



**MILPITAS PLANNING COMMISSION  
STAFF REPORT**

September 24, 2014

**APPLICATION:** **JAKE’S WAYBACK BURGERS – 1547 California Circle – UP14-0015: A request for a Conditional Use Permit to allow for a 2,000 square foot fast food establishment in an existing building.**

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Adopt Resolution No. 14-032 approving Conditional Use Permit No. UP14-0015 to allow for a 2,000 square foot fast food establishment.**

**LOCATION:**  
Address/APN: 1547 California Circle (APN 22-37-049)  
Area of City: Southwest corner of California Circle and I-880 Off-Ramp

**PEOPLE:**  
Project Applicant/ Business Owner: Abul Usman, Jake’s Wayback Burgers  
Consultant(s): Richard Oblander, Design 4 Designing  
Property Owner: Sung Simon Cho  
Project Planner: Cindy Hom, Assistant Planner

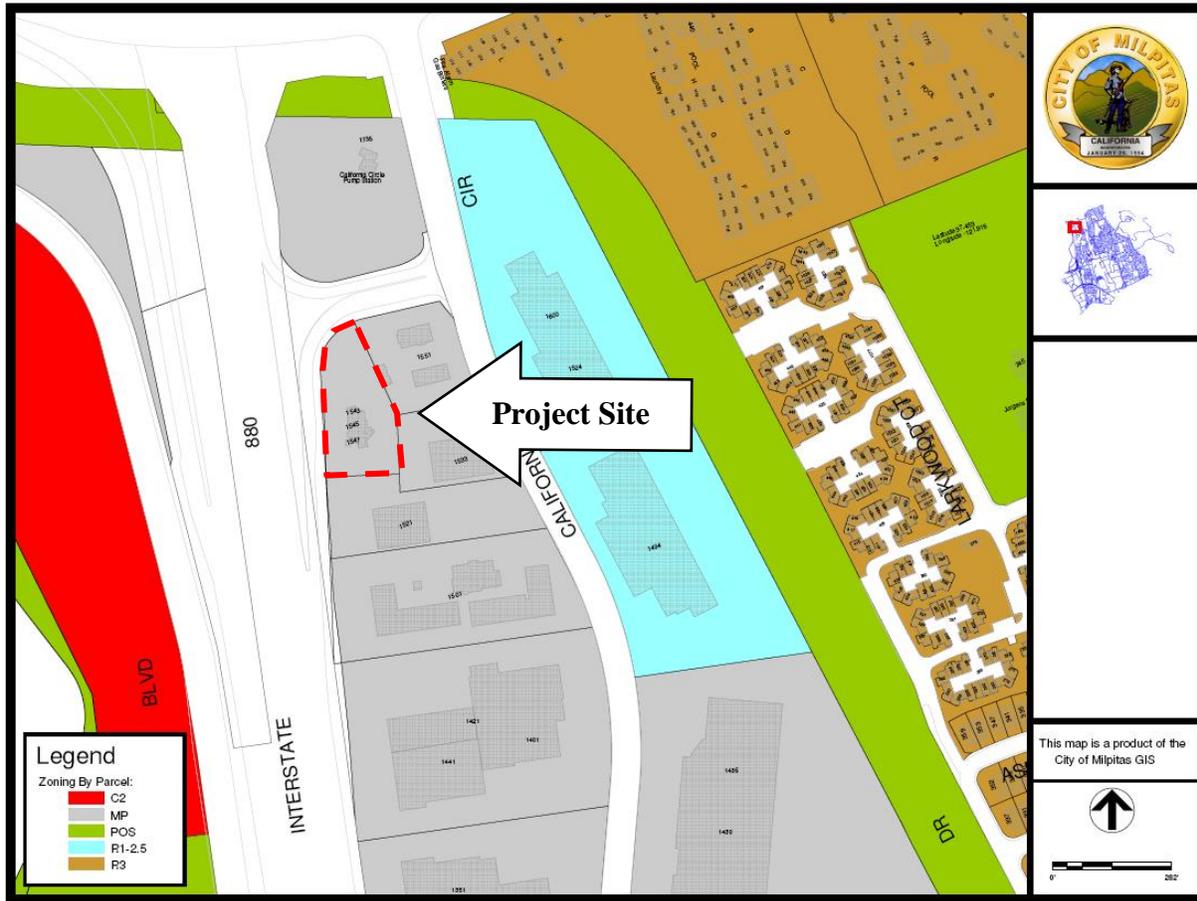
**LAND USE:**  
General Plan Designation: Industrial Park (INP)  
Zoning District: Industrial Park (MP)  
Overlay District: Site and Architectural Overlay (-S)

**ENVIRONMENTAL:** Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

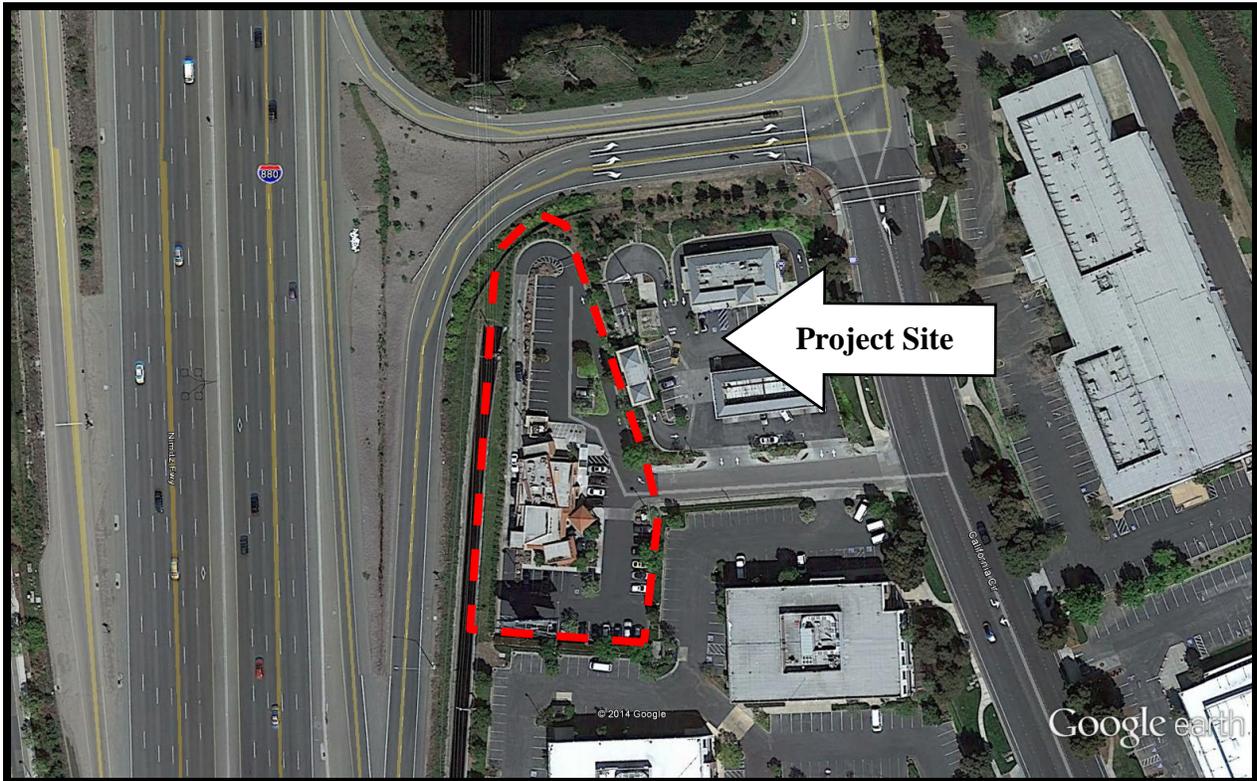
# EXECUTIVE SUMMARY

The applicant is requesting a Conditional Use Permit to allow for the operations of a 2,000 square foot fast-food establishment within an existing commercial building located at 1547 California Circle. The project entails interior improvements and replacement of existing mechanical roof top equipment.

**Map 1**  
**Project Location**



## Map 2 Project Site



## **BACKGROUND**

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### *History*

In 1994, the Planning Commission approved a minor tentative map that separated a single larger parcel into five smaller parcels. The subject site is one of these five parcels. Subsequently in February 1994, the Planning Commission approved a Site Development Permit and Conditional Use Permit for a Burger King restaurant with drive-thru on the subject property.

In September 2002, the Planning Commission approved Conditional Use Permits Nos. UP2002-22 and UP2002-25 and Site Development Permits Nos. SA2002-46 & SA2002-47 to convert an existing Burger King restaurant into a two-tenant building with drive-thru. One of the tenant spaces accommodated a 1,522 square foot Starbucks Cafe s with drive-thru and the other is an approximately 2,000 square foot Togo's Eatery and Baskin Robin ice cream shop.

Between May 2011 and May 2014, a paper shredding company occupied the space that was vacated by Togo's and Baskin Robin. Per Milpitas Municipal Code XI-10-64.06 (Expiration of Permits) the conditional use permit for the restaurant is considered expired when the activity has lapse for a period of at least on year.

### ***The Application***

On July 7, 2014, Abdul Usman with Jake's Wayback Burgers, submitted an application pursuant to Section 57 of the Milpitas Zoning Code for Planning Commission review and approval of a conditional use permit to allow for the operations of a 2,000 square foot fast-food restaurant. The applicant proposes to operate seven days a week from 9:00AM to 9:00PM.

## **PROJECT DESCRIPTION**

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### ***Overview***

The project includes interior modifications for new kitchen equipment and dining room fixtures. The project also proposes to remove and replace existing mechanical roof top equipment. The project does not propose any site or exterior changes to the building facade. The project does not propose to provide beer and wine with the food service.

### ***Location and Context***

The subject site is located at the northwest corner of the City off of California Circle, south of Dixon Landing Road, near the Interstate 880 and Dixon Landing Road interchange. The site is approximately 1.13 acres with a zoning designation of Industrial Park with an "S"-Zone overlay (MP-S). The site is accessed, via California Circle. Adjacent uses include Interstate 880 to the west, a Chevron gas station to the northeast and an office building to the south. Area uses include hotels, industrial buildings and uses to the north, east and south and multi-family residential further northeast.

The building is located at the southwest end of the lot. Entrances to the building will be at the east end of the building with parking at the north and south ends of the property. The drive-thru will circle to the back of the building (facing west and I-880). Vehicle entry and pedestrian access will be off of California Circle (from the east), with a walkway along the access driveway.

## **PROJECT ANALYSIS**

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### ***General Plan and Zoning Conformance***

The General Plan and Zoning Designation for this site is Industrial Park which allows various industrial and professional office uses and conditionally permits various commercial uses such as restaurants and food service uses. The purpose and intent of the Industrial Park Zoning District is to accommodate limited group of research, professional, packaging, and distribution facilities in a park-like setting. The project is consistent with this designation in that the project, adds additional restaurant services that would serve the neighboring residents and workers in the immediate area.

The project is consistent with the Milpitas Zoning Code in terms of land use. Restaurants and food service uses are conditionally permitted uses in the Industrial Park Zoning District. The project complies with the Industrial Park development standards and parking requirements as describe in the sections below.

### ***Development Standards***

As mentioned, the project will not change any of the existing building setbacks, floor area ratio, height, or existing landscaping. Compliance with the current development standards for the Mixed Use Zoning District is summarized in Table 1 below.

**Table 1:**  
**Summary of Development Standards**

	<b>Standard</b>	<b>Existing</b>	<b>Complies?</b>
<u>Setbacks</u> (Minimum)			
Front	35 feet	40 feet	Yes
Interior	10 feet	56 feet and 150 feet	
Rear	20 feet	55 feet	
<u>Floor Area Ratio</u> (Maximum)	.50	.07	Yes
<u>Building Height</u> (Maximum)	3 stories or 35-feet	21 feet	Yes

### ***Access, Circulation, and Parking***

Primary vehicle access to the project site is provided by shared driveway off of California Circle which provides local and regional access to major arterials such as Dixon Landing Road and Interstate 880.

Pedestrian circulation is provided by internal and public sidewalks and crosswalks. Public sidewalks are provided and the east and west side of California Circle with a crosswalk at the intersection of California Circle and the I-880 off ramp. The site includes private sidewalks located on the north and south side of the shared driveway and internal crosswalk from sidewalk to the front of the building.

Parking is located on the south, east, and north side of the building. The project complies with the parking ordinance requirements in that it provides the 40 required parking spaces as demonstrated in Table 2.

**Table 2**  
**Parking Requirements with Shared Parking**

<b>Land Use</b>	<b>Site</b>	<b># of Seats/Sq. Ft.</b>	<b>Parking Ratio</b>	<b>Required Parking</b>
Starbuck's	1545 California Cir.	Seats = 38 Take Out/Ordering = 82 s. f. Retail = 290 s. f.	1 / 2.5 seats 1 / 60 s. f. 1 / 200 s. f.	1 15 1
Jake's Wayback Burgers	1547 California Cir.	Seats = 51 Take Out/Ordering = 120	1 / 2.5 seats 1 / 60 s. f.	21 2
<b>Total number of parking spaces required</b>				40
<b>Total number of parking spaces provided</b>				40

***Site and Architectural Design***

The existing architecture is characterized as contemporary, modern architecture that consists of a flat roof, metal awnings and canopy, and stucco walls with reveals. No signage is proposed with this application. Any proposed signs shall be submitted as a separate review in accordance with the Milpitas Sign Ordinance.

**FINDINGS FOR APPROVAL**

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

***Conditional Use Permit (Section XI-10-57.04(F))***

- i. 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.*

The proposed food service and hours of operation will not be detrimental or injurious to property, improvements or to public health, safety and general welfare in that the use does not propose service of alcoholic beverages, live entertainment, or late night operations that would disrupt residents' quiet and peaceful enjoyment of the neighborhood or detract from the character of the Dixon Landing Business Park. As discussed above, the project complies with the

Industrial Park development standards and parking requirements, is located near a freeway interchange and will provide additional restaurant services to serve the community.

*ii. The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with the Milpitas Zoning Ordinance based on the following:

- a) With respect to land use, restaurant and food service uses are conditionally permitted uses in the Industrial Park District.
- b) With respect with development standards, the project complies with setback, height, floor area ratio, landscaping and parking requirements as discussed above.

*iii. The proposed use is consistent with the Milpitas General Plan.*

The proposed food service use provides for a complementary land use that can cater to nearby residents and workers in the surrounding area. The immediate area has a need for these types of food-related businesses, as currently there are none. Specifically, the proposed use supports the following General Plan policies:

- a) Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- b) Policy 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.

## **ENVIRONMENTAL REVIEW**

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The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities. The project entails a building and minor site modification to allow for a fast food restaurant within an existing building and will not create any additional significant environmental impact.

## **PUBLIC COMMENT/OUTREACH**

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Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on September 12, 2014. In addition, 106 notices were sent to owners and occupants within 1000-feet of the project site. A public notice was also provided on the project site, on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall.

## **CONCLUSION**

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The project includes a new 2,000 square foot fast-food restaurant. As proposed, the project complies with the development standards of the Zoning Ordinance and is consistent with the General Plan and Zoning Code. Therefore, staff recommends the Planning Commission adopts Resolution No. 14-032 approving Conditional Use Permit No. UP14-0015.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Conduct Public Hearing; and
2. Adopt Resolution No. 14-032 approving Conditional Use Permit No. UP14-0015 to allow for the operations of a 2,000 square feet fast-food establishment.

## **ATTACHMENTS**

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A: Resolution No. 14-032

B: Project Plans