



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 28, 2010

APPLICATION: **CONDITIONAL USE PERMIT AMENDMENT NO. UA10-0004,
SWAGAT INDIAN RESTAURANT**

APPLICATION SUMMARY: A request to add sales of all types of alcohol for an existing restaurant with a banquet facility.

LOCATION: 68 S. Abel Street (APN 22-24-045),
APPLICANT: Jayram Komati, 68 S. Abel Street, Milpitas, CA 95035
OWNER: Witt Albert Jr. Et Al, P.O. Box 2362, Menlo Park, CA 94025

RECOMMENDATION: **Staff recommends that the Planning Commission:
Adopt Resolution No. 10-032 approving the project subject to
conditions of approval.**

PROJECT DATA:
General Plan/
Zoning Designation: Mixed Use (MXD)/ Mixed Use (MXD)
Overlay District: Site and Architectural Overlay (-S)
Specific Plan: Midtown Specific Plan Area

Site Area: 3.11 Acres
Building Square footage: 32,038 square feet
Existing Dining Area: 1,479 square feet
Total Parking Spaces Provided: 208

CEQA Determination: Categorically Exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

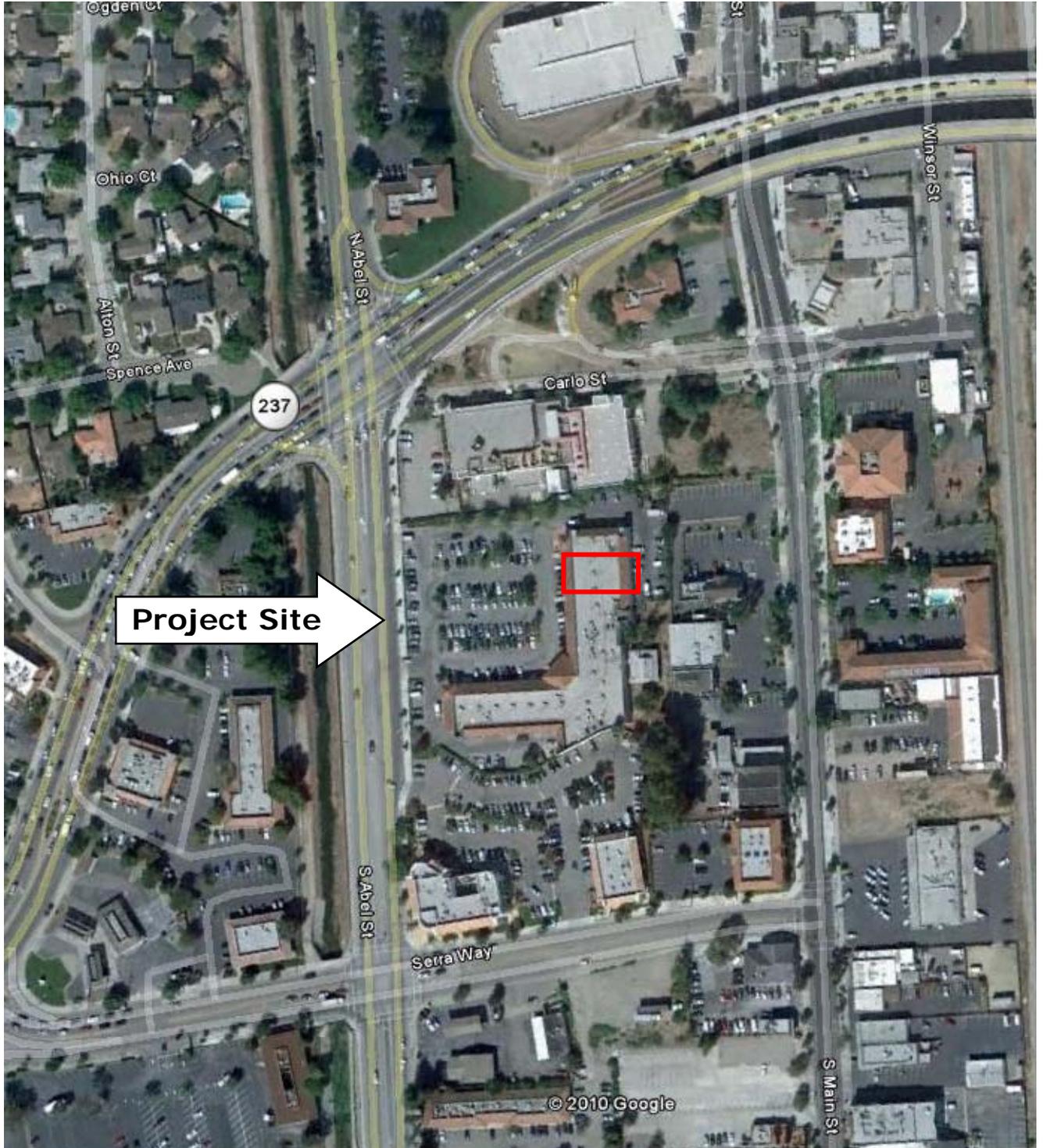
PLANNER: Cindy Hom, Assistant Planner

PJ: 2645

ATTACHMENTS: A. Resolution No. 10-032
B. Plans
C. ABC License Concentration Map Exhibit

D. Project Letter

LOCATION MAP



No scale

BACKGROUND

On February 9, 1994, the Planning Commission approved a conditional use permit amendment (UP 876-A) to convert 540 square feet of storage space into additional dining area that allowed for a seating capacity of 100.

On May 23, 2009, Jayram Komati, of Swagat Indian Restaurant submitted an application to upgrade its existing beer and wine license to all types of liquor for on-site consumption. The project proposes no other changes to the existing floor plan or hours of operation. The application is submitted pursuant to Milpitas Municipal Code XI-10-5.02-1 (Restaurant with on-site service of alcohol).

PROJECT DESCRIPTION

The project is a tenant space located within Abel Plaza located at 68 S. Abel Street. Abel Plaza is a 32,038 square foot one-story multi-tenant commercial building on 3.11 acres with surface parking. The project site is bounded by Carlo Street and Calaveras Boulevard to the north, South Abel Street to the west, South Main Street to the east, and Serra Way to the south. Surrounding land uses include retail shopping centers, commercial centers, restaurants, as well as medical and dental offices. An aerial photo of the project site and vicinity is shown on the previous page.

The project site is located within the Milpitas Midtown Area and is zoned Mixed Use with a Site and Architectural Overlay (MXD-S). The project space currently operates as a restaurant that includes banquet facilities and ancillary beer and wine sales in conjunction with the restaurant. The applicant requests to upgrade their beer and wine license to all types of alcohol. The applicant does not propose any physical changes or hours of operation.

Development Standards

There are no proposed changes to the site or building. A change in the alcohol license does not affect parking standards. Furthermore, the project does not exceed the threshold to require upgrades required by the Midtown Specific Plan.

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
2.a-I-3: <i>Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The project provides the city with a dining destination within one of Milpitas commercial corridors.
2.a-I-7	Consistent. The project would promote business

Policy	Consistency Finding
<p><i>Provide opportunities to expand employment, participate in partnerships with local businesses to facilitate communication, and promote business retention.</i></p>	<p>retention in that it would allow the restaurant to capture a larger customer base and increase the vitality of the retail strip center</p>

Zoning Ordinance

The project is consistent with the Milpitas Zoning Ordinance in terms of land use and development standards. Restaurants with alcohol service are conditionally permitted in the Mixed Use Zoning District. The project proposes no site or building modifications and the change in alcohol license does not require additional parking.

The sale of all types of alcohol would be ancillary to the food service and would not be detrimental or injurious to property, improvements, public health, safety, and general welfare in that the project site is located within an existing shopping center. Although the project is located near sensitive areas such as residential homes and a church, there is adequate buffer between the uses. The project site is approximately 320-feet from residential homes located on the opposite of Calaveras/Abel Street intersection and approximately 230-feet from the church property on South Main Street. To ensure responsible serving of alcohol, staff recommends as a condition of approval that the restaurant operator and its employees shall receive responsible alcohol beverage training. for

Department of Alcoholic Beverage Control’s “Undue concentration of Liquor License” Regulations

According the Department of Alcohol and Beverage Control, the project site is located within Census Tract 5045.04 which authorizes seven (7) on-sale permits. Currently there are thirty-seven (37) active on-sale licenses. (See Attachment C) Therefore, the project is within an undue concentration area. However, because the establishment is a bona fide restaurant, no finding of public convenience or necessity is required by the City.

Midtown Specific Plan

The table below outlines the project’s consistency with applicable Midtown Specific Plan Implementing Policies:

Table 2
Midtown Specific Plan Consistency

Policy	Consistency Finding
<p>3.16 <i>Provide for the continuation of retail development along the Calaveras Boulevard Corridor.</i></p>	<p>Consistent. The project is located within the Calaveras Boulevard corridor and would further support the continuation of existing and future commercial development</p>

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 15301 (Existing Facilities) of the California Environmental Quality Act. The addition of on-site consumption of a full range of alcoholic beverages in conjunction with food service is considered a negligible expansion beyond the existing restaurant 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 were no inquiries from the public.

CONCLUSION

The service of all types of alcohol in conjunction with existing restaurant with a banquet facility would be an ancillary use that would be consistent with the Milpitas General Plan and Midtown Specific Plan policies in that it encourages economic pursuits, business retention, and continuation of commercial development in the Calaveras Boulevard Corridor. The project conforms to the Mixed Use Zoning in terms of land use and development standards. As conditioned, the project will not be detrimental to property, improvements, or public health, safety, and general welfare.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission close the public hearing and adopt Resolution No. 10-032 approving Conditional Use Permit Amendment No. UA10-0004, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 10-032
- B. Plans
- C. ABC License Concentration Map Exhibit
- D. Project Description

RESOLUTION NO. 10-032

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA10-0004, SWAGAT INDIAN RESTAURANT, A REQUEST TO UPGRADE EXISTING BEER AND WINE SALES TO ALL TYPES OF ALCOHOL LOCATED AT 68 S. ABEL STREET

WHEREAS, on May 23, 2010, an application was submitted by Jayram Komati, 68 S. Abel Street, a request to allow for ancillary sale of all types of alcohol to an existing restaurant. The property is located at 68 S. Abel Street (APN 22-24-045) within the Mixed Use Zoning District; 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 is Categorically Exempt from further environmental review.

WHEREAS, on July 28, 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 Class 1, Section 15301 (Existing Facilities) of the California Environmental Quality Act. The addition of on-site consumption of a full range of alcoholic beverages in conjunction with food service is considered a negligible expansion beyond the existing restaurant use.

Section 3: The service of all types of alcohol in conjunction with the existing restaurant is consistent with the Milpitas General Plan and Midtown Specific Plan policies in that it encourages economic pursuits, business retention, and continuation of commercial development in the Calaveras Boulevard Corridor.

Section 4: The project conforms to the General Commercial Zoning in that the restaurant with liquor service is a conditionally permitted use.

Section 5: As conditioned, the project will not be detrimental or injurious to property, improvements, public health, safety and general welfare in that restaurant operator and its employees shall receive responsible alcohol beverage training.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA10-0004, Swagat India Restaurant, 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 July 28, 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 July 28, 2010, and carried by the following roll call vote:

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

EXHIBIT 1

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA10-0004
A request to allow for ancillary sales of all types of alcohol an existing restaurant
68 S. Abel Street

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 July 28, 2010, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, 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. Conditional Use Permit Amendment No. UA10-0004 shall become null and void if the project is not commenced within two (2) years from the date of approval. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Pursuant to Section 64.06(1), the owner or designee shall have the right to request an extension of Conditional Use Permit Amendment No. UA10-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
4. The project shall be operated in accordance with all local, state and federal regulations. **(P)**
5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. **(P)**
6. 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)

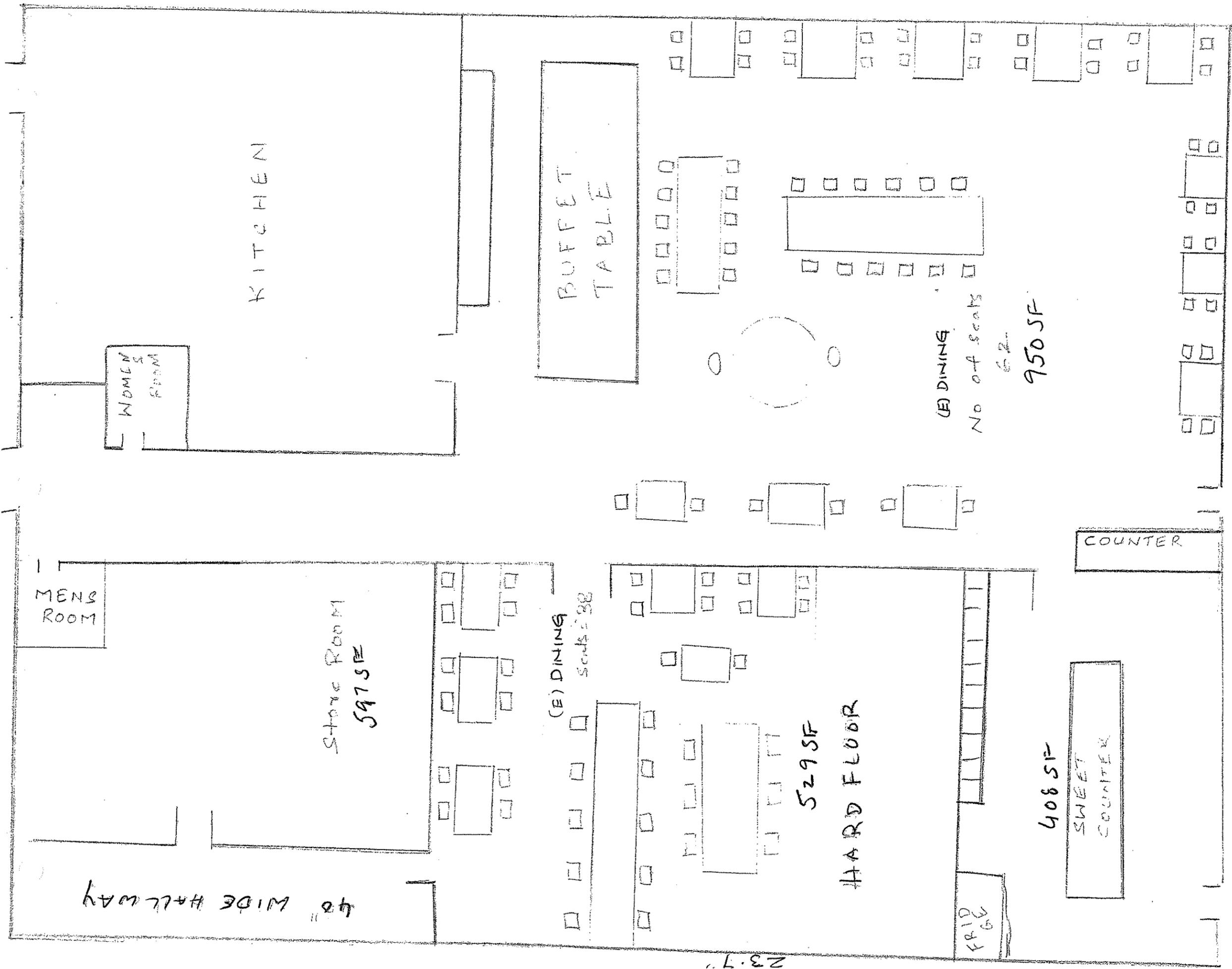
7. Comply with all Department of Alcoholic Beverage Control licensing requirements pertaining to the sale of beer, wine and distilled spirits. (P)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention



KITCHEN

WOMEN'S ROOM

BUFFET TABLE

(B) DINING
No of seats
62
950 SF

COUNTER

MENS ROOM

Store Room
597 SF

(B) DINING
seats 238

529 SF

HARD FLOOR

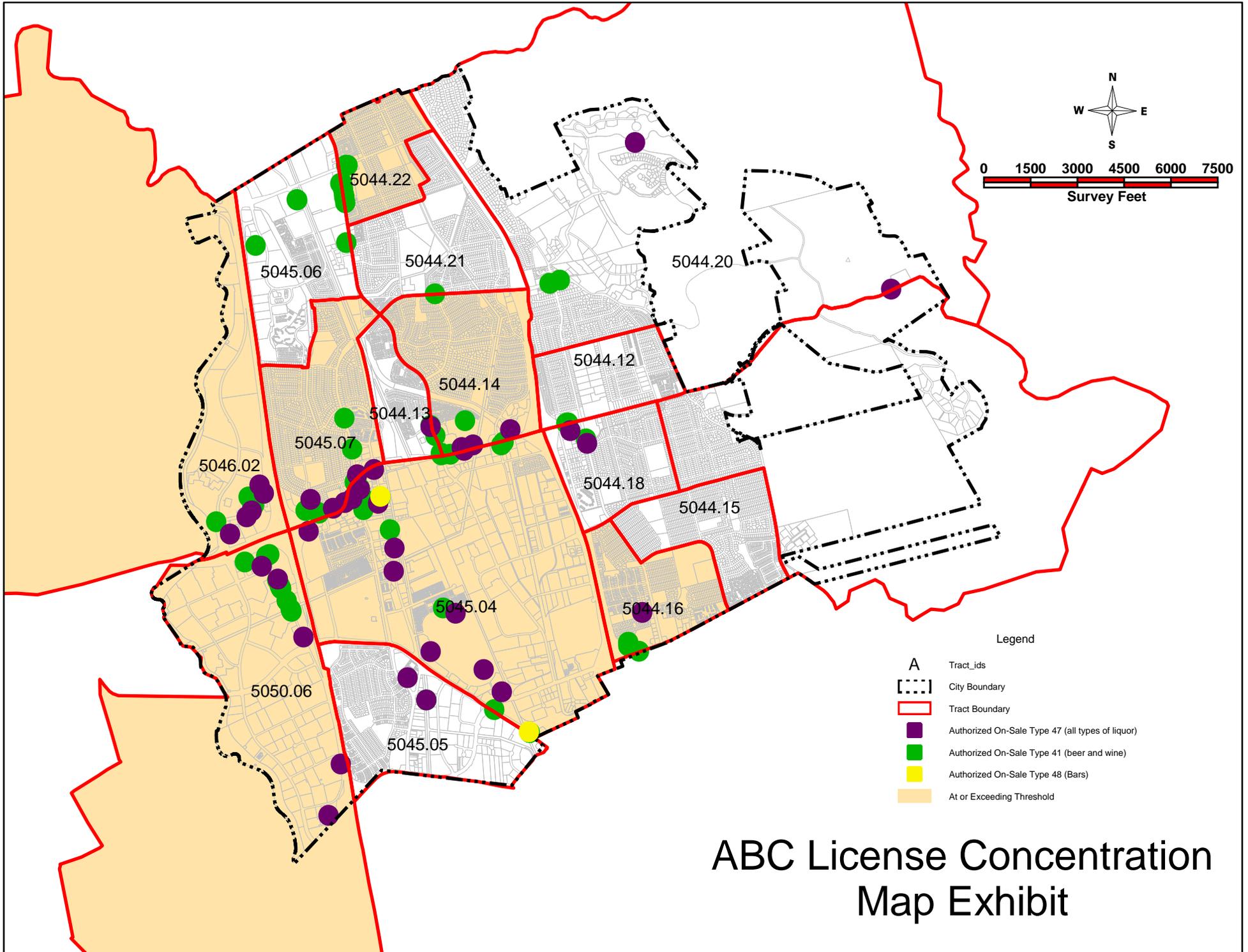
408 SF

SWEET COUNTER

40" WIDE HALLWAY

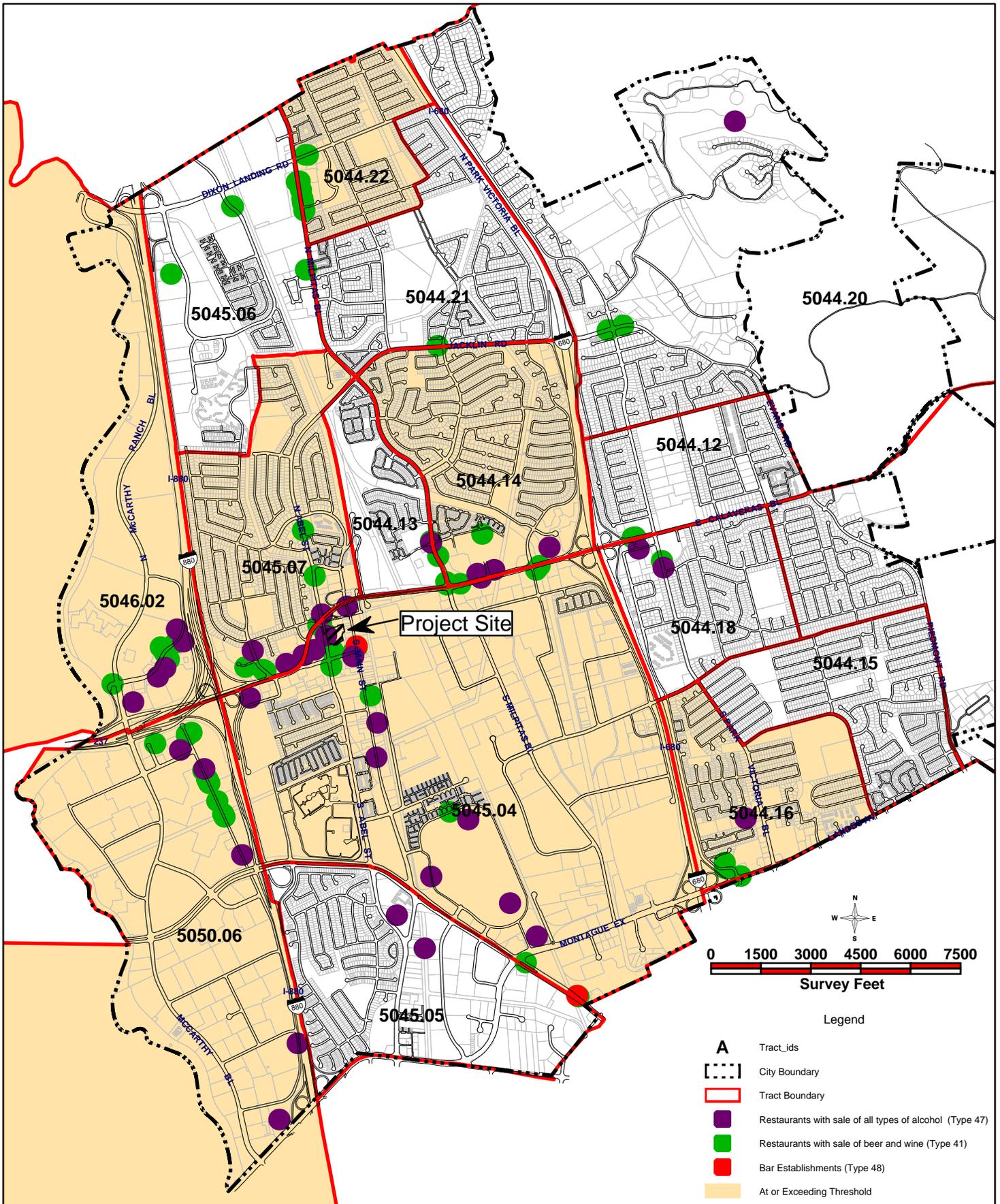
23.7'

FRIDGE



ABC License Concentration Map Exhibit

ABC License Concentration Map Exhibit



Kalpana Komati, President
JR Technology Inc. dba Swagat Indian Cuisine
68 South Abel Street
Milpitas, Ca 95035

To Whom It may Concern:

Public Convenience or necessity served by issuance of the Liquor License

The issuance of the applied-for license would enable customers of this restaurant to enjoy the full experience of enjoying a meal with their favorite beverage.

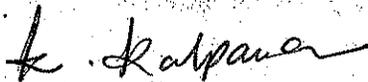
The serving of liquor at the establishment will not in any manner will be a convenience to the patrons of the restaurant as they will not have to go to a bar or drive around looking for a place to obtain liquor. This will also serve the community for it's convenience provided but also reduce traffic in the immediate area.

The restaurant will only serve responsible adults and will reserve the right to refuse any one that seems to get even close to being inebriated. Because of the responsible action by the restaurant applicant does not see a problem of crime or traffic accidents as a direct cause of liquor service in the area.

The fiscal benefit to the community will be from additional sales tax revenue to the county.

This restaurant will be a model for the conscientious serving of liquor to responsible adults.

Sincerely, Your,



Kalpana Komati, President
JR Technology Inc., dba Swagat Indian Cuisine