SEE CONCRETE SLAB AT ENTRANCE - SEE DETAIL C1
  4. SEE ROOF FLASHING DETAIL - SEE DETAIL R1
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**PROJECT SITE DATA**  
 PROJECT NAME: OLIVE GARDEN RESTAURANT  
 PROJECT ADDRESS: 10000 W. 10th Ave., Golden, CO 80401  
 PROJECT OWNER: C.R.H.O. CONSULTING ENGINEERS

**PARKING CALCULATIONS:**  
 PARKING REQUIRED: 100 SPACES  
 PROVIDED: 100 SPACES  
 STATUS: 100% COMPLETE

- LEGEND:**
- 1. SEE LABORER'S AREA
  - 2. SEE TYPICAL WALL SECTION
  - 3. SEE CONCRETE SLAB AT ENTRANCE
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DATE: 10/10/10  
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 CHECKED BY: [Signature]  
 PROJECT NO.: SP-1.1  
 SHEET NO.: 1 OF 1









File Name: 08160 - FR&R

# ITALIAN RESTAURANT

## MILPITAS, CA

0 5 10 20

### MATERIAL LEGEND

- 101 - PAINT @ EXTERIOR WALLS  
Benjamin Moore® IC-12 "Caswell Ivory" - apply per spec.
- 105 - STAIN @ WOOD TRELLIS  
Olympic Semi-Transparent Stain #726  
Oil base, Cut 25%
- 106 - PAINT @ WOOD TRIM, WINDOWS & DOORS  
Benjamin Moore "Olive Garden Brown"
- 107 - STONE VENEER w/ (133 Brick, Clinkers) Coronado Stone  
"Appalachian Fieldstone" w/ matching chiseled corner stones  
Color: "Mountain Sunset"  
Grout: Natural Gray
- 110 - ROOF TILE  
Master Life Tile - Spanish "S" "Buttercup Blend" @ ISPCU  
6243
- 133 - BRICK CLINKERS  
Coronado Stone  
2.18" x 8" Thin Brick - Tumbled & Spaced Randomly  
w/ Natural Gray Grout

For: Darden Restaurants  
 Orlando, FL  
 407 245 4000

By: CRHO Architects  
 Tustin, CA  
 714 832 1834

January 22nd, 2010  
 Sheet 1 of 1



**107 - STONE VENEER** (w/ #133 Brick Clinkers) Coronado Stone "Appalachian Fieldstone" w/ matching chiseled corner stones  
 Color: "Mountain Sunset"  
 Grout: Natural Gray

**133 - BRICK CLINKERS** Coronado Stone 2-1/8" x 8" Thin Brick - Tumbled Space d Randomly as shown  
 Grout: Natural Gray



**110 - ROOF TILE**  
 Monier Life Tile - Spanish "S"  
 "Buttercup Blend" # ISPCU 6243



**101 - EXTERIOR PLASTER**  
 Benjamin Moore # HC-12  
 "Concord Ivory" - apply per spec.



**105 - STAIN @ WOOD TRELLIS**  
 Olympic Semi-Transparent Stain #726  
 Oil base, Cut 25%



**106 - PAINT @ WOOD TRIM, WINDOWS & DOORS**  
 Benjamin Moore "Olive Garden Brown"



**PLASTER TRIM**  
 Benjamin Moore # HC-83  
 "Grant Beige"

C · R · H · O  
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 714 832 1834 FAX 832 1910



# Colors & Materials

Great Mall Shopping Center  
 Milpitas, CA

January 21st, 2010